WSR 06-11-012
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION
[Filed May 4, 2006, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-105.

Title of Rule and Other Identifying Information: WAC 390-37-090 relating to informal settlement, cases resolvable by stipulation prior to enforcement hearing.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on June 29, 2006, at 9:30 a.m.

Date of Intended Adoption: June 29, 2006.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by June 26, 2006.

Assistance for Persons with Disabilities: Contact Chip Beatty by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Possible rule amendment to reflect the commission's intent to receive stipulated agreements involving civil penalties prior to an adjudicative proceeding. Stipulations shall be provided by 4:00 p.m. the business day preceding a commission hearing.

Reasons Supporting Proposal: To provide guidance and clarification to the general public and persons subject to the disclosure law.

Statutory Authority for Adoption: RCW 42.17.370.

Statute Being Implemented: Chapter 42.17 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule amendment is needed to provide clarity, guidance and direction to persons during an informal settlement process in cases resolvable by stipulation prior to an enforcement hearing.

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule amendment has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The public disclosure commission (PDC) is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(i) of section 201, and, to date, the joint administrative rules review committee has not made section 201 [applicable] to the adoption of these rules.

May 4, 2006
Douglas J. Ellis
Assistant Director

AMENDATORY SECTION (Amending WSR 05-11-001, filed 5/4/05, effective 6/4/05)

WAC 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. ((~~The stipulation shall be provided at the hearing.~~)) Any stipulation to facts and violations shall be provided prior to or at the hearing. Stipulations to penalty shall be provided by 4:00 p.m. the business day preceding the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

WSR 06-11-018
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed May 4, 2006, 3:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-05-080.

Title of Rule and Other Identifying Information: New WAC 388-106-1400 through 388-106-1480, new freedom consumer directed services (NFCDS); and amending WAC 388-106-0010 Long-term care services—Definitions, 388-106-0015 What long-term care services does the department provide?, 388-106-0040 Who can provide long-term care services?, 388-106-0055 What is the purpose of an assessment?, and 388-106-0130 How does the department determine the number of hours I may receive for in-home care?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on June 27, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 28, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., on June 27, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by June 23, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The aging and disability services administration will be offering new freedom consumer directed services (NFCDS). Rules on this program are needed to provide a description of the program, eligibility criteria, types of services, the enrollment/disenrollment process, and additional information.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.030.

Statute Being Implemented: RCW 74.08.090, 74.09.-520, 74.39A.030, 42 C.F.R. 441.301(b)(6)(i).

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rosemary Biggins, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2466.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tiffany Sevruk, Home and Community Services Division, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2538, fax (360) 407-7582, e-mail sevruta@dshs.wa.gov.

May 2, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet.)

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of informal support available if the need is partially met. The department determines the amount of the assistance available using one of four categories:

(a) Less than one-fourth of the time;

(b) One-fourth to one-half of the time;

(c) Over one-half of the time to three-fourths of the time; or

(d) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

"Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make deci-

sions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

"Department" means the state department of social and health services, aging and disability services administration or its designee.

"Designee" means area agency on aging.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of Medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under Medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved Medicaid waiver program.

"Income" means income as defined under WAC 388-500-0005.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Disability" is described under WAC 388-511-1105.

"Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older.

"Institution" means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

"Medicaid" is defined under WAC 388-500-0005.

"Medically necessary" is defined under WAC 388-500-0005.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom Consumer Directed Services (NFCDS)" means a mix of services and supports to meet needs identified in the participant's assessment and identified in a New Freedom Spending Plan, within the limits of the individual budget, that provide participants with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

"New Freedom Consumer Directed Services (NFCDS) Participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom Spending Plan(NFSP)" means the plan developed by the participant, within the limits of an indi-

vidual budget, that details the participant's choices to purchase specific NFCDS and provides required federal Medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 388-500-0005.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Residential facility" means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other non-weight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"SSI-related" is defined under WAC 388-475-0050.

"Status" means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

"Supplemental Security Income (SSI)" means the federal program as described under WAC 388-500-0005.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the

activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a Medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPES)** is a Medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Medically needy residential waiver (MNRW)** is a Medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.

(4) **Medically needy in-home waiver (MNIW)** is a Medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.

(5) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(6) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(7) **Program of all-inclusive care for the elderly (PACE)** is a Medicaid/Medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(8) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(9) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(10) **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(11) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

(12) **Private duty nursing** is a Medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(13) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(14) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(15) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-853 WAC.

(16) **Nursing facility.**

(17) **Medicare/Medicaid Integration Project (MMIP)** is a DSHS prepaid managed care program, authorized under 42 CFR Part 438, that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare (Parts A and B) and Medicaid.

(18) **New Freedom Consumer Directed Services (NFCDS)** is a Medicaid waiver program authorized under RCW 74.39A.030.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0040 Who can provide long-term care services? The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05909.

(2) Home care agencies, who provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-336 WAC and contracted with area agency on aging.

(3) Residential providers, which include licensed adult family homes and boarding homes, who contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

(5) In the case of New Freedom Consumer Directed Services (NFCDS), providers meeting NFCDS HCBS waiver requirements contracting with a department approved provider of fiscal management services.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

(1) Determine eligibility for long-term care programs;

(2) Identify your strengths, limitations, and preferences;

(3) Evaluate your living situation and environment;

(4) Evaluate your physical health, functional and cognitive abilities;

(5) Determine availability of informal supports and other nondepartment paid resources;

(6) Determine need for intervention;

(7) Determine need for case management activities;

(8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;

(9) Determine need for referrals; and

(10) Develop a plan of care, as defined in WAC 388-106-0010.

(11) In the case of New Freedom Consumer Directed Services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom Spending Plan, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for your informal supports, as defined in WAC 388-106-0010, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
Unscheduled ADLs	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
Scheduled ADLs	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
			1/2 to 3/4 time	.35
			>3/4 time	.15
IADLs	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Meal preparation, Ordinary housework, Essential shopping*	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0

IADLs	Self Performance	Status	Assistance Available	Value Percentage
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
			1/2 to 3/4 time	.1
			>3/4 time	.05
IADLs	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
Key: > means greater than < means less than *Results in 5% deduction for each IADL from the base hours. Remaining hours may be used for completion of household and personal care tasks.				

(b) To determine the amount of reduction for informal support, the value percentage is divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is base in-home care hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours for the following shared living circumstances:

(a) If there is more than one client living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

(i) Meal preparation,

(ii) Housekeeping,

(iii) Shopping, and

(iv) Wood supply.

(b) If you and your paid provider live in the same household, the status under subsection (2)(a) of this section must be met for the following IADLs:

(i) Meal preparation,

(ii) Housekeeping,

(iii) Shopping, and

(iv) Wood supply.

(c) When there is more than one client living in the same household and your paid provider lives in your household, the status under subsection (2)(a) of this section must be met for the following IADLs:

(i) Meal preparation,

(ii) Housekeeping,

(iii) Shopping, and

(iv) Wood supply.

(4) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	Unmet	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
		>3/4 time	2

Condition	Status	Assistance Available	Add On Hours
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

(5) In the case of New Freedom Consumer Directed Services (NFCDS), the department determines hours as described in WAC 388-106-1450.

(6) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs. In the case of New Freedom Consumer Directed Services (NFCDS), a New Freedom Spending Plan (NFSP) is developed in place of a plan of care.

((~~6~~)) (7) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).

(d) A home health aide if you are eligible per WAC 388-106-0300 or WAC 388-106-0500.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and WAC 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom Consumer Directed Services (NFCDS).

NEW SECTION

WAC 388-106-1400 What services may I receive under New Freedom Consumer Directed Services (NFCDS)? You may use your individual budget to purchase services that address an identified need in the CARE assessment. Service categories are:

(1) **Personal Assistance Services,** defined as supports involving the labor of another person to help participants carry out activities they are unable to perform independently as identified in the CARE assessment. Services may be provided in the participant's home or in the community and may include:

(a) Direct personal care services defined as activities of daily living, as defined in WAC 388-106-0010;

(b) Delegated health related tasks, per WAC 388-71-05805 through 388-71-05830. Providers of direct personal care services may be asked to do nurse delegated tasks under supervision of a nurse;

(c) Homemaking, or assistance with instrumental activities of daily living (essential shopping, housework and meal preparation);

(d) Other tasks or assistance with activities that support independent functioning, and are necessary due to functional disability;

(e) Personal assistance with transportation.

(2) **Treatment and Health Maintenance** activities that:

(a) Are beyond the scope of the Medicaid State Plan that are necessary to promote the participant's health and ability to live and participate in the community;

(b) Are provided for the purpose of preventing further deterioration, or improving or maintaining the participant's current level of functioning; and

(c) Are performed or provided by people with specialized skill, registration, certification or licenses as required by state law.

(3) **Individual Directed Goods, Services and Supports,** defined as services, equipment or supplies not otherwise provided through this waiver or through the Medicaid State Plan, and address an identified need in the CARE assessment; and

(a) Will allow the participant to function more independently; or

(b) Increase safety and welfare; or

(c) Allow the person to perceive, control, or communicate with their environment.

(4) **Environmental or vehicle modifications,** defined as:

(a) Alterations to a participant's residence or vehicle that:

(i) Are necessary to accommodate the participant's disability and promote functional independence, health, safety and welfare; and

(ii) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(b) Vehicles subject to modification must be owned by the participant or participant's family who reside with the participant; and

(i) Must be in good working condition, licensed, and insured according to Washington state law; and

(ii) Modifications demonstrate cost effectiveness when compared to available alternative transportation.

(5) **Training and educational supports,** which are supports beyond the scope of Medicaid State Plan services that are necessary to promote the participant's health and ability to live and participate in the community and maintains, slows decline, or improves functioning and adaptive skills. Examples include:

(a) Training or education on participant health issues, or personal skill development;

(b) Training/education to paid or unpaid caregivers related to the needs of the participant.

NEW SECTION

WAC 388-106-1410 Am I eligible for New Freedom Consumer Directed Services (NFCDS)-funded services? You are eligible for NFCDS-funded services if you reside in your own home and meet all of the following criteria. The department must assess your needs using CARE and determine that:

(1) You are in NFCDS HCBS waiver specified target groups of:

(a) Eighteen or older and blind or have a physical disability; or

(b) Sixty-five or older; and

(2) You meet financial eligibility requirements. This means the department will assess your finances, determine if your income and resources fall within the limits, and determine the amount you may be required to contribute, if any, toward the cost of your care as described in WAC 388-515-1505; and

(3) You:

(a) Are not eligible for Medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide; and

(4) Your CARE assessment shows you need the level of care provided in a nursing facility as defined in WAC 388-106-0355; and

(5) You live in your own home, or will be living in your own home by the time NFCDS start.

NEW SECTION

WAC 388-106-1415 When do New Freedom Consumer Directed Services (NFCDS) start? Your eligibility for NFCDS begins the date the department authorizes services.

NEW SECTION

WAC 388-106-1420 How do I remain eligible for New Freedom Consumer Directed Services (NFCDS)? (1) In order to remain eligible for NFCDS, you must be in need of services in accordance with WAC 388-106-1410, as determined through a CARE assessment. The CARE assessment must be performed at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for NFCDS change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your NFCDS services.

NEW SECTION

WAC 388-106-1425 How do I pay for New Freedom Consumer Directed Services (NFCDS)? Depending on your income and resources, you may be required to pay participation toward the cost of your care, as described in WAC 388-515-1505. If you have nonexempt income that exceeds the cost of NFCDS services, you may keep the difference. Since you are receiving services in your own home, you are allowed to keep some of your income for a maintenance allowance.

NEW SECTION

WAC 388-106-1430 Can I be employed and receive New Freedom Consumer Directed Services (NFCDS)? You can be employed and receive NFCDS, per WAC 388-515-1505.

NEW SECTION

WAC 388-106-1435 Who can direct New Freedom Consumer Directed Services (NFCDS)? The NFCDS participant directs services. The participant can also designate a representative to assist them.

NEW SECTION

WAC 388-106-1440 What is an individual budget? An individual budget means the maximum amount of funding authorized by the department and allocated to the participant for the purchase of New Freedom Consumer Directed services.

NEW SECTION

WAC 388-106-1445 How is the amount of the individual budget determined? The department will calculate the individual budget amount after the NFCDS participant is assigned a classification resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on:

(a) The published hourly rate for individual provider personal care paid by the department multiplied by the number of hours generated by the assessment, multiplied by a factor of .95, plus an amount equal to the average per participant expenditures for non-personal care supports purchased in the COPES waiver. The average will be re-calculated in July of each year.

(b) If the participant selects a home care agency, an adjustment will be made for each hour of personal care identified in the NFSP for an amount equal to the difference between the published individual provider rate and home care agency rate.

NEW SECTION

WAC 388-106-1450 Is the individual budget intended to fully meet all of my needs? The program provides funds in an amount proportionate to the amount of resources you would receive through COPES, and gives you flexibility to self-direct the purchase of goods and services to meet your long-term care needs. The degree to which the budget meets your needs depends on the supports you identify and prioritize in your spending plan. Depending on your

decisions, after your budget is exhausted, some of your needs may be unmet, or you may find other resources to address them.

NEW SECTION

WAC 388-106-1455 What happens to unused funds from my individual budget? Unused funds, up to three thousand dollars, may be held in reserve for future purchases documented in the NFSP. Reserves in excess of three thousand dollars may be maintained for planned purchases with approval from the department.

NEW SECTION

WAC 388-106-1460 When can my New Freedom Spending Plan (NFSP) be denied? Your NFSP may be denied when the plan you develop does not:

(a) Include services in the New Freedom definition;

(b) Address your needs as it relates to performance of Activities of Daily Living and Instrumental Activities of Daily Living;

(c) Include strategies and steps to address known critical risks;

(d) Identify the payment rate; or

(e) Adequately describe the service.

NEW SECTION

WAC 388-106-1465 Who can deny my New Freedom Spending Plan (NFSP)? Your plan can be denied by your New Freedom Consultant, who assists NFCDS participants to develop and use a New Freedom Spending Plan to:

(a) Meet identified needs;

(b) Address health and safety needs;

(c) Develop options to meet those needs;

(d) Make informed decisions about their individual budget; and

(e) Obtain identified supports and services.

NEW SECTION

WAC 388-106-1470 Are there waiting lists for New Freedom Consumer Directed Services (NFCDS)? The department will create a waiting list for NFCDS in accordance with caseload limits determined by legislative funding. Participants on the waiting list will gain access in the following order:

(1) Nursing home residents who are returning home and are assessed for NFCDS waiver services will be ranked first on the waiting list by date of application for services;

(2) Individuals living in the community with a higher level of need, as determined by the CARE assessment, will be ranked higher on the wait list over participants with a lower level of need; and

(3) When two or more individuals on the waiting list have equal need levels, the individual with the earlier application for NFCDS will have priority over later applications for services.

NEW SECTION

WAC 388-106-1475 How do I end enrollment in New Freedom Consumer Directed Services (NFCDS)? (1) You may choose to voluntarily end your enrollment from NFCDS without cause at any time. To do so, you must give notice to the department. If you give notice:

(a) Before the fifteenth of the month, the department will end your enrollment at the end of the month; or

(b) After the fifteenth, the department will end your enrollment the end of the following month.

(2) Your enrollment may also end involuntarily if you:

(a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless you have documented the purpose of the longer absence in the NFSP; or

(b) Do not meet the terms for consumer direction of services outlined in the NFCDS enrollment agreement when:

(i) Even with help from a representative, you are unable to develop a NFSP or self-direct services or manage your individual budget or NFSP;

(ii) Any one factor or several factors of such a magnitude jeopardize the health, welfare, and safety of you and others, requiring termination of services under WAC 388-106-0047;

(iii) You become financially ineligible for Medicaid services; or

(iv) You no longer meet the nursing facility level of care requirement as defined in WAC 388-106-0355.

NEW SECTION

WAC 388-106-1480 What are my hearing rights to appeal New Freedom Consumer Directed Services (NFCDS) actions? You have a right to a hearing under WAC 388-106-1300 through 388-106-1310, and under chapter 388-02 WAC.

WSR 06-11-028
PROPOSED RULES
COLUMBIA BASIN COLLEGE
[Filed May 8, 2006, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-01-060.

Title of Rule and Other Identifying Information: Student rights and responsibilities.

Hearing Location(s): Columbia Basin College, Board Room, 2600 North 20th Avenue, Pasco, WA 99301, on June 27, 2006, at 3:00 - 4:30 p.m.

Date of Intended Adoption: July 25, 2006.

Submit Written Comments to: Madeline Jeffs, Vice President for Student Services, 2600 North 20th Avenue, Pasco, WA 98504 [99301], e-mail mjeffs@columbiabasin.edu, fax (509) 547-0511 ext. 2765, by June 26, 2006.

Assistance for Persons with Disabilities: Contact Peggy Buchmiller by June 26, 2006, TTY (509) 546-0400.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To address the

student as a member of the campus community and define expectations of conduct, processing of all actions of misconduct with appeal mechanisms, and disciplinary action.

Reasons Supporting Proposal: Chapter 132S-40 WAC, Student policies was last updated July 2000. The proposed student rights and responsibilities will replace the old rules and be aligned with the current board and administrative policies and procedures.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Columbia Basin College, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Madeline Jeffs, Vice President for Student Services, 2600 North 20th Avenue, Pasco, WA 99301, (509) 547-0511 ext. 2765.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No economic impact on small businesses. Under chapter 19.85 RCW, none required.

A cost-benefit analysis is not required under RCW 34.05.328. No costs to access within these rules.

May 3, 2006
Lee R. Thornton
President

CODE OF STUDENT RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 132S-40-300 Preamble. The effectiveness of the educational process depends upon the provision of appropriate conditions and opportunities for learning in an environment that is supportive of diversity among ideas, cultures, and student characteristics. A responsibility to secure, respect, and protect such opportunities and conditions is shared by all members of the academic community, including students.

The primacy of the faculty's role and its unquestionable centrality in the educational process must be recognized and preserved. The primary educational purpose of Columbia Basin College (herein referred to as CBC or the college) - its intellectual content and integrity - is the responsibility of the faculty.

Each right of an individual places a reciprocal duty upon others; the duty to permit the individual to exercise the right. As a member of the academic community, the student has both rights and responsibilities, the most essential right being the right to learn. The college has a duty to provide for the student those privileges, opportunities, and protections which best promote the learning process in all its aspects. The student also has duties to other members of the academic community, the most important of which is to refrain from interference with the rights of others which are equally essential to the purposes and processes of the college.

As an agency of the state of Washington, CBC must respect and adhere to all laws established by local, state, and federal authorities. CBC has developed a set of regulations to assure the orderly conduct of the affairs of the college.

NEW SECTION

WAC 132S-40-310 Definitions. Assembly - Any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.

Board - The board of trustees of Community College District No. 19, state of Washington.

Brief adjudicative hearing - A hearing which complies with the provisions of RCW 34.05.482 and is available in cases of student-athlete ineligibility, residency determination, parking fines, and outstanding student debt.

Chief student services officer - That person designed by the college president to be responsible for the student services division of the college, including the administration of the code of student rights and responsibilities or, in such person's absence, the acting CSSO or other appointed designee.

College - Columbia Basin College, established within Community College District No. 19, state of Washington.

College facilities - Any and all real property controlled or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto.

College premises - All land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college, including adjacent streets and sidewalks.

Disciplinary action - The reprimand, suspension, or expulsion of any student pursuant to WAC 132S-40-380 for the violation of any designated rule or regulation of the college, including rules of student conduct, for which a student is subject to adverse action.

Drugs - Any narcotic drug and any dangerous drug as defined in Washington statute (chapter 69.41 RCW) as now law or hereafter amended.

Hazing - Any method of initiation into a student club or organization, or any pastime or amusement engaged in with respect to such a group or organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the college as described in Washington statute (RCW 28B.10.900).

Instructional day - Any regularly scheduled instructional day designated in the academic year calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays are not regularly scheduled instructional days.

Liquor - The definition of liquor as contained in Washington statute (RCW 66.04.010(21)) as now law or hereafter amended.

Policy - The written regulations of the college as found in, but not limited to, the code of student rights and responsibilities, the college catalog, quarterly class schedules, the college web pages, the electronic communications policy, the academic honesty handbook, and various program handbooks.

President - The chief executive officer appointed by the board of trustees or, in such president's absence, the acting president.

Rules of student conduct - The rules contained herein as now exist or which may be hereafter amended, the violation of which subject a student to disciplinary action.

Student - Any person taking courses or any other educational offerings at Columbia Basin College, either full-time or part-time. If a student withdraws after allegedly violating the code of student rights and responsibilities but prior to the college reaching a disciplinary decision in the matter, the college shall place the investigation results in the individual's file for consideration should the individual submit a reapplication for admittance to the college.

Student conduct board - The hearing panel as set forth herein.

NEW SECTION

WAC 132S-40-320 Student rights. The following enumerated rights which are deemed necessary to achieve the educational goals of the college are guaranteed to each student within the limitations of statutory law and college policy:

(1) Academic freedom.

(a) Students have the right to pursue educational objectives from among the college's curricula, programs, and services subject to the provisions of this chapter.

(b) Students have the right to a learning environment that is free from unlawful and/or discriminatory actions.

(c) Students have the right to present their own views, even though they may differ from those held by faculty members, and will not be subject to adverse action by faculty when such views are expressed in a manner that does not interfere with the rights of others.

(d) Students are protected from academic evaluations which are arbitrary, prejudiced, or capricious.

(2) Admission requirements. Columbia Basin College operates under an open door admission policy and grants admission to applicants who are eighteen years of age and/or graduated from high schools accredited by a regional accrediting association or who have a GED certificate. Home school graduates and graduates from nonaccredited high schools are admitted based on course placement assessment scores.

(a) Applicants who do not meet CBC's admission requirements will be considered for admission upon request by the admissions/graduation committee.

(b) Students under sixteen years of age will not be admitted, except where such students are qualified "running start" students pursuant to chapter 392-169 WAC and provided that such admission is not inconsistent with the best interests of the applicant, other students, or the orderly operation of the college.

(c) Admission to CBC does not guarantee admission to all degree or certificate programs. Students should consult the catalog for admission requirements in specific programs.

(3) Due process.

(a) No disciplinary sanctions may be imposed upon any student without notice to the accused of the nature of the charges.

(b) Once notified of the charges, the accused student is entitled to explain his/her version of the facts in response, explanation, and defense of the allegation(s) and is entitled to the other procedures as specified herein.

(4) Distribution and posting of printed material. Students may distribute or post printed material subject to official procedures available in the office of student programs.

(5) Freedom of assembly. Students may conduct or may participate in any assembly on college facilities which are generally available to the public provided such assemblies:

(a) Are conducted in an orderly manner.

(b) Do not unreasonably interfere with vehicular or pedestrian traffic.

(c) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or with the general educational process of the college.

(d) Do not unreasonably interfere with regular college functions.

(e) Do not cause destruction or damage to college property.

(6) Freedom of association and organization. Students are free to organize and join associations to promote any legal purpose. Student clubs and organizations must be granted a charter by the associated students of Columbia Basin College (herein referred to as ASCBC) before they may be officially recognized.

(7) Nondiscrimination. Students have the right not to be discriminated against on the basis of age, color, creed, disability, sex, marital status, national origin or ancestry, race, religion, sexual orientation, or veteran status.

(8) Use and maintenance of education records. Students have the right to maintain confidentiality of records and access to records as outlined in college policy. The Family Educational Rights and Privacy Act (herein referred to as FERPA) affords students certain rights with respect to their education records. These rights include:

(a) The right to inspect and review the student's education records within forty-five days of the day the college received a request for access.

(b) The right to request an amendment of the student's education records the student believes are inaccurate.

(c) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

(d) The right to file a complaint with the U.S. Department of Education concerning alleged failure by the college to comply with the requirements of FERPA.

(9) Use of college facilities. Any recognized ASCBC club or organization may request use of available college facilities for authorized activities. The use of facilities for purposes other than what has been approved or in an irresponsible manner, may result in withdrawal of this privilege.

NEW SECTION

WAC 132S-40-330 Student responsibilities. Students who choose to attend Columbia Basin College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment that includes resources used

by students to attain their educational goals. In return each student is responsible to:

(1) Participate actively in the learning process, both in and out of the classroom.

(2) Seek timely assistance in meeting educational goals.

(3) Attend all class sessions.

(4) Prepare adequately to participate fully in class activities.

(5) Meet the standards of academic performance established by each instructor.

(6) Develop skills required for learning; e.g., basic skills, time management, and study skills.

(7) Assume final authority for the selection of appropriate educational goals.

(8) Select courses appropriate for meeting chosen educational goals.

(9) Make appropriate use of services and resources.

(10) Contribute towards improving the college.

(11) Become knowledgeable of and adhere to the college's policies, practices, and procedures.

(12) Abide by the standards set forth in the code of conduct.

NEW SECTION

WAC 132S-40-340 Student code authority. The chief student services officer (herein referred to as the CSSO) will develop policies for the administration of the student conduct system as well as procedural rules for the conduct of student conduct board hearings that are consistent with the provisions of the code of student rights and responsibilities (herein referred to as the code) as specified herein.

NEW SECTION

WAC 132S-40-350 Proscribed conduct. (1) Jurisdiction of the code of student rights and responsibilities. The Columbia Basin College code of student rights and responsibilities will apply to conduct that occurs on college premises and at college-sponsored events and activities. The code of student rights and responsibilities also applies to actions occurring off campus which are violations or alleged violations of local, state, or federal law and which also violate the code of student rights and responsibilities. Such allegations or violations of off-campus violations can be the subject of college disciplinary action only if the CSSO determines disciplinary action is necessary for the protection of other members of the college community or property of the college community, or that the off-campus conduct adversely affects the college community and/or the pursuit of the college's objectives. Each student will be responsible for his/her conduct from the time of enrollment through their severance of a relationship with the college (e.g., the actual awarding of a degree or certificate), even though conduct may occur before classes begin or after classes end, as well as during the academic year. The CSSO will decide whether the code will be applied to conduct occurring off-campus, on a case-by-case basis, at his/her sole discretion.

(2) Conduct - Rules and regulations. The voluntary attendance of a student at Columbia Basin College is a voluntary entrance into the academic community. By such voluntary entrance, the student voluntarily assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

(a) Conduct themselves in a responsible manner;

(b) Comply with rules and regulations of the college and its departments;

(c) Respect the rights, privileges, and property of other members of the academic community;

(d) Maintain a high standard of integrity and honesty; and

(e) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

(3) Student misconduct. Any student will be subject to disciplinary action who, either as a principal or participator or by aiding or abetting, commits or attempts to commit any of the following which are hereby prohibited:

(a) Abusive conduct. Physical and/or verbal abuse, threats, intimidation, harassment, coercion, and/or other conduct which threatens or endangers the health or safety of any person or which has the purpose or effect of creating a hostile or intimidating environment at any college-sponsored or college-supervised function.

(b) Destroying or damaging property. Intentional and/or reckless damage to or misuse of college-owned or controlled property, or the property of any person where such property is located within college-owned or controlled premises or at college-sponsored functions.

(c) Discrimination. Engaging in any prohibited discriminatory or harassing behavior as defined by applicable law and/or college policies including stalking or hate activity as defined by law.

(d) Disorderly conduct.

(i) Obstruction of teaching, administration, disciplinary proceedings, or other college activities, including its public service function on- or off-campus, or of other authorized noncollege activities when the conduct occurs on college premises or at college-sponsored functions.

(ii) Material and substantial interference with the personal rights or privileges of others or of the educational process of the college.

(iii) Lewd or indecent conduct, breach of peace, or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored, or participated in, by the college or members of the academic community.

(iv) Unauthorized use of electronic or other devices to make an audio or video recording of any person while on college premises without his/her prior knowledge, or without his/her effective consent, when such a recording is likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(e) Disruption:

(i) Participating in an on- or off-campus demonstration, riot, or activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community.

(ii) Intentionally and/or recklessly inciting others to engage in any prohibited conduct as defined herein, when incitement may lead to such conduct.

(iii) Obstruction of the free flow of pedestrian or vehicular traffic on college premises or at college-sponsored or supervised functions.

(f) Drugs. Nonintended using of a prescriptive drug or using, possessing, manufacturing, furnishing, selling, or being under the influence of any narcotic drug or controlled substance as defined in Washington statute (chapter 69.50 RCW) except when the use or possession of a drug is specifically prescribed as medication by an authorized medical practitioner to the specific student.

(g) Falsehoods and misrepresentations.

(i) The intentional making of false statements and/or filing of false charges against the college and/or members of the college community.

(ii) Knowingly furnishing false information to any college official, faculty member, or office.

(iii) Forgery, alteration, or misuse of any college document, record, fund, or instrument of identification with the intent to defraud.

(h) Hazing. Any method of initiation into a student club or organization, or any pastime or amusement engaged in with respect to such a group or organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the college as described in Washington statute (RCW 28B.10.900).

(i) Insubordination.

(i) Failure to comply with the direction of college officials or law enforcement officers acting in the legitimate performance of their lawful duties.

(ii) Failure to properly identify oneself, provide evidence of student enrollment and/or proper identification upon request of college officials acting in the legitimate performance of their lawful duties.

(j) Liquor. Consuming, possessing, furnishing or selling of alcoholic beverages and/or being demonstrably under the influence of any alcoholic beverage on college premises or at college-sponsored or supervised events except as a participant of legal age in a student program, banquet, or educational program which has the special written authorization of the college president or his/her designee.

(k) Misuse of equipment and technology. Misuse of the college's computer, telecommunications, or electronic technology, facilities, or equipment provided for the use of students in fulfilling their educational needs including, but not limited to:

(i) Unauthorized entry into a file to use, read, or change the contents, or for any other purpose.

(ii) Unauthorized transfer of a file.

(iii) Use of another individual's identification or password.

(iv) Copyright violations.

(v) Use of the college's computer, telecommunications, or electronic technology facilities and resources:

(A) That interferes with the work of another student, faculty member, or college official.

(B) To send obscene or abusive messages.

(C) For personal profit, advertisement, or illegal purposes.

(D) For purposes other than those necessary to fulfill an assignment or task as part of the student's program of instruction.

(l) Safety misconduct:

(i) Intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency on college premises or at any college-sponsored activity; or

(ii) Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(m) Sexual misconduct. Engaging in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where such behavior offends a reasonable, orderly, prudent person under these circumstances.

(n) Theft. The unauthorized taking or removing of college-owned or operated property or of another's property with the intent of depriving the owner of the property, where such property is located within college premises.

(o) Trespass or unauthorized presence.

(i) Entering or remaining unlawfully on college premises, as defined by state law.

(ii) Using college premises, facilities, or property without authority.

(iii) Unauthorized possession, duplication or use of keys to any college premises.

(p) Weapons. Possession of weapons (e.g., firearms, daggers, swords, knives or other cutting or stabbing instruments, clubs) or substances (e.g., explosives) apparently capable of producing bodily harm and/or damage to real or personal property is prohibited on or in college-owned or operated facilities and premises and/or during college-sponsored events.

(i) Carrying of firearms on or in college-owned or operated facilities and/or during college-sponsored events is prohibited except and unless the firearm is registered with the campus security department for a specified period of time.

(ii) The aforementioned regulations shall not apply to equipment or materials owned, used or maintained by the college; nor will they apply to law enforcement officers acting in the legitimate performance of their lawful duties.

(4) Academic dishonesty. Academic dishonesty minimizes the learning process and threatens the learning environment for all students. As members of the CBC learning community, students are not to engage in any form of academic dishonesty which includes, but is not limited to, cheating, plagiarism, and fabrication or falsification of information, research, or other findings for the purpose of fulfilling any assignment or task as part of the student's program of instruction.

(a) Any student who commits or aids and abets the accomplishment of an act of academic dishonesty will be subject to disciplinary action.

(b) The class instructor is responsible for handling each case of academic dishonesty in the classroom and for determining a penalty grade as outlined in the course syllabus.

(i) When reasonable evidence would suggest a student engaged in academic dishonesty, the instructor will provide

notice to the student of the allegation and allow the student the opportunity to refute the evidence.

(ii) Based upon the evidence and the consequences for engaging in academic dishonesty as stated in the course syllabus, the instructor may assign to the student a lower or failing grade for an individual assignment or test. Written notice will be provided to the student.

(iii) The instructor will submit a copy of the written notice and the applicable evidence to his/her dean.

(iv) The dean, after consulting with the instructor and others as appropriate, may recommend the matter also be referred to the CSSO as a disciplinary matter as provided in this procedure.

(5) Classroom conduct and the learning environment.

(a) Instructors have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(b) An instructor has the authority to exclude a student from any single class/program session during which the student is so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum. The instructor will report any such exclusion from the class/program to the CSSO. The CSSO may initiate disciplinary action as provided in this procedure.

(c) Bringing any person or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the approval of the class instructor or other authorized official, is expressly prohibited.

(6) Violation of law. College disciplinary proceedings may be instituted against a student charged with conduct that potentially violates the criminal law and this student code (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the CSSO. Determinations made or sanctions imposed under this code will not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

NEW SECTION

WAC 132S-40-360 Student conduct code procedures. (1) Initiation of disciplinary action. A request for disciplinary action of a student for violation(s) of the rules of student conduct must be made in writing to the CSSO as soon as possible but not later than twenty instructional days after the occurrence or the date the requestor knew or should reasonably have known of the occurrence. Any member of the college's administration, faculty, staff, or student may make such a request. The written request must be signed by the individual making the request and must be a good faith claim. The CSSO may decline the request, implement the request, or engage in informal negotiations to resolve the situation based on the allegation(s) and the evidence that has been provided.

(2) Notice requirements. Any student charged with a violation will be given written notice personally or sent written notice by registered or certified mail to the most recent address in the student's record on file with the college, no later than fifteen instructional days after a decision is made to proceed with an investigation. The notice will not be ineffective if presented later due to the student's absence. Such notice will:

(a) Inform the student a report has been filed alleging the student violated college policy.

(b) Set forth those provisions of the college's policy and the specific acts which are alleged to be violations, as well as the date(s) of the violation(s).

(c) Specify the time, date, and location where the student is required to meet with the CSSO. The meeting will be scheduled no earlier than three instructional, but within thirty instructional days of the mailing of the notification to the student. The CSSO may modify the time, date and location of the meeting, either at the student's or college's request, for reasonable cause.

(d) Inform the student that failure to appear at the appointed time and place may subject the student to suspension from the college for a stated or indefinite period of time.

(e) Inform the student that he/she may bring an advisor or representative to the meeting. The advisor or representative cannot be a college employee.

(3) Meeting with the chief student services officer.

(a) At the meeting with the CSSO the student will be informed of the following:

(i) The provision(s) of the rules of conduct or college policy he/she is charged with violating.

(ii) The disciplinary process.

(iii) The range of sanctions which might result from disciplinary proceedings.

(iv) The student's rights to appeal.

(b) The student will have the opportunity to respond to the allegation(s) by providing information to the CSSO about his/her involvement, if any, in the alleged violation(s), explaining the circumstances surrounding the violation(s), and/or defending him/herself against the allegations. If the student chooses to have an advisor or representative present at the meeting, the CSSO will allow the advisor or representative to make a brief statement.

(4) Decision by chief student services officer.

(a) After interviewing the student or students involved and/or other individuals as appropriate, and after considering the evidence in the case, the CSSO may take any of the following actions:

(i) Terminate the proceedings and thereby exonerate the student or students.

(ii) Impose disciplinary sanctions as provided herein.

(iii) Refer the matter to the student conduct board (herein referred to as the SCB) for appropriate action.

(b) Notification of action by the CSSO will be delivered to the student personally or sent by registered or certified mail to the most recent address in the student's record on file with the college, within thirty instructional days of the meeting. A copy of the notification will be filed with the office of the CSSO.

(c) Disciplinary action taken by the CSSO is final unless the student exercises the right of appeal as provided herein.

(5) Student conduct board.

(a) Composition: The college will have a SCB composed of six members who will be chosen and appointed by October 1 of each year to serve as a standing committee until their successors are appointed. The membership of the board will consist of two members of the administration (not including the CSSO) appointed by the president, two faculty members appointed by the faculty senate, and two students appointed by the president of the ASCBC.

(b) Chairperson: The SCB will elect a chairperson from among the administrator or faculty members. The chairperson will preside at every disciplinary hearing and will provide administrative oversight throughout the hearing process. The chairperson may participate in committee deliberations but will not vote unless it is necessary to constitute a quorum or the vote of the SCB is tied, at which time the chairperson will cast the deciding vote.

(c) Hearing procedures:

(i) The SCB will hear, de novo, all disciplinary cases appealed to the committee by the student or referred to it by the CSSO.

(ii) The student and the CSSO will be sent written notification at least seven instructional days prior to the hearing of the following:

(A) The time, date, and location of the hearing.

(B) The specific violation(s) alleged against the student.

(C) The SCB procedures.

(D) The names of the members of the SCB.

(iii) A student facing dismissal has the right to be assisted by one advisor or representative of his/her choice and at his/her expense. The advisor must be someone who is not employed by the college. If the student chooses to have an attorney serve as his/her advisor, the student must tender notice to the SCB no less than five instructional days prior to the hearing in order to allow the CSSO a legal advisor. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time of the SCB hearing because delays will normally not be allowed due to the scheduling conflicts of an advisor.

(iv) The student will be accorded reasonable access to the case file that will be retained by the CSSO.

(v) Any SCB member who has a personal relationship, personal interest, or other interest which would prevent that person from rendering a fair and impartial decision must recuse him/herself from sitting for that case.

(vi) A student may request in writing no less than five instructional days prior to the hearing that a SCB member recuse or disqualify him/herself. The request must be for good cause, which must be shown by the student. In the event of such a request, the SCB will consider the request prior to the time scheduled for the hearing and will decide whether the SCB member should be disqualified for that hearing.

(vii) The parties involved in the hearing will be requested to submit their witness list and any documentary evidence to be discussed at the hearing to the hearing chairperson not less than five instructional days prior to the hearing.

(viii) Hearings will be closed to the public except if requested by the student and at the discretion of the chairperson. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the SCB.

(ix) A quorum will consist of no less than three members provided that such quorum will include at least one student, one faculty member, and one administrator.

(x) The CSSO may request a special presiding officer to the SCB in complex cases. In these circumstances the special presiding officer will act as the chairperson of the hearing.

(xi) The chairperson will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the student, who disrupts a hearing or who fails to adhere to the rulings of the chairperson may be excluded from the proceedings and may be subject to disciplinary action.

(xii) The student may question witnesses and have a maximum of three character witnesses appear on his/her behalf.

(xiii) The burden of proof will be on the CSSO who must establish the alleged violation(s) by a preponderance of the evidence.

(xiv) Formal rules of evidence and procedure will not be applicable in disciplinary proceedings conducted pursuant to this code. The chairperson will admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.

(xv) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will be recorded or transcribed except for the deliberations of the SCB. The record will be the property of the college.

(xvi) After considering the evidence in the case, the SCB will decide by majority vote whether to terminate the proceedings, thereby exonerating the student, or impose disciplinary sanctions as set forth herein.

(xvii) The decision of the SCB must include a written summary in sufficient detail to permit appellate review of the violations alleged, testimony and evidence, and conclusions. Decisions of the SCB will be delivered, within ten instructional days, to the student personally or sent by registered or certified mail to the student's most recent address on file with the college, and a copy filed with the office of the CSSO.

(xviii) Disciplinary action taken by the SCB is final unless the student exercises the right of appeal as provided herein.

NEW SECTION

WAC 132S-40-370 Appeals of disciplinary action. (1) All appeals by a student must be made in writing and received by the CSSO within ten calendar days of notification of the CSSO's or the SCB's decision. Failure to file a written appeal within the time period specified will result in the decision(s) becoming final with no further right of appeal.

(2) Appeals of disciplinary action(s) will be taken in the following order:

(a) Disciplinary decisions and action taken by the CSSO may be appealed by the student to the SCB.

(b) Disciplinary decisions and action taken by the SCB may be appealed by the student to, and shall be reviewed by, the college president who shall have final authority in the disciplinary action.

NEW SECTION

WAC 132S-40-380 Disciplinary sanctions. (1) The student will be notified in writing of the sanction(s) imposed as well as of any conditions pursuant to the sanction(s). Copies of the notification will be kept on file in the office of the CSSO and in the student's official educational record. All sanctions outlined herein are subject to the appeal process.

(2) The following sanctions, singly or in combination, may be imposed upon any student found to have violated the student code:

(a) Warning. Notice to a student that the student is violating or has violated college rules or regulations or has otherwise failed to meet the college's standards of conduct. Such warnings will include the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary actions described below.

(b) Reprimand. Formal action censuring a student for violation of the college rules or regulations or failure to meet the college's standards of conduct. Reprimands will be made in writing to the student by the CSSO or the SCB with copies filed in the office of the CSSO. A reprimand will include the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary actions described below.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. An individual student may be required to make restitution for damage, loss, or injury. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution within thirty days or any period set by the CSSO or SCB will result in suspension for an indefinite period of time as set forth in (g) of this subsection, provided that a student may be reinstated upon payment or upon a written agreed plan of repayment. Failure to strictly comply with the terms of a repayment plan will result in immediate suspension.

(e) Discretionary sanctions. Work assignments, essays, service to the college, or other related discretionary assignments.

(f) Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of college rules or regulations or other failure to meet the college's standards of conduct. Written notice of disciplinary probation will specify the period of probation and any condition(s) upon which his/her continued enrollment is contingent. Such conditions may include, but not be limited to, adherence to terms of a behavior contract or limiting the student's participation in extra-curricular activities or access to specific areas of the college's facilities. Disciplinary probation may be for a specified term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.

(g) Suspension. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Students who are suspended may be denied access to all or any part of the campus or other facilities during the duration of the period of suspension. Additionally, conditions for readmission may be specified.

(h) Expulsion. Permanent separation of the student from the college. Students who are expelled may be denied access to all or any part of the campus or other facilities permanently.

(i) Revocation of admission and/or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining admission or the degree, or for other serious violations committed by a student prior to graduation. Revocation of admission or a degree is subject to the hearing process as outlined in this code. Revocation of a degree must be approved by the board of trustees.

(j) Withholding degree. The college may withhold awarding a degree otherwise earned until the completion of the process set forth in the code, including the completion of all sanctions imposed, if any. Withholding a degree must be approved by the board of trustees.

NEW SECTION

WAC 132S-40-390 Interim restriction and suspension procedures. (1) Initiation of interim restriction and suspension procedures. If there is cause to believe that a student or student organization poses an imminent threat to him/herself, itself, to others, or to property, immediate action may be taken pending an investigation by the CSSO. The CSSO may take one or more of the following interim actions:

(a) Interim restrictions. A student may be restricted from college-owned or operated facilities and/or events.

(b) Interim suspension. A student may be suspended pending investigation, action, or prosecution.

(2) Permission to enter or remain on campus. During the period of interim restriction or suspension, the student will not enter the campus of the college or any facility under the operation of the college other than to meet with the CSSO or to attend the hearing. However, the CSSO may grant the student special permission to enter the campus for the express purpose of meeting with faculty, staff, or students in preparation for the hearing.

(3) Notice of interim restriction and suspension proceedings. If the CSSO finds it necessary to exercise the authority to evoke interim restriction or suspension, he/she will give the student notice, orally or in writing, stating:

(a) The time, date, place and nature of the alleged misconduct.

(b) The evidence in support of the charge(s).

(c) The corrective action or punishment which may be imposed against the student.

(d) The possibility that anything the student says to the CSSO may be used against the student.

(e) The student's right to either accept the disciplinary action or, within three instructional days following receipt of the above notification, file at the office of the CSSO a written

request for a hearing by the SCB. If the request is not filed within the prescribed time, it will be deemed as waived.

(4) Hearing. The hearing will be accomplished according to the procedures set forth in this document and no later than ten instructional days after the action is taken. Failure by the student to appear at the SCB hearing will result in the CSSO suspending the student from the college.

NEW SECTION

WAC 132S-40-400 Records of disciplinary action. (1) Records of all disciplinary cases will be kept by the office of the CSSO. Except in proceedings wherein the student is exonerated, all documentary proceedings and all recorded testimony will be preserved insofar as possible for at least five years. No record of proceedings wherein the student is exonerated, other than the fact of exoneration, will be maintained in the student's file or other college repository after the date of the student's graduation or for one calendar year.

(2) The office of the CSSO will keep accurate records of all disciplinary actions taken by, or reported, to that office. Such recordings will be placed in the student's official records. The CSSO is responsible for ordering the removal of any notations of any disciplinary action on the student's record. A student may petition the CSSO for removal of such a notation at any time.

(3) The Family Educational Right to Privacy Act (FERPA) provides that an educational institution may notify a student's parent or legal guardian if the student is under the age of twenty-one and has violated a federal, state, or local law involving the use or possession of alcohol or a controlled substance.

NEW SECTION

WAC 132S-40-410 Rights to brief adjudicative procedures. (1) Use of brief adjudicative procedures. In accordance with RCW 34.05.482 through 34.05.494, brief adjudicative procedures will be used in all matters pertaining to:

(a) Residency determinations made pursuant to RCW 28B.15.013.

(b) Disputes concerning educational records.

(c) Parking violations.

(d) Outstanding debts.

(e) Student-athlete ineligibility.

In all cases, except as stipulated for outstanding debts as noted below, students shall be informed verbally or in writing of the action taken by the college no later than three instructional days by an administrator from the department issuing the adverse action. The letter of notification shall also state that the student has a right to a brief adjudicative procedure which, if desired, must be received by the college within ten calendar days from the date of verbal notification or posting of the letter. If a written request is not received within this time frame, the student will be deemed to have waived any right to a brief adjudicative procedure.

(2) Withholding of services and other remedies for outstanding debts.

(a) Upon receiving a request for services when there is an outstanding debt due to the college from the student, the college shall notify the student verbally or by first class mail addressed to his/her last known mailing address, that there is an outstanding debt and the requested services will not be provided until that debt is paid.

(b) The letter of notification shall also state the student has a right to a brief adjudicative procedure for the purposes of determining whether the student is, in fact, indebted to the college as alleged in the notice. The letter shall indicate that any request for a hearing must be received by the college within ten calendar days from the date of verbal notification or posting of the letter. If a written request is not received within this time frame, the student will be deemed to have waived any right to a brief adjudicative procedure.

(3) Student-athlete ineligibility.

(a) Any student-athlete alleged to have violated the rules of student conduct, except as noted below, will be subject to disciplinary action, appeal procedures, and sanctions as afforded any other student and as specified herein.

(b) If a student-athlete is found to have violated chapter 69.50 RCW, which prohibits the illegal use, possession, furnishing, or selling of any narcotic or dangerous drug or prescriptive drug, the student-athlete will be disqualified from participation in any college-sponsored athletic event or activity. In these circumstances, the student-athlete will have the right to a brief adjudicative procedure. The college's athletic director must receive a written request for such a procedure within three instructional days of notice of the adverse action. If a written request is not received within this time frame, the student will be deemed to have waived any right to a brief adjudication procedure and will be declared ineligible from further participation in college-sponsored athletic events or activities.

(4) Brief adjudicative procedure. If a written request for a brief adjudicative procedure is made within the required time frame, the college will designate a presiding officer to conduct the brief adjudicative proceeding. The brief adjudicative proceeding will be conducted in accordance with RCW 34.05.482 through 34.05.494. The presiding officer will be a college administrator who is not involved with the program whose adverse action is being questioned. The presiding officer shall give each party an opportunity to be informed of the college's view on the matter and the student's view of the matter.

(5) Brief adjudicative decision. Within ten calendar days of the brief adjudicative procedure, the presiding officer shall issue a written decision to the parties which will include a brief written statement of the reasons for the decision. The written decision shall serve as the final order. All documents presented, considered, or prepared by the presiding officer will be maintained as the official record of the brief adjudicative proceeding.

NEW SECTION

WAC 132S-40-420 Procedure for addressing student complaints. The purpose of these procedures is to establish a process whereby a student may express dissatisfaction with the performance or action of a college employee which the student believes to be a violation of his/her rights and/or is inconsistent with college policy or usual practices. It is the belief and practice of Columbia Basin College that the best

way for individuals to address concerns is in an informal, direct manner. Students are encouraged to meet with the instructor or staff member involved and attempt to resolve the problem. When resolution is not possible at this level, students may choose to initiate a more formal process of review.

(1) Issues or problems excluded from the complaint process.

(a) Outcomes of the disciplinary proceedings described in this code.

(b) Federal and state laws, rules, and regulations.

(c) Existing college policy, practices, regulations, and procedures. In these circumstances, students should bring their concerns to the attention of the appropriate college committee or administrator.

(d) Student academic evaluations.

(e) Sexual harassment, sex discrimination, or handicapped discrimination complaints. For these complaints, a student will use the appropriate college procedures as outlined in college policies that are available on the college web site and in the office of the CSSO.

(2) Initiating the informal complaint process. The informal process promotes constructive dialogue and understanding and does not require paperwork or forms. Prior to filing a formal complaint, the student must use the following informal procedure:

(a) The student should discuss the complaint informally and thoroughly with the employee no later than ten instructional days within the quarter following the alleged abridged right. Both parties should openly discuss the matter and attempt to understand the other's perspectives, explore alternatives, and attempt to arrive at a satisfactory resolution to the issue or problem within fifteen instructional days from the date the student first made the issue or problem known.

(b) In the event of absence from campus by the employee, the student will contact the employee's supervisor for advice on how to proceed with this process.

(c) If the student feels that he/she cannot meet face-to-face with the employee, he/she may directly contact the employee's supervisor.

(d) If the student is dissatisfied with the resolution, the student may proceed with a formal complaint.

(3) Proceeding with a formal complaint. If an informal attempt at resolution is unsuccessful, a student may proceed with a formal complaint. A formal complaint must be initiated no later than the quarter following the alleged abridged right or within thirty instructional days from the date the student first made the issue or problem known as an informal complaint. The student is encouraged to contact the executive assistant to the CSSO prior to initiating a formal complaint so that he/she may inform the student of the formal complaint process:

(a) The student must outline in writing what right has been abridged, identifying dates and persons involved as accurately as possible, with a remedy clearly stated.

(b) Complaints will be addressed to the appropriate supervising vice-president, dean, director, or designee.

(i) The appropriate supervisor will inform the student that he/she may choose an advisor, at his/her own expense, to assist the student in the completion of the complaint process. The advisor must be someone who is not employed by the college.

(ii) The appropriate supervisor will forward the student's written complaint to the employee concerned within five instructional days of the receipt of the written complaint. The employee will provide a written response to the student within ten instructional days with a copy submitted to the appropriate supervisor.

(iii) If the written response does not resolve the complaint, the student may request the appropriate supervisor to convene a conference of all the involved parties within ten instructional days to:

(A) Attempt to resolve to the satisfaction of all parties the complaint; and/or

(B) Hear the issue(s) and take appropriate action(s) to resolve the complaint.

(c) The student may request an appeal, in writing, to the appropriate supervisor no later than three instructional days following receipt of the supervisor's decision. The appeal will be reviewed at the next administrative level and a written decision mailed to the student within ten instructional days following receipt of the request for an appeal. The decision at this level will be final.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132S-40-160	Student rights.
WAC 132S-40-165	Student responsibilities/violations.
WAC 132S-40-170	Disciplinary proceedings.
WAC 132S-40-175	Appeals of disciplinary action.
WAC 132S-40-180	Disciplinary sanctions.
WAC 132S-40-185	Summary suspension procedures.
WAC 132S-40-190	Student complaints.

WSR 06-11-029
PROPOSED RULES
STATE TOXICOLOGIST
[Filed May 8, 2006, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-01-142.

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

Hearing Location(s): Washington State Toxicology Laboratory, 2203 Airport Way South, Seattle, WA 98134, on July 27, 2006, at 9:00 a.m.

Date of Intended Adoption: July 27, 2006.

Submit Written Comments to: Barry K. Logan PhD, Washington State Toxicology Laboratory, 2203 Airport Way

South, Seattle, WA 98134, e-mail barry.logan@wsp.wa.gov, fax (206) 262-6018, by July 14, 2006.

Assistance for Persons with Disabilities: Contact Kitty Jacobs, kitty.jacobs@wsp.wa.gov, by July 14, 2006, (206) 262-6000.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, only one breath test screening device is approved for use in the state of Washington - the AlcoSensor III. However, the AlcoSensor III is no longer in production. Because the AlcoSensor III is no longer in production, another breath test screening device or devices must be approved. The amendments to chapter 448-15 WAC would broaden the range of devices permitted for use, subject to documentation of their compliance with certain minimum standards of performance, outlined in the proposed amendment. The changes would permit individual agencies to select devices meeting federal-type approval standards.

Reasons Supporting Proposal: Development of minimum standards and monitoring of compliance is necessary to ensure accurate measurements in impaired driving investigations.

Statutory Authority for Adoption: RCW 46.61.506.

Statute Being Implemented: RCW 46.61.506, 46.20.308.

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

Name of Proponent: Barry K. Logan PhD, DABFT, Washington state toxicologist, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Barry K. Logan PhD, DABFT, Washington State Toxicology Laboratory, 2203 Airport Way South, Seattle, WA 98134, (206) 262-6000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No identifiable small business impact. Affects regulation of government law enforcement agencies only.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempted under RCW 34.05.328 (5)(a)(i).

May 8, 2006
Barry K. Logan PhD, DABFT
State Toxicologist

Chapter 448-15 WAC

ADMINISTRATION OF BREATH ALCOHOL SCREENING TEST

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99)

WAC 448-15-010 Approval of devices. All preliminary breath test (PBT) instruments listed as approved devices on the Conforming Products List of the National Highway Traffic Safety Administration (NHTSA) ~~The following preliminary breath test (PBT) instruments~~ are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in the following sections.~~:~~

~~Alcosensor III (Intoximeters, St. Louis, MO).~~

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

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.

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

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99)

WAC 448-15-020 Use of test results. The devices described in WAC 448-15-010 are approved for use in establishing ~~aiding police officers to form~~ probable cause that a subject has consumed ~~committed an offense involving the consumption of~~ alcohol. ~~The test results, when~~ For purposes of this section, valid results are considered those obtained from following the approved protocol, by a trained operator using an approved device which has been ~~maintained and~~ certified according to the rules described below.~~, and carried out according to the approved test protocol,~~ Valid results will show to a reasonable degree of scientific certainty the test subject's breath alcohol concentration. Valid ~~The~~ results are ~~therefore~~ suitable to assist in establishing ~~show whether an officer has~~ probable cause to place a person under arrest for alcohol related offenses. These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

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

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.

Reviser's note: The unnecessary underscoring 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.

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

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99)

WAC 448-15-030 Test protocol. After advising the subject that this is a voluntary test, and that it is not an alternative to an evidential breath alcohol test as described in chapter ~~448-13~~ 448-16 WAC, the operator shall determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the sub-

ject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT. If the subject consents, the operator will check the temperature of the device to ensure that it is within the normal operating range. The operator will perform the following test protocol: ~~then press the "read" button to obtain a sample of ambient air, and ensure that this results in a reading of 0.003 or less. The subject will be asked to exhale into the device. The device will be activated towards the end of the subject's exhalation, to capture a portion of end expiratory breath for analysis.~~

(1) ensure a blank test result is obtained

(2) have the subject exhale into the mouthpiece with a full and continuous exhalation

(3) observe the results

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.

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

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99)

WAC 448-15-040 Certification. Any PBT used as described in the preceding sections, must be certified at least annually ~~every six months~~. In order to certify a PBT as accurate, the certifying agency must follow a protocol approved by the state toxicologist. ~~testing shall include at a minimum, a blank test of room air which must give a result of less than 0.005g/210L, and a test of a certified dry gas alcohol standard. The instrument must accurately measure the reference value within ± 0.010g/210L. A record of certification must be kept by the person responsible for calibration.~~

Certification of PBTs can be performed by persons certified by the state toxicologist as PBT technicians, or by factory authorized representatives, provided that the protocol for certification approved by the state toxicologist is followed.

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.

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

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99)

WAC 448-15-050 PBT operators. Persons certified as DataMaster operators as described in WAC 448-16, ~~448-13-150, who received their certification or recertification after September 1, 1998,~~ shall be trained and authorized to perform the tests described herein on the PBT, for the purposes outlined in this section.

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.

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

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99)

WAC 448-15-060 PBT technicians. Persons trained according to ~~approved~~ outlines approved ~~prepared~~ by the state toxicologist, in the proper procedures for certifying PBT~~s~~ instruments shall be certified as PBT technicians. Their responsibilities will include performing periodic certification and maintaining records on such certification. Wallet sized permits shall be issued to persons so qualified. The certification received on successful completion of the training must be renewed every three years. Persons certified as DataMaster technicians as described in WAC ~~448-13-170~~ 448-16 are also certified to perform all the duties of PBT technicians.

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.

WSR 06-11-047
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. A-050802—Filed May 11, 2006, 9:53 a.m.]

Supplemental Notice to WSR 06-08-058.

Preproposal statement of inquiry was filed as WSR 05-15-091.

Title of Rule and Other Identifying Information: Chapter 480-07 WAC, Procedural rules. This supplemental proposal notices possible changes to WAC 480-07-700(3) relating to settlement conferences, which were not included in the proposal filed at WSR 06-08-058, and Qwest's proposed amendment to WAC 480-07-650 (1)(c), that would require a petitioner to file its petition within thirty days of service of the ten-day notice of intent to file a petition. Provisions previously noticed in WSR 06-08-058 are not affected by this supplemental notice.

Hearing Location(s): Commission Hearing Room, Second Floor, Chandler Plaza, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on June 28, 2006, at 1:30 p.m.

Date of Intended Adoption: June 28, 2006.

Submit Written Comments to: Carole J. Washburn, Washington State Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@wutc.wa.gov, fax (360) 586-1150, by June 19, 2006. Please include "Docket No. A-050802" in your comments.

Assistance for Persons with Disabilities: Contact Mary DeYoung by June 26, 2006, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This supplemental proposal would revise WAC 480-07-700(3), by setting forth a process for settlement conferences that includes notice to all parties. The amended language is intended to ensure that all parties have an opportunity to participate in settlement conferences.

This supplemental proposal would also revise WAC 480-07-650 (1)(c) concerning the prefiling notice of petitions for enforcement of interconnection agreements. The amended language would require that companies that send a ten-day notice of intent to file a petition for enforcement must file the petition within thirty days after serving the ten-day notice. The inclusion of the thirty-day window in which to file the petition is intended to avoid the situation of a petitioner filing a ten-day notice of intent to file a petition, and then waiting several months to file the petition.

The detailed changes are shown in legislative format on the commission's web site at www.wutc.wa.gov/050802.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Rendahl, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1144; Implementation and Enforcement: Carole Washburn, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

May 11, 2006
C. Robert Wallace
for Carole J. Washburn
Executive Secretary

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements. The purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.

(1) **Petitions for enforcement.** A telecommunications company that is party to an interconnection agreement with another telecommunications company may petition under this rule for enforcement of the agreement.

(a) ***What the petition must contain.*** Each petition for enforcement must contain the following elements:

(i) A statement, including specific facts, demonstrating that the petitioner engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue.

(ii) A copy of the provision of the interconnection agreement that the petitioner contends is not being complied with.

(iii) A description of facts demonstrating failure to comply with the agreement. One or more affidavits, declarations, or other sworn statements, made by persons having personal knowledge of the relevant facts must support the description.

(b) ***How to serve the petition.*** The petitioner must serve the petition for enforcement on the responding party on the same day the petition is filed with the commission. If the petitioner chooses to serve the respondent by mail or parcel delivery service, it must deliver a copy of the petition and all supporting documents by hand delivery, ((~~telefacsimile~~)) fax, or ((~~electronic mail~~)) e-mail (to the e-mail address specified by the recipient for the purpose of receiving a copy of the petition) on the same day as filed with the commission. For purposes of this section, service must be effected on:

(i) The responding party's authorized representative, attorney of record, or designated agent for service of process;

(ii) The responding party's representatives with whom the petitioner conducted the negotiations addressed in (a)(i) of this subsection; and

(iii) All parties designated in the interconnection agreement to receive notices.

(c) ***Prefiling notice of petition.*** The petitioner must give at least ten days' written notice to the respondent that the petitioner intends to file a petition for enforcement. The notice must identify ((~~the contract~~)) each specific provision of the agreement that the petitioner alleges was violated, and the exact behavior or failure to act that petitioner alleges violates the agreement. The written notice must be served as provided in (b) of this subsection. The petitioner must include a copy of this notice with its petition for enforcement. The written notice shall be valid for thirty days from the date of service. If the petitioner wishes to file a petition for enforcement after the thirty-day period, the petitioner must serve another notice to the respondent at least ten days prior to filing the petition.

(2) **Answering a petition.** The respondent may answer the petition. The respondent waives the opportunity to present any matter that is not raised in the answer, except that the answer may be amended under subsection (3) of this section.

(a) ***Contents of the answer.*** The answer to a petition for enforcement must respond to each allegation of failure to comply with the terms of the interconnection agreement, stating relevant facts. Any facts relied upon must be supported by affidavits, declarations, or other sworn statements by persons having personal knowledge of the facts.

(b) ***Filing and service of the answer.*** The respondent must file the answer with the commission and serve it on the petitioner within five business days after service of the petition for enforcement. Service must be accomplished so that a copy of the response to the petition for enforcement and all supporting documents reach the petitioner's attorney, or the person who signed the petition if petitioner has no attorney, on the same day the answer is filed with the commission. If the respondent chooses to serve the petitioner by mail, a copy of the petition for enforcement and all supporting documents must be delivered to the person identified above on the same day as filed with the commission.

(3) **Amendment of petition and answer.** The presiding officer may permit the responding party to amend its answer for good cause shown, and to avoid substantial prejudice to

the responding party that is not caused by the fault of the responding party. The presiding officer may permit either party to amend its petition or answer to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, CR 15(b) of the Washington superior court civil rules, when determining whether to permit amendment of the petition or answer to conform to the evidence.

(4) **Prehearing conference.** The commission will conduct a prehearing conference regarding each petition for enforcement of an interconnection agreement.

(a) ***Schedule; mandatory attendance.*** The presiding officer will issue notice of a prehearing conference within five business days after the petition is filed. Both the petitioner and the respondent must attend the prehearing conference. The prehearing conference may be conducted by telephone.

(b) ***Procedural determination.*** The presiding officer will determine at the prehearing conference whether the issues raised in the petition can be determined on the pleadings, submissions, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding officer will consider the parties' preferences and the reasons they advance, the need to clarify statements by asking questions, whether the issues are largely factual, largely legal, or involve questions of fact and law, the apparent complexity of facts and issues, the need for speedy resolution, and the completeness of information presented. The presiding officer may require the parties to submit written briefs on the issues.

(c) ***Means of obtaining additional information.*** If the presiding officer determines that further proceedings are necessary, the presiding officer will establish a schedule for receiving additional facts or evidence and may schedule an enforcement hearing session to explore the facts and issues raised in the petition and the answer. The party filing the ((~~complaint~~)) petition or answer may file with the ((~~complaint~~)) petition or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue. The presiding officer may allow limited discovery requiring only the disclosure of facts relating directly to matters at issue, and only if discovery is shown to be essential to the requesting party. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

(d) ***Consideration as a complaint.*** If the matter at issue involves policy, technical or accounting issues that require extensive analysis or discovery, the commission may convert the proceeding to a complaint proceeding to allow adequate time and process for the demands of the proceeding.

(5) **Powers of the presiding officer; conversion of proceeding; recommended or final decision.**

(a) ***Conduct of proceeding.*** The presiding officer has broad discretion to conduct the proceeding in a manner that best suits the nature of the petition, including, but not limited to, converting the proceeding into a complaint proceeding under RCW 80.04.110. Matters may be appropriate for conversion when their complexity requires that they cannot be completed on the schedule provided in this rule; when the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; when extensive policy argument or legal briefing is required; or when participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written submissions or may schedule an enforcement hearing session. The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) ***Recommended decision.*** The presiding officer, if other than the commissioners, will serve a recommended decision on the parties within seventy-five days of the date the petition for enforcement was filed, or twenty-one days after the last hearing session or submission, whichever is later. The recommended decision is subject to approval by the commission. If the commissioners preside over the enforcement proceeding, they may enter a final decision within the time requirements applicable to recommended decisions.

(c) ***Review of the recommended decision.*** Any party may file a petition for administrative review of a recommended decision within seven days after the order is entered. A party opposing review may file an answer within five days after a petition for review is filed. The commission may hear the parties' arguments ((~~or comments~~)) regarding any recommended decision on the written pleadings or during ((~~a hearing~~)) oral argument, which may, in the commission's discretion, be scheduled coincident with a regular or special open public meeting. ((~~The parties may file written comments prior to the meeting on a schedule established in the recommended decision.~~)) The commission may request commission staff to make a presentation at the ((~~meeting~~)) argument. The commission will conduct this session within ten days after the date of the recommended decision, or as soon thereafter as the commissioners' schedules permit. If no party files a petition for administrative review, the commission may adopt the recommended decision without material change. If the commission considers making a material change in a recommended order to which no petition for review has been filed, the commission must first seek the views of the parties on the issue.

(6) **Commission decision on petition for enforcement.**

(a) ***Extent of commission discretion.*** The commission will serve a final decision on the parties in the form of a commission order resolving the issues. The commission may adopt, modify, or reject all or part of any recommended decision.

(b) ***Time of service.*** The commission will enter its order on the petition for enforcement no later than ninety days after the date the petition is filed or fifteen days after the meeting at which it reviews the recommended decision, whichever is later. The commission may extend this time for lack of resources or for other good cause.

(c) ***Petition for reconsideration.*** The parties may petition for reconsideration within ten days after the commission serves its order on the petition for enforcement. If a party petitions for reconsideration, the commission may request that an answer be filed. The commission may request additional comments, briefing, evidence, or argument from the parties. Filing a petition for reconsideration of the order does not stay the effect of the order. A petition for reconsideration is deemed denied unless the commission grants or denies it

by written order within ten days after the date on which petition for reconsideration is filed or the date established for filing an answer or additional comments, briefing, evidence, or argument, whichever is later. The commission may alter the time for entering its order on a petition for reconsideration by notice or letter.

(d) ***Failure to comply with the order.*** Any party who fails to comply with the terms of the commission's final order on a petition for enforcement is subject to penalties under RCW 80.04.380 and any other penalties or sanctions as provided by law. A company against whom a penalty is assessed may challenge the penalty or the facts on which it is based, or seek mitigation of the penalty, pursuant to pertinent law and commission rules.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-700 Alternative dispute resolution. The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest, and subject to approval by commission order. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

(1) **No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission retains and will exercise its authority in every adjudicative proceeding to consider any proposed settlement or agreement for approval.

(2) **Forms of ADR.** Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight. The commission may direct parties to meet or consult as provided in subsection (3) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720. The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties. The commission may assign a settlement judge to assist the parties in appropriate circumstances. The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

(3) **Settlement conference.** ((~~The commission may invite or direct the parties to confer among themselves, or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties. Any resulting settlement or stipulation must be submitted to the commission in writing and is subject to commission approval.~~)) Settlement conferences include any discussion or other communication, in person or otherwise, intended to resolve one or more disputed issues (whether actual or anticipated) between two or more parties in an adjudicative proceeding. Settlement conferences or discussions do not include requests for information or clarification, to define whether a dispute exists or in aid of discovery. Settlement conferences must be informal and without prejudice to the rights of the parties. The procedural requirements of this section relating to settlement conferences may be waived if all parties and the commission agree.

(a) **Initial settlement conference.** The commission will set in the procedural schedule for each adjudicative proceeding the date for an initial settlement conference. Any party may attend and participate in the initial settlement conference. No party is required to attend. Parties wishing to reschedule the initial settlement conference must seek modification of the schedule by the presiding officer upon notice to all other parties.

(b) **Early initial settlement conference.** Any party that wishes to initiate settlement discussions with any other party between the filing of the docket and the initial prehearing conference must provide notice to the commission and to all other parties. The notice must specify the time and place of the early initial settlement conference and the topics to be discussed. The notice must be filed with the commission in the proceeding docket and served on other parties at least fourteen days before the date set for the conference. An early initial settlement conference must be open to all parties. For purposes of (b) of this subsection only, a party includes:

(i) The entity filing the matter leading to an expected adjudication and the respondent, if any;

(ii) The commission staff;

(iii) Public counsel;

(iv) An entity that has filed a petition to intervene in the docket, as shown on the commission's web site at the time of service of the notice; and

(v) An entity that was party to the most recent proceeding of the same type, involving the same filing entity and respondent, if any.

(4) **ADR guidelines.** In any negotiation, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider the commission's guidelines for negotiations, set out in a policy statement adopted pursuant to RCW 34.05.230, and determine the ground rules governing the negotiation;

(b) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

(c) Parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential, subject to the requirements of RCW 5.60.070; and

(d) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement. Participants must immediately advise the commission if a commission-sanctioned ADR process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that an impasse has been reached or an impasse is declared by any neutral third party who is assisting the participants in the ADR process).

(e) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding, unless all parties consent in writing.

WSR 06-11-101
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 17, 2006, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-21-094.

Title of Rule and Other Identifying Information: WAC 388-450-0080 What is self-employment income?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097, on June 27, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 28, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 27, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by June 23, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule amendments are necessary to more clearly describe the criteria by which an individual's earned income is considered self-employment income for assistance programs. The proposed text will better describe when a person has an employer/employee relationship versus when that person is self-employed.

Reasons Supporting Proposal: Current descriptions of employer/employee relationships versus self-employment are vague and cause some confusion in application of the rule by department staff.

The proposed criteria are consistent with federal Internal Revenue Service and Social Security Administration descriptions, as well as state labor and industries statutes and division of child care and early learning statutes and policy.

The improved clarity and consistency with other standards will provide a better guideline for department staff who must apply the rule to client circumstances.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rebecca Henrie, 1009 College S.E., Lacey, WA 98504, (360) 725-4615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to....rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

May 15, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-13-045, filed 6/11/03, effective 8/1/03)

WAC 388-450-0080 What is self-employment income? This section applies to ((~~TANF/SFA, GA, RCA~~)) cash assistance, Basic Food, and medical programs for children, pregnant women and families.

(1) Self-employment income is income you earn from ((~~operating~~)) running a business, performing a service, selling items you make, or re-selling items to make a profit.

(2) You are self-employed if you earn income without having an employer/employee relationship with the person who pays you. This includes, but is not limited to, when:

(a) You have primary control of the way you do your work; or

(b) You report your income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) You usually have an employer/employee relationship when:

(a) The person you provide services for has primary control of how you do your work; or

(b) You get an IRS form W-2 to report your income.

(4) Your self-employment does not have to be a licensed business for your business or activity to qualify as self-employment. Some examples of self-employment include:

(a) Child care that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car ((~~maintenance~~)) care;

(e) ((~~Operating~~)) Running a lodging for roomers and/or boarders. Roomer income includes money paid to you for shelter costs by someone not in your assistance unit who lives with you ((~~if you~~)) when:

(i) ((~~Own~~)) You own or are buying your residence; or

(ii) You rent all or a part of your residence and the total rent you charge all others in your home is more than your total rent.

(f) ((~~Operating~~)) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling ((~~self-produced or supplied items~~)) items you make or items that are supplied to you;

(j) Selling or donating your own biological products such as ((~~blood, plasma, eggs, sperm, or hair; and~~)) providing blood or reproductive material for profit;

(k) Working as ((~~a subcontractor~~)) an independent contractor; and

(l) Running a business or trade either on your own or in a partnership.

((~~(3)~~)) (5) If you are an employee of a company or ((~~individual~~)) person who ((~~performs~~)) does the activities listed in subsection (2) above as a part of your job, we do not count the ((~~activity~~)) work you do as self-employment. ((~~If the person or company who pays you must report your income using IRS form W-2, you are an employee.~~

~~(4) Most~~)) (6) Self-employment income is ((~~considered~~)) counted as earned income as described in WAC 388-450-0030 except as described in subsection (7).

((~~(5)~~)) (7) For ((~~TANF/SFA~~)) cash assistance and Basic Food there are special rules about renting or leasing out property or real estate that you own.

(a) We count the income you get as unearned income unless you spend at least twenty hours per week managing the property.

(b) For TANF/SFA, we count the income as unearned income unless the use of the property is a part of your approved individual responsibility plan.

WSR 06-11-113

PROPOSED RULES

SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

[Filed May 18, 2006, 2:13 p.m.]

Continuance of WSR 06-09-059.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Spokane County air pollution control authority (SCAPCA) Regulation I; Revise Regulation I, Article II, Section 2.12 - Restraining Orders—Injunctions; Revise Regulation I, Article II, Section 2.13 - Federal Regulation Reference Date; and add Section 2.24 - Washington Administrative Codes (WACs).

Hearing Location(s): Spokane County Public Works Building, 1206 West Broadway, Hearing Room, Lower Level, Spokane, WA 99201, on July 6, 2006, at 9:30 a.m.

Date of Intended Adoption: July 6, 2006.

Submit Written Comments to: Charles E. Studer, Spokane County Air Pollution Control Authority, 1101 West College, Suite #403, Spokane, WA 99201, e-mail cestuder@scapca.org, fax (509) 459-6828, by 4:30 p.m., Thursday, May 20, 2006.

Assistance for Persons with Disabilities: Contact Charles Studer by 4:30 p.m., Friday, June 30, 2006, (509) 4727 [477-4727] ext. 107.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The hearing date has been changed from July 7, 2006, at 9:00 a.m. to July 6, 2006, at 9:30 a.m. The hearing will be held during SCAPCA's regularly scheduled board meeting.

The topics to be covered are listed below:

- Revise Section 2.12 by adding the title "Restraining Orders - Injunctions" to clarify the purpose of the section.
- Revise Section 2.13 by changing the federal rules and regulations effective date to July 1, 2006, from March 4, 2004, for those federal rules and regulations that SCAPCA implements and enforces. These rules and regulations are listed in SCAPCA Regulation 1, Article IV, "Exhibit R items #7, #8.a., and #8.b.".
- Added Section 2.14, this section was added [to] clarify which Washington state WACs that SCAPCA implements and enforces and which sections of the Washington state WACs that SCAPCA does not implement and enforce.

Anticipated effects:

- Section 2.12, clarification of what the section addresses.
- Section 2.13, allows SCAPCA engineering and compliance staff to reference the latest revisions of existing or new federal rules and regulations.
- Section 2.14, clarifies what sections of the WACs that SCAPCA implements and enforces and those sections that it does not.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq.

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

Name of Proponent: Spokane County air pollution control authority, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: SCAPCA, 1101 West College, #403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule. Chapter 19.85 RCW does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule amendment.

May 16, 2006
Charles E. Studer
Environmental Engineer

WSR 06-11-114

PROPOSED RULES

OLYMPIC REGION CLEAN AIR AGENCY

[Filed May 18, 2006, 2:41 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Olympic region clean air agency Regulation 1, this action will change the arrangement of the existing Regulation 1. No additions or deletions will be made.

Hearing Location(s): Olympic Region Clean Air Agency, 2940 B Limited Lane N.W., Olympia, WA 98502, on July 12, 2006, at 10:15 a.m.

Date of Intended Adoption: July 12, 2006.

Submit Written Comments to: Olympic Region Clean Air Agency, 2940 B Limited Lane N.W., Olympia, WA 98502, e-mail Robert@orcaa.org, fax (360) 491-6308, by July 11, 2006.

Assistance for Persons with Disabilities: Contact Dan Nelson by July 7, 2006, (360) 586-1044.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This action will create a common-sense organization of the regulations. The impact will be a combining of similar subject matter for more ready access to the regulations affecting a specific activity. These changes will help the public and industry identify their regulatory responsibilities in complying with air quality laws and regulations. The numbering system will change. There will be no changes to the content of the regulations. To assist those familiar with the previous numbering system, the new Table of Contents includes a historical reference to the Article and Section of the former Regulation 1.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Olympic region clean air agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Moody, 2940 B Limited Lane N.W., Olympia, WA 98502, (360) 586-1044.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the Regulatory Fairness Act (chapter 19.85 RCW) because air pollution control authorities are not deemed state agencies (RCW 70.94.141).

A cost-benefit analysis is not required under RCW 34.05.328. Air pollution control authorities are not deemed to be state agencies (RCW 70.94.141).

May 17, 2006
Richard A. Stedman
Executive Director

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The parenthetical notes reference the original citations in Regulation 1.

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Rule 1.2 Name of Agency *(Article 1, Section 1.03)*
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Rule 1.4 Definitions *(Article 1, Section 1.07)*
Rule 1.5 Control Officer - Powers and Duties *(Article 3, Section 3.01)*
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Regulation 2 - Enforcement Procedures and Penalties

Rule 2.1 Voluntary Compliance *(Article 3, Section 3.19)*
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Regulation 3 - Fees

Rule 3.1 Annual Registration Fees *(Article 5, Section 5.05)*
Rule 3.2 Operating Permit Fees *(Article 6, Section 6.03)*
Rule 3.3 Notice of Construction Fees *(Article 7, Section 7.13)*
Rule 3.4 Outdoor Burning Permit Fees *(Article 9, Section 9.01)*
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Regulation 4 - Registration

Rule 4.1 Registration Required *(Article 5, Section 5.01)*
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Rule 4.3 Requirements for Stationary Sources subject to Registration *(Article 5, Section 5.03)*
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Regulation 5 - Operating Permit Program (Title V)

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6.3.1 Removal and encapsulation of asbestos material purpose *(Article 14, Section 14.01)*

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6.3.4 Disposal of asbestos containing waste material *(Article 14, Section 14.11)*

6.3.5 Controlled and regulated substances *(Article 14, Section 14.12)*

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Rule 8.9 Burning used oil in land-based facilities *(Article 9, Section 9.17)*

Rule 8.10 Fluorides *(Article 9, Section 9.21)*

Rule 8.11 Record Keeping and Reporting purpose *(Article 13)*

Rule 8.12 Gasoline stations *(Article 15)*

8.12.1 Definitions *(Article 15, Section 15.03)*

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8.12.5 New gasoline dispensing facilities *(Article 15, Section 15.11)*

WSR 06-11-129
PROPOSED RULES
SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

[Filed May 22, 2006, 9:51 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1)

Title of Rule and Other Identifying Information: Revise SCAPCA Regulation I, Article X, Section 10.09 - Asbestos fees.

Hearing Location(s): Spokane County Public Works Building, Lower Level Hearing Room, 1206 West Broadway, Spokane, WA 99201, on July 6, 2006, at 9:30 a.m.

Date of Intended Adoption: July 6, 2006.

Submit Written Comments to: Brenda Smits, 1101 West College, Suite 403, Spokane, WA 99201, e-mail bmsmits@scapca.org, fax (509) 477-6828, by 4:30 p.m. Tuesday, June 27, 2006.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m., Tuesday, June 27, 2006, (509) 477-4727 ext. 106.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose: Revise SCAPCA Regulation I, Article X, Section 10.09 to allow for full cost recovery of SCAPCA's comprehensive asbestos program, established in 1998, established in 1998, as directed by SCAPCA's board in Resolution 98-01.

Anticipated effects: The proposed fee changes will allow SCAPCA to continue the current level of implementation for its comprehensive asbestos program. The proposed changes are intended to achieve full cost recovery.

Changes to existing rule:

1. Remove $50 amendment fee;

2. Increase Owner-Occupied, Single-Family Residence demolition fee;

3. Increase Non-Owner-Occupied, Single-Family Residence fee;

4. Combine project categories for 1,000-9,999 linear ft., 5,000-49,999 square ft. and >10,000 linear ft., >50,000 square ft., into a single project category for ≥1,000 linear ft., ≥5,000 square ft.; and

5. Add exception for hazardous conditions to table for clarification.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW; 42 U.S.C. 7401 et. seq.; and 42 U.S.C. 7412.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: In 1998, SCAPCA's board established a comprehensive asbestos program as a reasonable approach to control asbestos emission from renovation and demolition activities, acknowledging that there is no known safe level of asbestos exposure. Resolution 98-01 directed SCAPCA to achieve full cost recovery for the asbestos program. No changes have been made to asbestos fees since the program's inception in 1998. Currently, the asbestos program is not at full cost recovery. The proposed changes in the asbestos fees will allow for full cost recovery.

Name of Proponent: Spokane County air pollution control authority (SCAPCA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Brenda Smits, 1101 West College, Suite #403, Spokane, WA 99201, (509) 477-4727; and Enforcement: Matt Holmquist, 1101 West College, Suite #403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule. Chapter 19.85 RCW does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule amendment.

May 18, 2006
B. Smits
Air Quality Specialist

AMENDATORY SECTION

REGULATION I, ARTICLE X, SECTION 10.09 - ASBESTOS FEES

ARTICLE X

SECTION 10.09 ASBESTOS FEES

Written notification, as required in Article IX, Section 9.04, shall be accompanied by the appropriate nonrefundable fee according to Section 10.09.A.

A Notification Period and Fees

Project	Size or Type	Notification Period	Fee
Owner-Occupied, Single-Family Residence Asbestos Project (excluding demolition)	Notification Not Required	None	None
Owner-Occupied, Single-Family Residence Demolition	All	Prior Notice	$((~~25~~)) 30
All Other Demolitions with no asbestos project	All	10 Days	$((~~150~~)) 250
Asbestos Project includes demolition fee*	10-259 linear ft 48-159 square ft	3 Days	$((~~150~~)) 250
Asbestos Project includes demolition fee	260-999 linear ft 160-4,999 square ft	10 Days	$((~~300~~)) 500
((~~Asbestos Project includes demolition fee~~))	((~~1,000-9,999 linear ft~~)) ((~~5,000-49,999 square ft~~))	((~~10 Days~~))	((~~$750~~))
Asbestos Project includes demolition fee	((~~>10,000~~)) ≥1,000 linear ft ((~~>50,000~~)) ≥5,000 square ft	10 Days	$((~~1,500~~)) 1,250
Emergency	9.04.C	Prior Notice**	Additional fee equal to project fee
Amendment***	9.04.B	Prior Notice	$((~~50~~)) 0
Alternate Means of Compliance (demolitions or friable asbestos-containing material)	9.07.A or C	10 Days	Additional fee equal to project fee
Alternate Means of Compliance (non-friable asbestos-containing material)	9.07.B	10 Days	Additional fee equal to project fee
Exception for Hazardous Conditions	9.05.B	Concurrent with Project	Regular Project Fee
Annual	9.04.A.8	Prior Notice	$1,000

* Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.

** Except in the case where advance notice is not required pursuant to Section 9.04.C.2.

*** For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted in addition to the ((~~$50~~)) amendment fee.

B. The Control Officer may waive the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.

C. Where a compliance investigation is conducted pursuant to Section 9.04 of this Regulation, the compliance investigation fee shall be equal to $50 per hour of compliance investigation.

D. The asbestos project fee in Section 10.09.a is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection is an asbestos survey, as defined in Section 9.02.G, performed by an AHERA Building Inspector, as defined in Section 9.02.A.

E. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane County Air Pollution Control Authority and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 06-11-135
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed May 23, 2006, 10:37 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 209, Olympia, WA 98502, on June 28, 2006, at 1:00 p.m.

Date of Intended Adoption: June 30, 2006.

Submit Written Comments to: Mary Haglund, P.O. Box 9649, Olympia, WA 98507, e-mail Security@dol.wa.gov, fax (360) 570-7888, by June 27, 2006.

Assistance for Persons with Disabilities: Contact Sherri Lonsbery by June 27, 2006, TTY (360) 664-8885 or (360) 664-6624.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will increase fees. The increase of revenue will bring the program budget into balance.

Reasons Supporting Proposal: The program is a dedicated fund program and requires that the program establish and maintain a reasonable fund balance. The fee increase will support this requirement.

Statutory Authority for Adoption: Chapter 18.185 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Haglund, Olympia, (360) 664-6624; Implementation: Sherri Lonsbery, Olympia, (360) 664-6624; and Enforcement: Pat Brown, Olympia, (360) 664-6624.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies to which this rule applies. Agencies that are not named can apply this rule voluntarily. The department of licensing has chosen not to.

May 19, 2006
Ralph Osgood
Assistant Director

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees. The following fees for a one-year period shall be charged by business and professions division of the department of licensing:

Title of Fee	Fee
Bail bond agency/branch office:	
Application	$((~~1,000.00~~)) 1,500.00
License renewal	((~~800.00~~)) 1,400.00
Late renewal with penalty	((~~1,000.00~~)) 1,500.00
Bail bond agent:	
Original license	((~~400.00~~)) 650.00
License renewal	((~~250.00~~)) 650.00
Late renewal with penalty	((~~350.00~~)) 750.00
Change of qualified agent	((~~200.00~~)) 250.00
Original endorsement to the bail bond agent license	((~~50.00~~)) 100.00
Endorsement renewal	((~~65.00~~)) 100.00
Endorsement renewal with penalty	((~~100.00~~)) 200.00
Bail bond recovery agent license:	
Original license	((~~300.00~~)) 650.00
License renewal	((~~350.00~~)) 650.00
Late renewal with penalty	((~~450.00~~)) 750.00
Examinations:	
Reexamination fee	25.00

WSR 06-11-138
PROPOSED RULES
BOARD OF ACCOUNTANCY
[Filed May 23, 2006, 2:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-05-005.

Title of Rule and Other Identifying Information: WAC 4-25-530 Fees.

Hearing Location(s): Evergreen Plaza Building, Second Floor Conference Room, 711 South Capitol Way, Olympia, WA, on June 27, 2006, at 9:00 a.m.

Date of Intended Adoption: June 27, 2006.

Submit Written Comments to: Richard C. Sweeney, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail webmaster@cpaboard.wa.gov, fax (360) 664-9190, by June 20, 2006.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by June 20, 2006, TTY (800) 833-6384 or (360) 664-9194.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase the section fees charged to candidates applying to take the uniform certified public accountant (CPA) examination.

Reasons Supporting Proposal: The CPA examination providers, the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) have notified the board of a forthcoming increase of all CPA exam fees. Additionally, Prometric, the testing centers used to administer the computer based CPA exam, has notified the board of its intent to increase the per hour seat charge from $22.50 to $23.11. These fee increases will become effective with ATTs (authorizations to test) submitted August 25, 2006. The board must therefore increase the fees it charges for the administration of the CPA examination to adequately pay all costs.

Statutory Authority for Adoption: RCW 18.04.065, 18.04.105(3).

Statute Being Implemented: RCW 18.04.065, 18.04.-105(3).

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

Name of Proponent: Washington state board of accountancy, government; AICPA, NASBA, and Prometric, private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, P.O. Box 9131, Olympia, WA 98507-9131, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.-328.

May 23, 2006
Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 05-10-046, filed 4/29/05, effective 6/2/05)

WAC 4-25-530 Fees. The board shall charge the following fees:

(1)	Initial application for individual license, practice privilege, individual license through reciprocity, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner	$330
(2)	Renewal of individual license, CPA-Inactive certificate, practice privilege, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner	$230
(3)	Application for CPA-Inactive certificateholder to convert to a license	$0
(4)	Application for reinstatement of license, practice privilege, CPA-Inactive certificate, or registration as a resident nonlicensee owner . .	$480
(5)	Quality assurance review (QAR) program fee (includes monitoring reviews for up to two years)	
	Firm submits reports for review	$400
	Firm submits a peer review report for review	$60
	Firm is exempted from the QAR program because the firm did not issue attest reports	$0
(6)	Late fee	$100
(7)	Amendment to firm license except for a change of firm address (there is no fee for filing a change of address)	$35
(8)	Copies of records, per page exceeding fifty pages	$0.15
(9)	Computer diskette listing of licensees, CPA-Inactive certificateholders, grants of practice privilege, registered resident nonlicensee firm owners, or firms	$75
(10)	Replacement CPA wall document	$50
(11)	Process transfer of grades	$35
(12)	Dishonored check fee (including, but not limited to, insufficient funds or closed accounts)	$35
(13)	CPA examination. Exam fees are comprised of section fees plus administrative fees. **The total fee is contingent upon which section(s) is/are being applied for and the number of sections being applied for at the same time.** The total fee is the section fee(s) for each section(s) applied for added to the administrative fee for the number of section(s) applied for.	

(a)	Section fees:		
(i)	Auditing and attestation	$((~~159.25~~)) 187.00	
(ii)	Financial accounting and reporting	$((~~148.00~~)) 175.44	
(iii)	Regulation	$((~~125.50~~)) 152.33	
(iv)	Business environment and concepts	$((~~114.25~~)) 140.78	
(b)	Administrative fees:	**1/1/04 - 12/31/06**	**After 1/1/07**
(i)	First-time candidate - Four sections	$124.50	$132.95
(ii)	First-time candidate - Three sections	$111.00	$119.10
(iii)	First-time candidate - Two sections	$97.00	$104.70
(iv)	First-time candidate - One section	$83.00	$90.30
(v)	Reexam candidate - Four sections	$122.50	$130.75
(vi)	Reexam candidate - Three sections	$104.00	$111.40
(vii)	Reexam candidate - Two sections	$85.00	$91.50
(viii)	Reexam candidate - One section	$66.00	$71.60
	National Association of State Boards of Accountancy candidate data base investigation fee for exam applications submitted without the applicant's Social Security number	$70	$70

Note: The board may waive late filing fees for individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

WSR 06-11-139
PROPOSED RULES
HORSE RACING COMMISSION
[Filed May 23, 2006, 2:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-02-080.

Title of Rule and Other Identifying Information: WAC 260-48-935 Choose (n) pools, which will authorize another form of parimutuel wagering in which bettors attempt to select the winners of a specific number of races (n).

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on July 13, 2006, at 9:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by July 10, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by July 10, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a new section being added to chapter 260-48 WAC, Mutuels, which when adopted will authorize another form of parimutuel wagering in which the bettor attempts to select the winners of a specific number of races (n).

Reasons Supporting Proposal: Has the potential of enhancing the handle by offering a new form of parimutuel wagering in which the bettor can "choose" and specific number of races (n) and attempt to select the winner of these (n) races.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: NW Racing Association (Emerald Downs), public.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

May 22, 2006
R. M. Leichner
Executive Secretary

NEW SECTION

WAC 260-48-935 Choose (n) pools. (1) The choose (n) is a form of parimutuel wagering, in which bettors attempt to select the winners of a specific number of races (n). The choose (n) pool must be held separately from all other pools and will in no way be part of a daily double, exacta, trifecta or any other wagering pool. The choose (n) is a pool wherein the bettor is required to select any (n) winning horses from that particular card and is not a parlay (a wager using the proceeds of a previous winning bet).

(2) The association must obtain written approval from the executive secretary concerning the format and scheduling of choose (n) contests, the races in which choose (n) wagering will be permitted, and the amount of any cap to be set on the carryover. The choose (n) pool must close after each race but will reopen with respect to subsequent races that have not yet been run provided that there are at least as many races remaining as required to be selected on a winning choose (n) ticket. Once approved, any changes will require approval from the executive secretary.

(3) The number of races in a choose (n) pool is designated by the association, while the specific races wagered on are at the discretion of the bettor. The races need not be consecutive and the first race of a choose (n) ticket may begin at any time provided that there are an adequate number of races left on the program. The bettor may purchase a choose (n)

ticket allowing the bettor to select any (n) races from the entire card, unless the association has designated a race not eligible for the choose (n) pool.

(4) The choose (n) pool will be apportioned under one of the following methods:

(a) Method one - Choose (n) no carryover: The choose (n) "net wagering pool" will be equally distributed to the holder or holders of choose (n) tickets which correctly select (n) first place winners from the eligible races comprising the choose (n). If no choose (n) ticket correctly selects (n) first place winners from choose (n) eligible races, the "net wagering pool" of a choose (n) with no carryover amount will be equally distributed to the ticket holder or holders selecting the greatest number of first place winners of the races comprising the choose (n). If there are no winning wagers, the pool is refunded.

(b) Method two - Choose (n) with carryover: The choose (n) "net wagering pool" and carryover, if any, will be distributed as a single price pool to holders of choose (n) tickets which have correctly selected the winner of (n) races of the races comprising the choose (n). However, if no choose (n) ticket correctly selects the first place winner in (n) races comprising the choose (n), twenty-five percent of the net wagering pool for that particular choose (n) will be equally distributed to the holder or holders of choose (n) tickets correctly selecting the greatest number of first place winners of the races comprising the choose (n) and the remaining seventy-five percent of the net wagering pool for that particular choose (n) will be added as the "carryover amount" portion of the wagering pool for designated subsequent choose (n) offerings by the association. In any choose (n) with a "carryover amount" feature, one hundred percent of the "net wagering pool" for the particular choose (n) plus any accumulated "carryover amount," will be equally distributed to the holder or holders of choose (n) tickets which correctly select the first place winners in (n) races comprising the choose (n).

(5) The association will determine the denominations of the choose (n) tickets. No less than two or more than six races will comprise any choose (n) ticket.

(6) The choose (n) tickets must be clearly and immediately distinguishable from other parimutuel tickets.

(7) Those horses constituting an entry or field, as defined by rule, will race in any choose (n) race as a single wagering interest for purposes of the choose (n) pool calculations. A scratch after wagering has begun of any part of the entry or field selection in a race will have no effect on the status of such entry or field as a wagering interest.

(8) At any time after wagering begins on the choose (n) contest, should a horse, entire betting entry or field be scratched or declared a nonstarter in any choose (n) race, no further tickets selecting such horses, entry or field will be issued, and wagers upon such horse, entry or field for purposes of the choose (n) will be deemed wagers upon the horse, entry or field on which the most money has been wagered in the win pool at the close of win betting for such race. In the event that two horses have the exact amount wagered on them, the horse, entry or field with the lowest program number will be designated.

(9) In the event of a dead heat for win between two or more horses in any of the choose (n) races, all such horses will be considered as the winning horse for the purpose of distributing the choose (n) pool.

(10) The choose (n) pool with a carryover will be calculated as follows:

(a) One hundred percent of the net amount in the choose (n) pool subject to distribution among winning ticket holders must be distributed among holders of choose (n) tickets which have correctly selected the winner of (n) races of the races comprising the choose (n).

(b) In the event there is no choose (n) ticket which correctly designates the winner of (n) races from the races that comprise the choose (n), twenty-five percent of that racing date's net amount available for distribution must be distributed among the holders of choose (n) tickets correctly designating the most winning selections of the races that comprise the choose (n), and the remaining seventy-five percent of said pool must be carried over and added to the pool on the next day that the wager is conducted.

(c) If, on the last day on which the choose (n) is conducted at a horse race meeting, no one selects the winning horse in (n) races, the total amount of the choose (n) pool which exists on that day must be paid to the bettor or bettors selecting the largest number of winning horses in those races. In no event will any part of the pool be carried over to the next year's race meeting, except for reasons beyond the control of the licensee and upon the approval of the executive secretary. If, for any reason, the choose (n) carryover must be held over to the corresponding choose (n) pool of a subsequent meet, the carryover will be deposited in an interest-bearing account approved by the executive secretary. The choose (n) carryover plus accrued interest will then be added to the net choose (n) pool of the following meet on a date and performance so designated by the executive secretary.

(11) When the distance of the race is changed or the condition of the turf course warrants a change of racing surface in any of the races open to choose (n) wagering, and such change has not been made known to the betting public prior to the close of wagering for the first choose (n) race, the stewards will declare the changed races a "no contest" for choose (n) wagering purposes and the pool will be distributed in accordance with subsection (10) of this section. Following the designation of a race as a "no contest," no tickets may be sold selecting a horse in such "no contest" race. Any race that has been canceled or declared a "no contest" may not be considered a contested race for choose (n) purposes.

(12) If, for any reason, one or more races are canceled or declared a "no contest," the choose (n) pool will be paid using the following formula:

(a) Choose two: Any live ticket regardless of its starting point that has not completed at least two contested legs will be refunded. After two or more races have run, one hundred percent of the daily pool plus any carryover will be distributed in accordance with subsection (10) of this section.

(b) Choose three: Any ticket regardless of its starting point that has not completed at least three contested legs will be refunded. After three or more races have run: One hundred percent of the daily pool plus any carryover must be distributed in accordance with subsection (10) of this section.

(c) Choose four: Any ticket regardless of its starting point that has not completed at least four contested legs must

be refunded. After four or more races have run: One hundred percent of the daily pool plus any carryover must be distributed in accordance with subsection (10) of this section.

(d) Choose five: Any ticket regardless of its starting point that has not completed at least four contested legs must be refunded.

(i) In the event that only four choose five races are contested: One hundred percent of that day's net pool (not including any carryover), after refunds, will be paid to tickets with four wins and no losses.

(ii) In the event that at least five races have been contested for the choose five: Seventy-five percent of that day's net pool (after refunds) plus any carryover will be paid to tickets with five wins and twenty-five percent of the pool will be paid to tickets with four wins and no losses. In the event no ticket has five wins, seventy-five percent of the daily pool will be paid to tickets with four wins and a selection in the canceled race and twenty-five percent paid to tickets with three wins and a selection in two of the canceled races.

(e) Choose six: Any ticket regardless of its starting point that has not completed at least four contested legs must be refunded.

(i) In the event only four choose six races are contested: One hundred percent of the day's net pool (not including any carryover) after refunds, must be paid to tickets with four wins.

(ii) In the event that only five choose six races are contested: Seventy-five percent of the daily pool (after refunds) will be paid to tickets with five wins and twenty-five percent to tickets with four wins and no losses and a selection in the noncontested race.

(iii) In the event that at least six races have been contested for the choose six and two or more races have not been contested: Seventy-five percent of the daily pool plus any carryover must be paid to tickets with six wins, eighteen and three-quarter percent of the daily pool to tickets with five wins and a selection in a noncontested race, and six and one-quarter percent of the daily pool will be paid to tickets with four wins and selections in two of the noncontested races. If no ticket has six wins, fifty percent of the daily pool must be paid to tickets with five wins and a selection in a noncontested race, twenty-five percent of the daily pool to tickets with four wins and selections in two noncontested races, and twenty-five percent of the daily pool to tickets with five wins and one loss.

(iv) In the event that at least six races have been contested for the choose six and one race has not been contested: Seventy-five percent of the daily pool plus any carryover must be paid to tickets with six wins and twenty-five percent of the daily pool to tickets with five wins and a selection in the noncontested race. If no ticket has six wins, seventy-five percent of the daily pool must be paid to tickets with five wins and a selection in the noncontested race and twenty-five percent of the daily pool to tickets with five wins and one loss.

(v) In the event that there is no payable ticket in a category within any of these subsections, that portion of the daily pool will be divided equally between the other categories within that subsection. In the event that there is no payable ticket within a subsection, the entire daily pool will be carried over and added to the choose (n) pool on the next day that the choose (n) wagering is conducted.

(13) When there is a cancellation of the race card or a race is declared a no contest and there are any changes in the calculation of the choose (n) other than provided for in subsection (12) of this section, the change must be approved in writing by the executive secretary.

(14) If, for any reason, the race card is canceled, wagering on the choose (n) pool must close immediately and the choose (n) pool must be distributed in accordance with subsection (12) of this section.

(15) The choose (n) carryover may be capped at a designated level approved by the executive secretary so that if at the close of any performance, the amount in the choose (n) carryover equals or exceeds the designated cap, the choose (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the choose (n) carryover is frozen, one hundred percent of the net pool, part of which would ordinarily be added to the choose (n) carryover, must be equally distributed to the ticket holder or holders selecting the greatest number of first place winners of the races comprising the choose (n) for that performance.

(16) A written request for permission to distribute the choose (n) carryover on a specific performance may be submitted to the executive secretary. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(17) Should the choose (n) carryover be designated for distribution on a specified date and performance in which there are no wagers with (n) wins, the entire pool must be distributed as a single price pool to those whose selection finished first in the greatest number of choose (n) contests. The choose (n) carryover will be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the executive secretary as provided in subsection (16) of this section.

(b) Upon written approval from the executive secretary when there is a change in the carryover cap, a change from one type of choose (n) wagering to another, or when the choose (n) is discontinued.

(c) On the closing performance of the meet or split meet.

(18) With the written approval of the executive secretary, the association may contribute to the choose (n) carryover a sum of money up to the amount of any designated cap.

(19) All choose (n) rules and methods of calculations must be available and posted for the bettors by the association.

(20) It is a violation of these rules for any person to provide information to any individual regarding covered combinations or amounts wagered on specific combinations. This rule is not intended to prohibit necessary communication between totalisator and parimutuel department employees for processing of pool data. The association may be permitted to provide information regarding number of tickets sold and number of live tickets remaining to the wagering public.

(21) The association may suspend previously approved choose (n) wagering with the prior approval of the executive secretary. Any carryover will be held until the suspended

choose (n) wagering is reinstated. An association may request approval of a choose (n) wager or separate wagering pool for specific performances.

(22) Should circumstances occur which are not addressed by these rules, the stewards will resolve them in accordance with general parimutuel practice. Decisions regarding distribution of the choose (n) pool made by the stewards will be final.

WSR 06-11-140
PROPOSED RULES
HORSE RACING COMMISSION
[Filed May 23, 2006, 2:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-016.

Title of Rule and Other Identifying Information: WAC 260-08-597 Funding to assist the equine industry, this new section is being adopted to formulate a process for requesting and a mechanism for distributing up to $300,000 per year for the purpose of developing the equine industry, maintaining and upgrading racing facilities and assisting equine health research. Authorized in 2006 by passage of SSB 6382.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on July 13, 2006, at 9:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by July 10, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by July 10, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 6382 passed by the Washington state legislature (chapter 174, Laws of 2006) authorizes the Washington horse racing commission to expend $300,000 of its operating funds each year for the development of the equine industry, improvement of racing facilities, and equine health research. This new section establishes a process for requesting and a mechanism for distributing these funds.

Reasons Supporting Proposal: Allows the agency to meet its statutory obligation and it supports the equine industry and equine health research.

Statutory Authority for Adoption: RCW 67.16.020.

Statute Being Implemented: SSB 6382, chapter 174, Laws of 2006.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable. Distribution of operating funds approved by the state legislature in 2006.

May 22, 2006
R. M. Leichner
Executive Secretary

NEW SECTION

WAC 260-08-597 Funding to assist the equine industry. (1) If the commission determines that there are additional funds in its operating account beyond what is needed to fund the continued operations of the commission, the commission may designate up to three hundred thousand dollars of those funds to be used to assist the equine industry. Funds used to assist the equine industry may only be used to help develop the equine industry, maintain or upgrade racing facilities, or assist equine health research. In deciding how to allocate the funds available, the commission will give first consideration to uses that assist the Class C race meets and equine health research. The commission will establish a process for individuals or organizations to request funds.

(2) Available funds may be allocated to fund requests from individuals or organizations, or programs the commission determines support the purposes specified in subsection (1) of this section.

(3) The commission has discretion to determine the amount of funding available, identify the programs for which funding will be provided, the amount of funding for each program, and the procedures for distributing funds.

WSR 06-11-145
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed May 23, 2006, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-106.

Title of Rule and Other Identifying Information: Chapter 468-70 WAC, Motorist information signs, motorist information signs are installed along the roadside within highway right-of-way, to display individual business logos for gas, food, lodging, camping, and recreational activities, twenty-four-hour pharmacies, and tourist-oriented activities that are of specific interest to traveling motorists.

Hearing Location(s): Large Commission Board Room 1D2, Transportation Building, 310 Maple Park Drive, Olympia, WA, on June 30, 2006, at 1:00 p.m.

Date of Intended Adoption: June 30, 2006.

Submit Written Comments to: Michael J. Dornfeld, Washington State Department of Transportation, P.O. Box 47344, Olympia, WA 98504-7344, e-mail dornfem@wsdot.wa.gov, fax (360) 705-6826, by June 30, 2006.

Assistance for Persons with Disabilities: Contact Michael J. Dornfeld by June 30, 2006, TTY (800) 833-6388 or (360) 705-7288.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will amend existing rules to incorporate revised federal regulations concerning motorist information signs, as set forth in the 2003 Manual on Uniform Traffic Control Devices published by the Federal Highway Administration, and to conform with section 1, chapter 398, Laws of 2005 (RCW 47.36.360, state of Washington).

Reasons Supporting Proposal: Chapter 468-70 WAC has a thirty-one year history based on Washington state law and national signing standards. Incorporating newly revised state and federal motorist information sign provisions into chapter 468-70 WAC maintains Washington state's uniformity with nationally accepted signing practices.

Statutory Authority for Adoption: RCW 47.36.030, 47.36.310, and 47.36.320.

Statute Being Implemented: RCW 47.36.360.

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

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting: Michael J. Dornfeld, Olympia, Washington, (360) 705-7288.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 47.36.360 authorizes the department of transportation to charge reasonable fees to defray the costs associated with installing and maintaining RV logos on business signs. The addition of RV logos is optional to businesses participating in the motorist information sign program, thus no mandatory costs are imposed on businesses within an industry. The one-time fee for installing RV logos is $75.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is exempt under RCW 34.05.328 (5)(b)(iii).

May 22, 2006
John F. Conrad
Assistant Secretary
Engineering and Regional Operations

AMENDATORY SECTION (Amending WSR 04-16-056, filed 7/29/04, effective 8/29/04)

WAC 468-70-020 Definitions. When used in these regulations the term:

(1) "Conventional road" shall mean a noninterstate highway which is not an expressway or freeway.

(2) "Department" shall mean the Washington state department of transportation.

(3) "Expressway" shall mean a divided arterial highway for through traffic with partial control of access and grade separations at most major intersections.

(4) "Fee zone" means:

(a) Fee zone 1, freeways and expressways with average daily trips greater than eighty thousand;

(b) Fee zone 2, freeways and expressways with average daily trips less than eighty thousand;

(c) Fee zone 3, conventional highways.

(5) "Freeway" shall mean an expressway with full control of access, and grade separations over the entire length of the numbered highway route.

(6) "Motorist information signs" shall mean the same as specific service signs as set forth in the Manual on Uniform Traffic Control Devices adopted by the department as chapter 468-95 WAC.

(7) "Motorist service activity" shall mean a business furnishing gas, food, lodging, camping, recreation ((~~and~~)), tourist-oriented, and twenty-four-hour pharmacy services.

(8) "Owner" shall mean a person who owns or operates a motorist service activity and who has authority to enter into and be bound by agreements relevant to matters covered by these regulations.

(9) "Qualified tourist-oriented business" means any lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(10) "RV symbol" means a logo, for a business or destination that accommodates recreational vehicles, designed and attached to a business sign in accordance with WAC 468-70-060(4).

(11) "Supplemental directional panel" shall mean a motorist information sign panel located on, opposite, or at the terminus of an exit ramp bearing business sign for a qualified motorist service activity and directional information.

((~~(11)~~)) (12) "Tourist-oriented directional (TOD) sign" means a sign on a motorist information sign panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

((~~(12)~~)) (13) "Trade name" shall mean any brand name, trade mark, distinctive symbol or other similar device or thing used to identify a particular motorist service.

((~~(13)~~)) (14) "Urban area" shall mean an area including and adjacent to a municipality or other place of five thousand or more population as shown by the latest available federal census.

AMENDATORY SECTION (Amending Order 196, filed 12/22/99, effective 1/22/00)

WAC 468-70-030 Location of panels and signs. (1) A maximum of four motorist information sign panels((~~, one per each type of motorist service activity,~~)) may be provided on interchange approaches and in advance of intersections. Where a qualified type of motorist service activity is not present, a panel will not be erected. ((~~Generally, these panels should be located near the right of way line and readable from the main traveled way.~~)) Where installed, the panels will be erected as follows:

(a) For freeways and interchanges on expressways the panels shall be erected between the previous interchange and at least eight hundred feet in advance of the exit direction sign at the interchange from which the services are available. There shall be at least eight hundred feet spacing between the panels, and there will be one panel each for gas, food, lodg-

ing, camping/recreation, ((~~and~~)) TOD, and twenty-four-hour pharmacy except as provided in (c) of this subsection.

(b) For conventional roads the panels shall be erected between the previous intersection and at least three hundred feet in advance of the intersection from which the services are available, signing should not be provided to any service visible at least three hundred feet along the mainline prior to the intersection or driveway approach serving the business. There will be one panel each for gas, food, lodging, camping/recreation, ((~~and~~)) TOD, and twenty-four-hour pharmacy except as provided in (c) of this subsection.

(c) A combined panel may be installed where there is a limited number of qualifying motorist service activities, or insufficient space available to install the array of gas, food, lodging, camping/recreation, ((~~and~~)) TOD's, and twenty-four-hour pharmacy panels as set forth in WAC 468-70-040(2). Not more than ((~~two~~)) three types of motorist service activities may be combined on one mainline back panel((~~; however, supplemental directional panels located along interchange ramps to direct motorists to the right or to the left may display more than two types of motorist service activities~~)). Each type of motorist service activity may be displayed once on a set of back panels along an interchange or intersection approach. The permissible number of business signs that may be displayed per type of motorist service activity shall be as set forth in WAC 468-70-060 (3)(a).

(2) Information for motorist information sign panels on the mainline of expressways/freeways will be repeated on the supplemental directional panels located along the interchange ramp, or at the ramp terminal, where the services are not visible from the ramp. Supplemental directional panels located along interchange ramps to direct motorist to the right or to the left may not display more than three types of motorist service activities. Supplemental directional panels ((~~may be used~~)) shall only ((~~to~~)) repeat messages installed on the mainline, and shall not contain supplemental messages.

(3) The spacing between motorist information sign panels, and between motorist information sign panels and other official traffic control signs shall be in accordance with the Manual on Uniform Traffic Control Devices. Where there is insufficient spacing for both other official traffic control signs and motorist information sign panels, the other official traffic control signs only shall be installed.

AMENDATORY SECTION (Amending Order 196, filed 12/22/99, effective 1/22/00)

WAC 468-70-040 Interchange and intersection selection for motorist information sign panels. (1) On an interstate or noninterstate highway the interchange or intersection must:

(a) For interchanges, consist of both an exit and entrance ramp. However, where there is no entrance ramp, the department may determine that another entrance ramp may qualify for motorist information sign panels, provided that it is conveniently located, to permit a motorist to proceed without the use of indirect or poor connecting roads.

(b) For intersections, provide a reasonable and convenient route, in the determination of the department, to permit a motorist to proceed without the use of indirect or poor connecting roads.

(2) Motorist information sign panels may be erected at locations outside the corporate limits of cities and towns and areas zoned for commercial and industrial uses, and at locations within the corporate limits of cities and towns and areas zoned for commercial and industrial uses, where there is sufficient distance between interchanges or intersections to erect the signs in accordance with WAC 468-70-030 (1)(a) and (b). Where there is insufficient space available to install an array of four of the gas, food, lodging, camping/recreation ((~~and~~)), TOD's, and twenty-four-hour pharmacy panels, the number of panels allowable are normally provided in that order of priority, or as combined panels in accordance with WAC 468-70-030 (1)(c), except that regional administrators may negotiate a revised priority at interchange/intersection locations with local officials. If there is no business interest in signing for any one activity at a location, and space allows, the next lower priority activity can be signed.

(3) Signing will be provided from the nearest interchange or intersection from the nearest freeway/expressway or conventional highway to the activity. Signing will not be provided from a freeway or expressway to another freeway or expressway.

AMENDATORY SECTION (Amending WSR 03-20-084, filed 9/30/03, effective 10/31/03)

WAC 468-70-050 Business eligibility. (1) To be eligible for placement of a business sign on a motorist information sign panel a motorist service activity must conform to the following standards:

(a) Gas activity:

(i) Provide vehicle services including fuel, oil, tire repair and water; and

(ii) Be in continuous operation at least sixteen hours a day, seven days a week; and

(iii) Provide restroom facilities, drinking water and a telephone access;

(iv) Motorist information sign panels may be installed and existing signing will not be removed when the motorist service activity is closed for a short period of time or when its hours of operation have been reduced as a result of a shortage of gasoline;

(v) Activities not meeting the tire repair requirement of (i) of this subsection but have gas, oil, and water may qualify for signing provided that the motorist information sign panel displays fewer than the full complement of business signs. A telephone must also be available at no cost for a person to use to acquire tire repair;

(vi) Business signs for card-lock gas activities may be installed, provided that the activities serve the general motoring public, without membership, and accept a variety of credit cards available to the general public. Card-lock gas activities must also meet the applicable requirements of (a)(i) through (v) of this subsection.

(b) Food activity:

(i) Be licensed or approved by the county health office; and

(ii) Food activities in fee zones 1 and 2 shall be in continuous operation to serve meals for a minimum of ((~~twelve~~)) ten hours a day ((~~to serve meals~~)) six days a week, and food activities in fee zone 3 shall be in continuous operation to serve meals for a minimum of eight hours a day six days a week; and

(iii) Have inside seating for a minimum of twenty patrons and parking facilities for a minimum of ten vehicles; and

(iv) Provide telephone and restroom facilities.

(c) Lodging activity:

(i) Be licensed or approved by the Washington department of health; and

(ii) Provide adequate sleeping and bathroom accommodations available without reservations for rental on a daily basis; and

(iii) Provide public telephone facilities.

(d) Camping activity (applicable only for activities available from interstate highways):

(i) Have a valid business license;

(ii) Consist of at least twenty camping spaces, at least fifty percent of which will accommodate tents, and have adequate parking, modern sanitary and drinking water facilities for such spaces; and

(iii) Have an attendant on duty to manage and maintain the facility twenty-four hours a day while in operation.

(e) Recreation activity (applicable only for activities available from noninterstate highways):

(i) Consist of activities and sports of interest to family groups and the public generally in which people participate for purposes of active physical exercise, collective amusement or enjoyment of nature; e.g., hiking, golfing, skiing, boating, swimming, picnicking, camping, fishing, tennis, horseback riding, ice skating and gun clubs; and

(ii) Be licensed or approved by the state or local agency regulating the particular type of business; and

(iii) When the recreational activity is a campground, it must meet the criteria specified in WAC 468-70-050 (1)(d)(i) thru (iii).

(f) Tourist-oriented business activity:

(i) A natural, recreational, historical, cultural, educational, or entertainment activity, or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business seasons from motorists not residing in the immediate area of the activity.

(ii) Be listed as a historic district on the National Register of Historic Places, on the Washington Heritage Register, or as a National Historic Landmark with the state's office of archeology and historic preservation. Signs on private property that mark the entrance to the historic district and a letter of support by the jurisdictional local agency are required.

(iii) Be a commercial district as adopted by a city ordinance or resolution with a minimum of one million square feet of leasable commercial space located within one square mile. The commercial district must provide a unique commercial activity where the majority of the district's customers do not reside in the city where the commercial district is located. The commercial district shall be located within one mile of the nearest state highway. Only the name of the commercial district will be displayed on the business sign. Corporate logos may not be displayed.

(iv) Activities must be open to the motoring public without appointment, at least six hours a day, five days a week including Saturday and/or Sunday.

(g) Twenty-four-hour pharmacy:

(i) Be open twenty-four hours a day, seven days a week.

(ii) Have a state-licensed pharmacist present and on duty at all times.

(2) To be eligible for a RV symbol on its business sign, the business or destination shall have amenities, designed to accommodate recreational and other large vehicles, including:

(a) A hard-surfaced access to and from the business, that is free of potholes and is at least twelve feet wide with minimum turning radii of fifty feet.

(b) The roadway access and parking facilities must be free of utility wires, tree branches, or other obstructions up to fourteen feet above the surfacing.

(c) Facilities having short-term parking, such as restaurants and tourist attractions, must have a minimum of two parking spaces that are at least twelve feet wide and sixty-five feet long with a minimum turning radius of fifty feet for entering and exiting.

(d) Fueling islands must be located to allow for pull-through with a minimum entering and exiting turning radius of fifty feet.

(e) Canopied fueling islands must have a fourteen-foot minimum overhead clearance.

(f) Fueling facilities selling diesel are required to have pumps with noncommercial nozzles.

(g) For campgrounds, a minimum of two parking spaces at least eighteen feet wide and forty-five feet long are required.

(h) Business activities must also post directional signing on the premises as needed to indicate RV-friendly parking spaces and other on-site RV-friendly services, so that the motorist is given additional guidance upon leaving the public highway and entering the property.

(3) Distances prescribed herein will be measured from the center of the interchange or intersection along the centerline of the most direct public road to the facility access.

(((~~3~~))) (4) The maximum distance that gas, food, lodging, camping, recreational, or tourist-oriented activities can be located on either side of an interchange or intersection to qualify for a business sign shall be as follows:

(a) From an interstate highway, gas, food, and lodging activities shall be located within three miles in either direction. Camping or tourist-oriented activities shall be located within five miles in either direction;

(b) From a noninterstate highway, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles in either direction.

(c) A twenty-four-hour pharmacy must be located within three miles of an interstate or noninterstate highway.

(d) Where there are fewer than the maximum number, as specified in WAC 468-70-060 (3)(a), of eligible services within the distance limits prescribed in ((~~subsection (3)~~))(a) and (b) of this ((~~section~~)) subsection, the distance limits may

be increased up to a maximum of fifteen miles to complete the balance of allowable signs.

(i) In reference to WAC 468-70-040(3), the department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible activity.

(ii) The department may erect and maintain signs on a route up to a maximum of twenty miles if an activity qualifies as eligible and is located within a distressed area under the criteria set forth in chapter 43.165 RCW.

((~~(4)~~)) (5) Within cities and towns having a population greater than twenty-two thousand five hundred, the department shall obtain concurrence from the municipality of locations for installing panels, and may request that the municipality install the panels.

((~~(5)~~)) (6) A gas, food, lodging, camping/recreational, ((~~or~~)) tourist-oriented, or twenty-four-hour pharmacy activity visible from the mainline at least three hundred feet prior to an intersection shall not qualify for a business sign on such highway. The activity's on-premise sign is considered part of that activity in determining the three hundred foot visibility.

((~~(6)~~)) (7) When a multiple business activity qualifies for business sign placement on more than one type of motorist information sign panel, placement will be made on that type of panel which, as determined by the department, best describes the main product or service. Additional business signs for a qualifying multiple business activity may only be placed on more than one type of motorist information sign panel where the applicable panels display fewer than a full complement of business signs. Where these additional business signs complete the full complement of business signs on a motorist information sign panel, the most recently installed of such additional business signs shall be substituted for in the event that a qualifying single business activity applies to receive business signs.

((~~(7)~~)) (8) Motorist information sign panels will not be erected and maintained by the department until adequate follow-through signing, as specified by the department, is erected on local roads and/or streets. Written assurance that the follow-through signs will be maintained is required.

((~~(8)~~)) (9) Where operations are seasonal, business signs for each specific location shall be removed or covered during the appropriate period as determined by the department.

AMENDATORY SECTION (Amending Order 196, filed 12/22/99, effective 1/22/00)

WAC 468-70-060 Signing details. (1) Specifications. All motorist information sign panels, supplemental directional panels, and business signs shall be constructed in accordance with the Washington state standard specifications, standard plans and amendments thereto. All business signs and RV symbols shall be constructed of a single piece of 0.063 inch thick aluminum. All panels ((~~and~~)), business signs, and RV symbols shall be fully reflectorized to show the same shape and color both by day and night.

(2) Color of panels ((~~and~~)), signs, and RV symbols:

(a) The background color for gas, food, lodging, camping ((~~and~~)), TOD, and twenty-four-hour pharmacy motorist information sign panels and supplemental directional panels shall be blue. The background color for recreation motorist information sign panels and supplemental directional panels shall be brown. The border and lettering on all such signs shall be white.

(b) The background and message colors ((~~and letter color for~~)) of business signs ((~~manufactured by the department shall be standard highway sign sheeting and inks which are available in white (silver), blue, black, yellow, red, orange, green, and brown. A description of business signs which the department will manufacture is provided in WAC 468-70-070 (8)(b)~~)) shall be at the businesses' option, subject to the department's approval as prescribed by WAC 468-70-070(5).

(c) The background color of RV symbols shall be yellow, with the letters RV in black.

(3) Composition of motorist information sign panels:

(a) For interchanges, the maximum number of business signs which may be displayed on a motorist information sign panel are six for each gas, food, lodging, camping/recreation, ((~~and~~)) TOD's, and twenty-four-hour pharmacy panel. For intersections, each panel is limited to four business signs. For combined motorist information sign panels on the mainline, the minimum number of business signs which may be displayed is two for each type of motorist service activity. For supplemental directional panels located along interchange ramps, there is no minimum number of business signs which may be displayed for each type of motorist service activity.

(b) Sign panel fabrication layouts, and business sign sizes, are provided in the Appendices of the Motorist Information Signs Booklet published by the Washington state department of transportation.

(i) The panel size shall be sufficient to accommodate the various sizes of business signs and directional information.

(ii) For qualifying businesses located more than one mile from an intersection the business sign shall show the mileage to the business to the nearest mile. For interchanges the mileage will be shown on the supplemental directional panel business signs installed along ((~~the~~)) an interchange ramp or at ((~~the~~)) a ramp terminal.

(4) RV symbol design and statutory mounting location:

(a) RV symbols installed on freeway/expressway size business signs shall be a round twelve-inch diameter plaque displaying eight-inch RV letters. RV symbols installed on conventional roadway size business signs shall be a round six-inch diameter plaque displaying four-inch RV letters.

(b) The RV symbol shall be displayed in the lower right corner of the gas, food, lodging, camping, or tourist activity business signs installed along the mainline of freeways/expressways and along conventional highways. The term lower right corner is exclusive of any panel displaying the mileage message referenced in subsection (3)(b)(ii) of this section. RV symbols shall not be installed on supplemental directional panel business signs installed along an interchange ramp or at a ramp terminal.

AMENDATORY SECTION (Amending WSR 04-16-056, filed 7/29/04, effective 8/29/04)

WAC 468-70-070 Permits and procedure. (1) No business signs will be installed on motorist information sign panels prior to issuance of a permit by the department. Per-

mits will be issued by the department in accordance with this chapter.

(2) Permit applications will be accepted at the appropriate department of transportation regional office in care of the regional administrator. Applications transmitted by mail shall be effective from date of receipt rather than of mailing.

(3) One permit application will be for all the signing that the applicant will qualify for at a single interchange or intersection.

(4) Application forms, which may be obtained from the department, shall contain the following information:

(a) Name and address of the owner of the business to be advertised.

(b) The highway for which the applicant seeks signing.

(c) A description of the interchange or intersection for which the business sign is to be installed.

(d) A statement of the business location including exact travel distance from the interchange or intersection and precise roads used for access.

(e) An agreement to limit the height of any on-premise sign to no greater than fifteen feet higher than the roof of the main building, measured to the bottom of the sign for businesses located within one mile of an interchange or intersection. (Not applicable along interstate highways if the sign is not visible to the highway.)

Pursuant to RCW 47.36.310, for on-premise signs visible along rural interstate highways the department may waive the fifteen-foot height requirement, on a case-by-case basis, where granting the waiver will not preclude another business having an on-premise sign which complies with the fifteen-foot height requirement from receiving business signs.

(f) Such other information as may be required by the department.

(5) Each permit application will include a sketch, drawing or picture of the message to be placed on the business signs. Business signs may not display messages advertising products or services incidental to the qualifying motorist service activity. The department shall have final approval of the design of the business sign and may modify such submissions to achieve uniformity, visibility, and legibility.

(6) Any party aggrieved by an application determination of the department shall be accorded hearing rights before the secretary of transportation or his designee pursuant to chapter 34.05 RCW.

(7) Once an application is approved, the department will request that the business ((~~to~~)) provide its business signs to the department for installation and pay the first year's annual motorist information sign panel fee. ((~~Business signs shall be built to the department's specifications prescribed by WAC 468-70-060.~~)) There is no additional fee for first-time business sign installations.

(8) ((~~Business sign replacement and motorist information sign panel maintenance fee:~~

~~(a) Maintenance replacement business signs shall be provided by the business, when requested by the department to replace weather worn business signs. A business at its own request may also provide replacement business signs for installation. In either case, the installation fee is one hundred fifteen dollars per sign.~~

~~(b) The annual fee charged to each business for motorist information sign panels is:~~

~~(i) Nine hundred ten dollars for signs located in fee zone 1;~~

~~(ii) Six hundred eighty-three dollars for signs located in fee zone 2;~~

~~(iii) Three hundred sixty-four dollars for signs located in fee zone 3.~~

~~(c)~~)) The department will install RV symbols on business signs upon request, after confirming that the business meets the eligibility requirements prescribed by WAC 468-70-050(2). RV symbols may remain on business signs until no longer applicable, or until the symbols require replacement due to weather-wear.

(9) Fees:

(a) The annual fee charged to each business for motorist information sign panels is:

(i) Nine hundred ten dollars for signs located in fee zone 1;

(ii) Six hundred eighty-three dollars for signs located in fee zone 2; or

(iii) Three hundred sixty-four dollars for signs located in fee zone 3.

(b) The fee for business sign replacement is one hundred fifteen dollars per sign, prepaid.

(c) The fee for new or replacement department-installed RV symbols is seventy-five dollars per symbol, prepaid.

(d) The annual fee for motorist information sign panels shall be paid within thirty calendar days after the anniversary of the permit issue. Failure to pay the annual fee within thirty calendar days after the anniversary of the permit issue will cause the permit to expire and the business signs to be removed from the motorist information sign panels.

((~~(9)~~)) (10) Business signs may be replaced at the request of a business; or, the department may request the business signs to replace weather-worn signs.

(11) Loss of sign locations:

(a) If highway construction or maintenance activities temporarily close sections of highway where business signs are installed, the business shall have no claim against the department or its contractor for disruption of signing and/or access resulting from the closures.

(b) Where it's necessary to remove signs temporarily to accommodate highway construction or maintenance activities, the department may prorate the amount due to the department for the next billing cycle proportionate to the length of time the sign is removed.

(c) Where highway construction, maintenance activities, or natural causes permanently preclude reinstalling motorist information sign panels or business signs, the business shall be entitled to:

(i) If no signs remain, prorated reimbursement for the balance of the current billing cycle; or

(ii) If signs remain in one direction of travel, prorated credit of the amount due to the department for the next billing cycle.

(12) The department shall not be liable for loss or damage due to delays or interruptions of service because of inclement weather, fire, or other casualty loss, strikes, gov-

ernmental laws, rules, or regulations, acts of God, or any other reason outside the department's control.

(13) In the event of change of ownership or operation, assignment of permits in good standing shall be effective only upon receipt of assignment by the department. The department will not reassign permits in the event of change of both ownership and operation.

((~~10~~)) (14) Revocation and expiration:

(a) After hearing before the secretary of transportation or his designee, as required by chapter 34.05 RCW (Administrative Procedure Act) and the rules and regulations of the department adopted pursuant thereto, any motorist information sign permit may be revoked by the secretary or the secretary's designee who has conducted the hearing for any of the following reasons:

(i) For the making of any false or misleading statements in the application for any permit, whether or not the same is material to or relied upon by the department in the issuance of such permit when such false or misleading statement or information shall remain uncorrected after the expiration of thirty days following written notification thereof.

(ii) For allowing or suffering any on-premise sign to remain that exceeds the height requirements set forth in this chapter.

(iii) For failure to provide the services and/or facilities required by WAC 468-70-050 and this section.

(b) If a motorist information sign permit is revoked or is allowed to expire, a new application may be accepted by the department and the motorist service activity must meet the requirements of any other applying motorist service activity.

WSR 06-11-146
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed May 23, 2006, 4:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-108.

Title of Rule and Other Identifying Information: WAC 16-302-480 Field standards for rapeseed certification.

Hearing Location(s): Washington State Department of Agriculture, 21 North 1st Avenue, Yakima, WA 98902, on June 29, 2006, at 11:00 a.m.

Date of Intended Adoption: July 19, 2006.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504-2560, e-mail dmcqueen@agr.wa.gov, fax (360) 902-2085, by 5 p.m., on June 29, 2006.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to increase the isolation distances for rapeseed seed fields from other crucifer species that are possible sources of pollen contamination to ensure varietal integrity under the seed certification program.

Reasons Supporting Proposal: These changes are in anticipation of the increased production of crucifer crops for biofuels. With the increased acreage it will be important to have increased isolation for certified seed production to ensure that rapeseed seed fields are protected from potential pollen contamination. This will help the seed producers of Washington meet the growing demand of providing seed stock to the biofuel producers.

Statutory Authority for Adoption: RCW 15.49.310 and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.49.310.

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

Name of Proponent: Washington department of agriculture, Tony Herrman - Monsanto and Bill Wirth - Precision Seed Company, private and governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no financial impact on producers. This rule has no new regulatory or reporting requirements. The current certification standards already have an isolation component that requires producers to comply with. This will not change with this rule. This rule will have the impact of providing a protection mechanism for seed producers, thus providing a favorable environment for seed production. In consideration of these facts the Washington state department of agriculture concludes that this proposal does not impose "more than a minor" cost to the seed industry and therefore a small business economic impact statement is not required according to RCW 19.85.030 (1)(a).

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed [agency] in RCW 34.05.328 (5)(a)(i).

May 23, 2006

Robert W. Gore

Assistant Director

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

WAC 16-302-480 Field standards for rapeseed certification. Field standards for the production of rapeseed are as follows:

(1) A portion of a rapeseed field may be certified if the area to be certified is clearly defined.

(2) A field producing foundation, registered or certified rapeseed, also known as Canola (*Brassica napus*), must be the minimum specified isolation distance from fields of any other variety ((~~or~~)) of *Brassica napus*, from fields of the same variety that do not meet the varietal purity requirements for certification, as ((~~given~~)) well as from fields of *Brassica rapa*, *Brassica oleracea*, and *Brassica juncea* as indicated in the following table:

Class	Fields of Cross Pollinated Varieties Including Hybrids	Fields of Self Pollinated Varieties
Foundation	((~~1,320 feet~~)) 1 mile	660 feet
Registered	((~~1,320 feet~~)) 1 mile	660 feet
Certified	((~~660 feet~~)) 1 mile	330 feet
Different class of same variety	165 feet	165 feet

These isolation distances are minimum and must be met in all cases. ((~~When isolating fields of different usage kinds, i.e., industrial type from edible type, it is recommended that distances of three miles for foundation and registered, and two miles for certified be used.~~))

(3) Volunteer plants may be cause for rejection or reclassification of a rapeseed field.

(4) Specific standards for rapeseed are:

Factor	Maximum permitted in each class: Foundation	Registered	Certified
Other varieties*	None found[1]	None found[1]	1.00%

* Other varieties are considered to include *Brassica rapa, Brassica oleracea, Brassica juncea,* off-type plants of *Brassica napus* and plants that can be differentiated from the variety being inspected.

[1] None found means none found during the normal inspection procedures. None found is not a guarantee to mean the field inspected is free of the factor.

(5) Inspection will be made by the certifying agency when the crop is in the early flowering stage.

WSR 06-11-147
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed May 23, 2006, 4:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-107.

Title of Rule and Other Identifying Information: WAC 16-302-410 Standards for sod quality seed.

Hearing Location(s): Washington State Department of Agriculture, 21 North 1st Avenue, Yakima, WA 98902, on June 29, 2006, at 11 a.m.

Date of Intended Adoption: July 19, 2006.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504-2560, e-mail dmcqueen@agr.wa.gov, fax (360) 902-2085, by 5 p.m., on June 29, 2006.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to modify the current sod quality seed standards to include all Vulpia species as a prohibited contaminate in sod quality seed lots. This will have the effect of protecting producers from selling sod quality seed lots that contain a contaminate that is detrimental to turf grass production.

Reasons Supporting Proposal: The current sod quality seed standards list rattail fescue as the only Vulpia species as a prohibited contaminate. However, there are other Vulpia species that are occurring in Washington production. If one of these other Vulpia species is found in a sod quality seed lot, the current standard is that the lot would be sod quality. However, all Vulpia species have the same detrimental impact as rattail fescue. By adopting this proposal it will prevent a seed lot from inadvertently being sold with a contaminate that is undesirable in sod production, thus providing a level of protection for Washington producers.

Statutory Authority for Adoption: RCW 15.49.310 and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.49.310.

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

Name of Proponent: Washington state department of agriculture (WSDA) seed program and the WSDA seed program advisory committee, public and governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no negative financial impact on producers. This rule will provide a level of protection for seed producers. Additionally, it will have the impact of increasing the value of a seed lot, allowing for trouble free marketing of Washington seed. Since this rule has no cost to the seed industry and may even allow for greater profits, a small business economic impact statement was not prepared.

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

May 23, 2006
Robert W. Gore
Assistant Director

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

WAC 16-302-410 Standards for sod quality seed. (1) Except for ryegrass sod quality seed, seed standards for sod quality grass seed are as follows:

Variety	Minimum Purity	Minimum Germination	Maximum* Other Crop	Maximum** Weed
Kentucky Bluegrass	97%	80%	0.1%	.02%
Red Fescue	98%	90%	0.1%	.02%
Chewings Fescue	98%	90%	0.1%	.02%
Tall Fescue	98%	85%	0.1%	.02%

* Must be free of ryegrass, orchardgrass, timothy, Agrostis sp., black medic, Poa trivialis, brome, reed canarygrass, tall fescue, clover, and meadow foxtail. Maximum allowable Canada bluegrass .02%. When the base sample is one of these kinds, the species will not be considered a contaminant (i.e., tall fescue in tall fescue).

** Must be free of Big, Canby and Sandberg bluegrass, dock, chickweed, crabgrass, plantain, short-awn foxtail, annual bluegrass,

velvetgrass, ((~~rattail fescue~~)) *Vulpia sp.,* and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105.

(2) Seed standards for sod quality ryegrass seed are as follows:

Variety	Minimum Purity	Germination****	Other Crop*	Maximum Weed***
Ryegrass**	98%	90%	0.10%	.02%

* Must be free of black medic, orchardgrass, timothy, Agrostis sp., Poa trivialis, brome, reed canarygrass, tall fescue, clover and meadow foxtail. Maximum allowable Canada bluegrass 0.02%.

** Maximum fluorescence levels as determined by breeder or variety owner.

*** Must be free of Big, Canby and Sandberg bluegrass, ((~~rattail fescue,~~)) dock, chickweed, crabgrass, plantain, annual bluegrass, velvetgrass, *Vulpia sp.,* short-awn foxtail, and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105. An additional 0.07% of weedy Bromus spp. will be allowed.

**** 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.

(3) A sod seed analysis certificate is the basis of determining if a lot meets sod quality standards. This certificate is issued by the certifying agency and represents a purity analysis, a twenty-five gram noxious all weed all crop exam and a germination test, except a 50-gram noxious all weed all crop exam is required for fescues and ryegrass.

(4) In addition to a seed certification tag, seed meeting sod quality certified seed standards will be tagged with a special "sod quality seed" tag.

WSR 06-11-148
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed May 23, 2006, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-111.

Title of Rule and Other Identifying Information: WAC 16-302-385 Grass seed standards for certification.

Hearing Location(s): Washington State Department of Agriculture, 21 North 1st Avenue, Yakima, WA 98902, on June 29, 2006, at 11:00 a.m.

Date of Intended Adoption: July 19, 2006.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504-2560, e-mail dmcqueen@agr.wa.gov, fax (360) 902-2085, by 5 p.m., on June 29, 2006.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to modify the current grass certification standards to include the requirement that blue fescue be subjected to an ammonia test as part of the certification criteria. This will have the effect of screening certified seed lots for other contaminating fescue species whose seeds are visibly indistinguishable from the sample being tested during the physical purity analysis.

Reasons Supporting Proposal: Blue fescue is an increasingly prevalent grass seed crop for Washington producers. This proposal will ensure that seed lots contain no more than the amount allowed according to the certification standards of other fine-leaved fescue species that can only be identified using the ammonia test. This proposal will align Washington seed certification standards with other state's standards, thus facilitating the marketing of Washington produced seed.

Statutory Authority for Adoption: RCW 15.49.310 and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.49.310.

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

Name of Proponent: Larry Falk, Agronomist for Seed Research of Oregon, private.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no increased cost to seed producers or seed conditioners. The ammonia test is a test that is routinely run on all fine-leaved fescue seed lots. This test can screen for contaminates that are not otherwise visually detectable. There are no new reporting or compliance requirements in this proposal. Considering this fact there is no increased cost imposed on the seed industry and therefore, a small business economic impact statement was not prepared.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed [agency] in RCW 34.05.328 (5)(a)(i).

May 23, 2006
Robert W. Gore
Assistant Director

AMENDATORY SECTION (Amending WSR 04-08-044, filed 3/31/04, effective 5/1/04)

WAC 16-302-385 Grass seed standards for certification. The seed standards for grass shall be as follows:

SEED STANDARDS

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330		MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES		
		FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. (i) REG. (i)	CERT. (a)	FNDT. SEEDS/ LB.	REG. SEEDS/ LB.	CERT. %
BLUEGRASS														
Big	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Canby	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Kentucky	(A)	80	80	97	97	3	3	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Canada, Upland	(A)	80	80	96	92	4	8	.05	.3	.1	.5	45 /lb.	907 /lb.	.25
BROMEGRASS														
Smooth & Meadow	(C) (C)	80	85	95	95	5	5	.05	.3 (c)	.1	.5	9 /lb.	91 /lb.	.25
Mountain & Sweet		85	85	95	95	5	5	.3	.3 (c)	.1	1.0	9 /lb.	91 /lb.	.25
DEERTONGUE	(C)	50	50	97	95	3	5	.50	.5 (c)	1.0	1.0	1%		
FESCUE														
Tall & Meadow	(C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	18 /lb.	91 /lb.	.25
Blue, Hard & Sheep (m)	(C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Turf Type (o) Reclamation/Range		80	85	95	92	5	8	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Type Chewings Red, Idaho and other Fescue	(C)	80	90	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
ORCHARDGRASS	(C)	80	85 80 for	85 penlate	90 & latar	15	10	.03	.3 (c)	.1	.5	27 /lb.	91/lb.	.25
RYEGRASS		85	90 (l)	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Pennfine	(C)	80	85	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
TIMOTHY		80	85	97	97	3	3	.1	.3	.1	.5	9 /lb.	45 /lb.	.25
WHEATGRASS (n)														
Beardless	(C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Bluebunch	(C) (C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Intermediate, Tall	(C)	80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Pubescent		80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Western, R/S														
Streambank,	(C)													
Thickspike	(S)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)(p)	9 /lb.	45 /lb.	.25(p)
Slender	(C)	80	85	90	95	10	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Crested & Siberian		80	85	90	95	10	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
INDIAN RICEGRASS	(S)	80 (j)	80 (j)	95	90	5	10	.3	.5	.5	1.0	9 /lb.	45 /lb.	.25
PUCCINELLIA (n) distans	(C)	80	80	90	95	5	5	.3	.5	.5	1.0	45 /lb.	454 /lb.	.25
WILDRYE (n)	(C)	80	80	90	90	10	10	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
BENTGRASS	(C)	85	85	98	98	2	2	.3	.4 (f) (g)	.2	.6 (h)			
REDTOP	(C)	80	80	92	92	8	8	.3	.5 (f)	.5	.2			
Ann.														
CANARYGRASS	(C)	85	85	99	99	1	1	.1	.3	1/lb.	3/lb.			-
GREEN (n) NEEDLEGRASS	(C)	80	80	80	80	20	20	.1	.3 (c)	.1	.5	-	-	
SWITCHGRASS	(C)	60	60	90	90	10	10	.5	1.5	.1	.25			

The following (a) - (o) are notes to the above table.

(a) Not to exceed .25% other grass species for blue tag seed.

(b) Grass seed must not contain more than 45/lb. for registered seed 91/lb. for certified seed, singly or collectively, of objectionable weed seeds. (See (f) of this subsection for certified bentgrass and redtop exemption.) Grass seed shall be free of the seed of prohibited noxious weeds.

(c) A tolerance of 0.5% may be allowed for samples containing weedy bromus spp provided the total of all other weed seeds does not exceed 0.3%.

(d) A standard tetrazolium (two hundred seed) test may be used in lieu of germination test. NOTE: State and federal seed laws require seed be labeled on a germination test.

(e) A tolerance of 0.8% may be allowed in registered and certified wheatgrass containing small grain seed provided the total of all other crop seed does not exceed 0.1% for registered class and 0.5% for certified class.

(f) Certified seed must not contain over 907 seeds per pound, singly or collectively, of the following weeds: Plantago spp., Big Mouse-ear Chickweed, Yarrow, Spotted Cat's Ear, and Dandelion.

(g) A maximum of .50% weed seed may be allowed in certified bentgrass containing silver hairgrass provided the total of all other weed seed does not exceed .40%.

(h) 1.50% other fine bentgrasses and .50% redtop may be allowed in certified bentgrass containing a minimum of 98.00% total bentgrass.
(i) A crop exam is required for all registered and foundation class grass seeds.
(j) Or 70% by Tz test.
(k) Maximum other ryegrass allowed as determined by fluorescence test: Foundation 0.1%, registered 1%, certified 2% for annual and 3% for perennial containing a minimum of 97% total ryegrass. Acceptable fluorescence levels for specific varieties available upon request.
(l) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.
(m) An ammonia test is required on hard, blue and sheep fescue to determine presence of other Fescue sp. Other fine-leaved fescue found in the ammonia test will be included with other crop not other grass species.
(n) Total viability as allowed in WAC 16-302-170 can be substituted for germination percentage.
(o) Turf type fescues 97% pure seed. Range/reclamation types 92% pure seed. Varietal designation of turf or range/reclamation types are to be made by the breeder or variety owner. If no designation is made, the variety will be considered a turf type.
(p) 10% slender wheatgrass is allowed in the certified class of Critana, provided that the total of all other grass spp. does not exceed .25% and total other crop, including all other grass spp. does not exceed .50%.

WSR 06-11-149
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed May 23, 2006, 4:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-109.

Title of Rule and Other Identifying Information: WAC 16-302-225 Land requirements for alfalfa seed.

Hearing Location(s): Washington State Department of Agriculture, 21 North 1st Avenue, Yakima, WA 98902, on June 29, 2006, at 11:00 a.m.

Date of Intended Adoption: July 19, 2006.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504-2560, e-mail dmcqueen@agr.wa.gov, fax (360) 902-2085, by 5 p.m., on June 29, 2006.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to simplify the language in the certification standards concerning restrictions between previous alfalfa production and the establishment of a new field.

Reasons Supporting Proposal: These changes will simplify the language concerning the time restrictions of the establishment of alfalfa seed fields in respect to the dormancy ratings assigned to each variety. This will make the requirement much easier to understand and give an exact standard to apply to new plantings. In addition, this modification will align Washington certification standards for this factor with the standards of neighboring states. This alignment promotes the production of alfalfa seed in Washington, increasing opportunities for Washington seed growers.

Statutory Authority for Adoption: RCW 15.49.310 and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.49.310.

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

Name of Proponent: Dan Gardner, Alfalfa Breeder, Dairyland Seed Company, private.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no increased cost to seed producers or seed conditioners. There are no new reporting requirements with these changes. This modification just adds clarification to existing seed certification standards and will make it easier to comply with the requirements. The Washington state department of agriculture (WSDA) concludes that these modifications do not impose any cost to the seed industry and therefore a small business economic impact statement is not required according to RCW 19.85.030 (1)(a).

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

May 23, 2006
Robert W. Gore
Assistant Director

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

WAC 16-302-225 Land requirements for alfalfa seed certification. Land requirements for the production of alfalfa seed crop are as follows:

(1) Prior to stand establishment an alfalfa seed crop of the same kind must not have been grown or planted on the land for four years for the production of foundation or registered class or one year for the production of certified class; except two years ((~~are required for the production of certified class seed of varieties adapted to the northern and central regions following varieties adapted to the southern region~~)) must elapse between the destruction of dissimilar varieties, which are varieties that differ by more than four or more points on a dormancy rating scale as reported by the National Alfalfa Variety Review board.

(2) Reseeding of an alfalfa seed field due to failure or partial failure of the first seeding may be done by referring to the guidelines in WAC 16-302-045(5).

(3) Ditchbanks, roadways, etc. adjacent to a certified alfalfa seed field must be free of volunteer alfalfa and prohibited noxious weeds.

(4) Volunteer alfalfa plants in the alfalfa seed field may be cause for rejection or reclassification of a seed field.

(5) No manure or other contaminating materials may be applied during the establishment and production period of the alfalfa seed stand.

WSR 06-11-150
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Management Services Administration)
[Filed May 23, 2006, 4:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-06-081.

Title of Rule and Other Identifying Information: Amending WAC 388-02-0215 What is the authority of the ALJ (administrative law judge)?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on June 27, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 28, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., on June 27, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by June 23, 2006, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 388-02-0215(4) states the types of cases where the parties may request review of an initial order by a review judge at the DSHS board of appeals (BOA). In general, the proposed rule simplifies the current rule by referencing entire WAC chapters instead of referring to individual WAC sections, and by updating obsolete or changed cross references to WAC chapters. Specific amendments to subsection (4) of WAC 388-02-0215 include:

- In subsection (4)(e), permitting review of cases under chapters 388-71 and 388-101 WAC regarding findings of abuse, abandonment, neglect or financial exploitation rather than specific sections of chapter 388-71 WAC. The reference to chapter 388-101 WAC in this subsection is needed because the DSHS aging and disability services administration is amending that chapter to include references to investigations and findings by the DSHS residential care services of abuse, abandonment, neglect and financial exploitation;
- In subsection (4)(j), replacing obsolete cross references to sections of chapters 388-71 and 388-72A WAC that have been recodified in chapter 388-106 WAC. As does the current rule, this amendment does not authorize the BOA to review hearing decisions regarding the client's financial eligibility for long-term care services; and
- In subsection (4)(v), replacing an obsolete reference to chapter 388-820 WAC with the current reference to chapter 388-101 WAC. All sections of previous chapter 388-820 WAC have been recodified as sections in chapter 388-101 WAC.

Department clients and providers will not lose hearing or appeal rights as a result of the proposed amendment.

The department plans to make further amendments to this rule under the preproposal statement of inquiry filed as WSR 05-06-081.

Reasons Supporting Proposal: The proposed rule is updated with current WAC references, is clearer, improves efficiency, and increases consistency. Proposed amendments are intended to reduce the need for future amendments to this rule by simplifying WAC references in the list of cases where the parties may request BOA review of an initial order of an office of administrative hearings administrative law judge.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.220.

Statute Being Implemented: Chapter 34.05 RCW, Parts IV and V.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brian Lindgren, Administrator, DSHS Board of Appeals, P.O. Box 45803, Olympia, WA 98504, (360) 664-6093 or e-mail LindgBH@dshs.wa.gov.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule change does not impose more than minor costs for business impacted by the rule. Also, the proposed rule amends "a procedure, practice or requirement relating to agency hearings," and under RCW 19.85.025 and 34.05.310 (4)(g)(i), a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule describes and updates DSHS administrative hearing procedures, practices and requirements, and is a procedural rule as defined in RCW 34.05.328 (5)(c). The rule also clarifies the language of the rule without changing its effect, and is exempt from the requirement to prepare a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv). By updating the cross references, the proposed amended rule will be clearer and will have the same effect as the current rule.

May 23, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-02-018, filed 12/27/04, effective 1/27/05)

WAC 388-02-0215 What is the authority of the ALJ? (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing.

(2) As needed, the ALJ may:

(a) Determine the order for presenting evidence;

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

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

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

(e) Admit relevant evidence;

(f) Impartially question witnesses to develop the record;

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

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

(i) Keep order during the hearing;

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

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

(l) Allow a party to waive rights given by chapters 34.05 RCW or 388-02 WAC, unless another law prevents it;

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

(n) Issue protective orders;

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

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

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

(4) The ALJ enters an initial order in those cases where the parties may request review of an initial order by a review judge. Cases where the parties may request review of an initial order by a review judge are those relating to:

(a) Adult family home licenses under chapter 388-76 WAC;

(b) Boarding home licenses under chapter 388-78A WAC;

(c) Resident protection program findings under WAC 388-97-077;

(d) Nursing home licenses under WAC 388-97-550 through 388-97-695;

(e) ((~~Adult protective services~~)) DSHS findings of abandonment, abuse, financial exploitation or neglect under chapters 74.34, 74.39, 74.39A RCW and chapters 388-71 and 388-101 WAC ((~~388-71-01235 through 388-71-01275~~));

(f) Where the client has requested a hearing under WAC 388-71-0560, the termination of a provider for placing clients in imminent jeopardy under RCW 74.39A.095(7) and WAC 388-71-0551;

(g) Where the client has requested a hearing under WAC 388-71-0560, the termination of a provider due to inadequate performance or inability to deliver quality care under RCW 74.39A.095(7) and WAC 388-71-0540 and 388-71-0551;

(h) Where the client has requested a hearing under WAC 388-71-0560, the denial of a contract to a provider due to inability of the provider to appropriately meet the care needs of clients under RCW 74.39A.095(8) and WAC 388-71-0546;

(i) Where the client has requested a hearing under WAC 388-71-0560, the denial or termination of a contract and subsequent denial of payment to a provider due to a disqualifying crime or lack of character, competence, or suitability to maintain the health, safety, and well-being of clients under RCW 43.20A.710(5) and WAC 388-71-0540 (3) through (5);

(j) Social service eligibility under ((~~WAC 388-71-0400 through 388-71-0480, 388-71-0202, and 388-71-0203~~)) chapter 388-71 WAC, and under chapter ((~~388-72A~~)) 388-106 WAC, except for ((~~WAC 388-72A-0055(2), 388-72A-0060(1), and 388-72A-0065 (4) through (6)~~)) financial eligibility requirements;

(k) Domestic violence perpetrator treatment program certification under chapter 388-60 WAC;

(l) Licensing or certification of homes, programs, facilities, providers, and agencies serving children, juveniles, expectant mothers and developmentally disabled persons under chapter 74.15 RCW and chapters 388-140, 388-145, 388-147, 388-148 and 388-160 WAC;

(m) Child protective services findings of abuse and neglect under RCW 26.44.125 and chapter 388-15 WAC;

(n) Adoption support under WAC 388-27-0120 through 388-27-0390, for which a hearing has been held under WAC 388-27-0365;

(o) Child day care licenses under chapter 74.15 RCW and chapters 388-150, 388-151, 388-155, 388-295 and 388-296 WAC;

(p) Background checks of protective payees under WAC 388-460-0025, for which a hearing has been held under WAC 388-460-0070;

(q) Background checks of child care providers and other persons under WAC 388-290-0143, for which a hearing has been held under WAC 388-290-0260 as part of the working connections child care program;

(r) Background checks of persons acting in the place of a parent under WAC 388-454-0006, for which a hearing has been held under WAC 388-472-0005 (1)(j);

(s) Claims of good cause for not cooperating with the division of child support under WAC 388-422-0020;

(t) Parent address disclosure under WAC 388-14A-2114 through 388-14A-2140;

(u) Chemical dependency treatment provider certification under chapter 388-805 WAC;

(v) Community residential services and support certification((~~, for which a hearing has been held under WAC 388-820-920~~)) under chapter 388-101 WAC;

(w) Denial or termination of eligibility for services under WAC 388-825-030 and 388-825-035, for which a hearing has been held under WAC 388-825-120 (1)(a);

(x) Development or modification of an individual service plan under WAC 388-825-050, for which a hearing has been held under WAC 388-825-120 (1)(b);

(y) Authorization, denial, reduction, or termination of services under WAC 388-825-055, for which a hearing has been held under WAC 388-825-120 (1)(c);

(z) Licensed community facilities under RCW 74.15.210 and WAC 388-730-0090;

(aa) Community mental health and involuntary treatment program licenses under WAC 388-865-0480;

(bb) Medical, dental, or transportation services, for which a hearing has been held under WAC 388-526-2610;

(cc) Medical provider overpayments, for which a hearing has been held under WAC 388-502-0230(5) or 388-502-0240(17); or

(dd) Background checks under WAC 388-06-0110 that result in denial of authorization for unsupervised access to

children or to individuals with developmental disabilities, for which a hearing has been held under WAC 388-06-0240(1); or

(ee) Cases for which a right to a hearing existed, if the request for a hearing was received by OAH or DSHS on or before November 14, 2002, and WAC 388-740-0060 and 388-891-0275 did not apply.

(5) The ALJ makes the final decision and enters the final order in all cases except those cases set forth in subsection (4) of this section.

(6) A review judge has the same authority as an ALJ when presiding at a hearing.

WSR 06-11-152
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed May 23, 2006, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-07-132.

Title of Rule and Other Identifying Information: Chapter 388-101 WAC, Certified community residential services and support, these rules address vulnerable adult abuse and neglect reporting requirements in certified supported living programs, including due process and appeal rights. These rules also address client transportation requirements.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on June 27, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 28, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., on June 27, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by June 23, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Residential care services division recently assumed responsibility for conducting investigations of entities and alleged perpetrators where allegations of abandonment, abuse, neglect, and financial exploitation in certified supported living programs are reported. Portions of WAC 388-71-0100 through 388-71-1280 (adult protective services) and WAC 388-97-077 (resident protection program) are being incorporated without material change into chapter 388-101 WAC to reflect this change in responsibility.

No substantive changes are being made to any existing requirements including those governing: (1) Vulnerable adult abuse and neglect reporting, (2) abuse and neglect investigations and notification, and (3) due process and appeal rights.

The proposed rules also amend WAC 388-101-2300 to clarify that vehicles used to transport clients must be insured as required by existing state law and that providers and persons associated with the provider who transport clients must have a valid driver's license. The proposed rules incorporate existing state law by reference (chapters 46.20, 46.29, and 46.30 RCW) and do not impose new requirements.

These proposed rules only address some of the elements identified in preproposal statement of inquiry WSR 05-07-132. The department plans to propose additional changes to chapter 388-101 WAC under WSR 05-07-132.

Reasons Supporting Proposal: The proposed WAC amendments reflect an internal change of responsibility for conducting investigations of alleged abandonment, abuse, neglect, and financial exploitation in certified supported living programs. Chapter 388-101 WAC needs to indicate that ADSA-adult protective services is no longer conducting certain investigations.

A recent audit by the state auditor's office stated that the department should establish adequate internal controls to ensure that vehicles used to transport clients of supported living services are properly insured as required by state law. The audit recommended that the department clearly define its expectations for properly insured vehicles used to transport clients.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.080.

Statute Being Implemented: Chapter 71A.12 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Implementing these rules requires supported living providers to call a different phone number to make mandated reports regarding vulnerable adult abandonment, abuse, neglect, and financial exploitation. All mandated reports must be made to the centralized toll free telephone number provided by the department instead of to ADSA-adult protective services.

A letter was sent to providers in February 2006 describing the revised mandated reporting procedures. Material and information was included with the letter to assist providers with the transition. Based on feedback and experience from the past three months, the department is revising and reissuing the letter to providers. The revised letter will include the following information and material:

(1) Copies of mandated reporting notices including the phone number to call to make those reports. One version of the notice will be provided for posting in a service provider's office. A second version will be provided that can be posted in the homes where clients live.

(2) The DSHS-ADSA complaint hotline printed script. The printed script includes all the questions that a caller will be asked and the information that should be reported when making a mandated report. The script includes instructions and tips for how to use the complaint hotline.

(3) A copy of chapter 74.34 RCW, Washington's state vulnerable adult abuse and reporting law.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: John Gaskell, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3210; Implementation and Enforcement: Joyce Stockwell, Director, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2401.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that they will not result in more than minor costs to small businesses or non-profits required to comply with the rules. A comprehensive small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii) the proposed changes to chapter 388-101 WAC are exempt from a cost benefit analysis because the rule is incorporating from other state regulations and adopting by reference to other state statutes without material change.

May 17, 2006
Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-101-1101 Abuse and neglect reporting requirements. (1) All administrators, owners, staff and volunteers are mandated reporters and must report instances of abandonment, abuse, neglect, or financial exploitation of vulnerable adults as defined in, and accordance with chapter 74.34 RCW.

(2) Reports must be made to the centralized toll free telephone number for reporting abandonment, abuse, neglect or financial exploitation of vulnerable adults, provided by the department.

(3) Reports must be made to law enforcement agencies, as required under chapter 74.34 RCW.

(4) Service providers must have policies and procedures complying with state law that specify reporting requirements for client abandonment, abuse, neglect, and financial exploitation.

(5) Each administrator, owner, staff person, and volunteer must read and sign the policy about reporting requirements. The service provider must retain the signed policy for staff and volunteers.

NEW SECTION

WAC 388-101-1106 Investigation of mandated reports. (1) The department will determine whether a report of client abandonment, abuse, neglect, or financial exploitation needs to be investigated, in accordance with established procedures.

(2) The department investigation will include an investigation of allegations about one or more of the following:

(a) A service provider;

(b) Anyone associated with a service provider; or

(c) A client receiving services under this chapter.

(3) If, after completing an investigation under this chapter, the department concludes that it is more likely than not that a specific individual abandoned, abused, neglected, or financially exploited a client, the department will make an initial finding against the individual.

NEW SECTION

WAC 388-101-1111 Notice of an initial finding. (1) The department will notify the individual in writing within ten working days of making an initial finding of abandonment, abuse, neglect or financial exploitation of a client. The written notice will not include the identities of the alleged victim, reporter and witnesses.

(2) The department shall make a reasonable, good faith effort to determine the last known address of the individual.

(3) The time frame for notification can be extended beyond ten working days to include the time needed to translate the notification letter or make provisions for the safety of the alleged victim.

(4) Notice of the initial finding will be served as provided in chapter 388-02 WAC.

NEW SECTION

WAC 388-101-1116 Reporting initial findings. (1) In a manner consistent with confidentiality requirements concerning the client, witnesses, and reporter, the department may provide notification of an initial finding to:

(a) Other divisions within the department;

(b) The agency or program identified under RCW 74.34.068 with which the individual is associated as an employee, volunteer or contractor;

(c) Law enforcement; and

(d) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as an initial finding.

NEW SECTION

WAC 388-101-1121 Disputing an initial finding. (1) An individual alleged to have abandoned, abused, neglected, or financially exploited a client may request an administrative hearing to challenge an initial finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for a hearing within thirty calendar days of the date the individual was served with notice of the initial finding.

(4) The written request for a hearing must include:

(a) The full legal name, current address and phone number of the individual;

(b) A brief explanation of why the individual disagrees with the initial finding;

(c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any accommodation for a disability; and

(d) The individual's signature.

NEW SECTION

WAC 388-101-1126 Disclosure of investigative and finding information. (1) The individual may only use confidential information provided by the department as needed to challenge initial findings through the appeal process.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the client will be redacted from documents unless otherwise ordered by the administrative law judge consistent with chapter 74.34 RCW and other applicable state and federal laws.

NEW SECTION

WAC 388-101-1131 Hearing procedures to dispute an initial finding. (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding an initial finding. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

(2) The administrative law judge shall determine whether a preponderance of the evidence supports the initial finding that the individual abandoned, abused, neglected, or financially exploited a vulnerable adult, and shall issue an initial order.

NEW SECTION

WAC 388-101-1136 Appeal of the administrative law judge's initial order on a finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not modify the finding in the department's records until a final hearing decision is issued.

NEW SECTION

WAC 388-101-1141 Finalizing an initial finding. (1) An initial finding becomes a final finding when:

(a) The department gives the individual notice of the initial finding pursuant to WAC 388-101-1110 and the individual does not request an administrative hearing;

(b) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues an initial order upholding the finding and the individual fails to appeal the initial order to the department's board of appeals; or

(c) The board of appeals issues a final order upholding the finding.

(2) The final finding is permanent and will not be removed from the department's records unless:

(a) It is rescinded following judicial review; or

(b) The department decides to remove a single finding of neglect from its records based upon a written petition by the individual provided that at least one calendar year has passed since the finding was finalized and recorded.

NEW SECTION

WAC 388-101-1146 Reporting final findings. The department will report a final finding of abandonment, abuse, neglect and financial exploitation within ten working days to the following:

(1) The individual;

(2) The service provider that was associated with the individual during the time of the incident;

(3) The service provider that is currently associated with the individual, if known;

(4) The appropriate licensing authority; and

(5) The department's registry of findings of abandonment, abuse, neglect and financial exploitation. The findings may be disclosed to the public upon request.

AMENDATORY SECTION (Amending WSR 04-23-070 [05-05-077], filed 2/15/05, effective 2/15/05)

WAC 388-101-2300 ((~~How must the service provider be involved with a client's transportation needs?~~)) Client transportation. (1) The service provider must provide transportation or ensure that clients have a way to get to:

(a) Emergency medical care;

(b) Medical appointments; and

(c) Therapies.

(2) Within available resources, the service provider must provide necessary assistance with transportation to and from:

(a) Work, school or other publicly funded services;

(b) Leisure or recreation activities;

(c) Client-requested activities; and

(d) ISP/POC- or IISP-related activities.

(3) ((~~A vehicle that the service provider uses to transport clients must be~~)) Service providers and persons associated with the provider, who transport clients, must:

(a) Have a valid driver's license as required by chapter 46.20 RCW; and

(b) Only use vehicles that are:

(i) In safe operating condition; and

((~~(b) Properly~~)) (ii) Insured ((~~for its usage~~)) as required by chapters 46.29 and 46.30 RCW.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101-1100	Abuse and neglect reporting requirements.
WAC 388-101-1105	Investigation of mandated reports.
WAC 388-101-1110	Notice of an initial finding.
WAC 388-101-1115	Reporting initial findings.
WAC 388-101-1120	Disputing an initial finding.

WAC 388-101-1125	Disclosure of investigative and finding information.
WAC 388-101-1130	Hearing procedures to dispute an initial finding.
WAC 388-101-1135	Appeal of the administrative law judge's initial order on a finding.
WAC 388-101-1140	Finalizing an initial finding.
WAC 388-101-1145	Reporting final findings.

WSR 06-11-163
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)

[Filed May 24, 2006, 9:09 a.m.]

Continuance of WSR 06-10-082.

Title of Rule and Other Identifying Information: The purpose of the continuance is to notify the public of a CHANGE IN THE LOCATION of the rules hearing and to CORRECT THE E-MAIL AND MAILING ADDRESS for submitting written comment.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501, on July 20, 2006, at 10:00 a.m.

Date of Intended Adoption: July 20, 2006.

Submit Written Comments to: Tim Fuller, P.O. Box 47863, Olympia, WA 98504-7863, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 586-4359, by July 19, 2006.

Assistance for Persons with Disabilities: Contact Doreen Beebe, (360) 236-4834, by July 5, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will create new chapter, chapter 246-972 WAC, regarding automated drug distribution devices. It will set standards for the use of these devices for hospitals and healthcare facilities, which the current rules do not. In addition, they will provide standards that will improve medication safety, appropriate access to medications, and accountability, particularly for controlled substances. The current rule WAC 246-869-102 Mechanical devices in hospitals, applies to devices that are not available. For the few devices in use, the mechanical device rule will remain in place.

Reasons Supporting Proposal: Hospitals and other healthcare facilities have purchased automated drug distribution devices to store and distribute medications. To protect and improve public health, the board of pharmacy establishes protocols to ensure that automated drug distribution devices meet appropriate standards for drug storage, security, distribution, and accountability.

Statutory Authority for Adoption: RCW 18.64.005.

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

May 23, 2006

Steven Saxe

Executive Director

WSR 06-11-164
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed May 24, 2006, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-014 [06-08-015].

Title of Rule and Other Identifying Information: WAC 246-338-022 Initial application for medical test site license, 246-338-024 License renewal/reapplication process, and 246-338-990 Fees. These sections establish fees or the due dates for fees.

Hearing Location(s): Department of Health, Room 152, 310 Israel Road S.E., Olympia, WA 98501, on June 27, 2006, at 10:30 a.m.

Date of Intended Adoption: July 5, 2006.

Submit Written Comments to: Yvette Fox, 310 Israel Road S.E., Olympia, WA 98501, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by June 27, 2006.

Assistance for Persons with Disabilities: Contact Yvette Fox by June 21, 2006, TTY (800) 833-6388 or (360) 236-2928.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will change the due dates for license and renewal fees for medical test sites in order to bring the funding cycle in line with the allotment cycle. The funding currently begins sixteen months after the beginning of the biennial funding cycle. The proposal enables the department of health to prorate licensure and renewal fees for those licenses issued for less than two years.

Reasons Supporting Proposal: RCW 70.42.090 Medical test site fees—Account, requires the department of health to establish a fee schedule for licenses, renewals, amendments and waivers. Aligning the funding cycle with the allotment cycle will provide consistency in the budgeting process.

Statutory Authority for Adoption: RCW 70.42.090.

Statute Being Implemented: RCW 70.42.090.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gary Bennett, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2902.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal is exempt under RCW 19.85.030 and does not require a small business economic impact statement because the rule does not impose any additional costs on the regulated industry.

A cost-benefit analysis is not required under RCW 34.05.328. Section 201, chapter 403, Laws of 1995 do not apply to rules that set or adjust fees or rates pursuant to procedural rules according to RCW 34.05.328 (5)(a)(i), (c)(i)(B) or (c)(iii).

May 24, 2006
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

WAC 246-338-022 Initial application for medical test site license. (1) **Application procedure.**

Applicants requesting a medical test site license must:

(a) Submit a completed application on forms furnished by the department, signed by the owner or authorized representative;

(b) File a separate application for each test site **except** under the following conditions:

(i) If the test site is not at a fixed location and moves from testing site to testing site, or uses a temporary testing location such as a health fair, the medical test site may apply for a single license for the home base location;

(ii) If the medical test site is a not-for-profit or state or local government and performs a combination of fifteen or less of either waived or moderate complexity test procedures at different locations, the owner may file an application for a single license;

(c) Furnish full and complete information to the department in writing:

(i) Name, address, phone number, and federal tax ID number of the medical test site;

(ii) Name of owner;

(iii) Number and types of tests performed, planned, or projected;

(iv) Name and qualifications including educational background, training, and experience of the director;

(v) Names and qualifications including educational background, training, and experience of technical personnel, if requested by the department;

(vi) Name of proficiency testing program or programs used by the medical test site and a copy of the enrollment confirmation form, if applicable;

(vii) Methodologies for tests performed, if requested by the department; and

(viii) Other information as requested by the department;

(d) Submit the designated fee in the time period indicated, upon receipt of a fee statement from the department;

(e) If applying for an accredited license, submit proof of accreditation by an approved accreditation organization. If application has been made to an accreditation organization, submit a copy of the application, followed by proof of accreditation within eleven months of issuance of the medical test site license.

(2) **Issuing an initial license.**

(a) An initial license will be issued for a medical test site when the applicant:

(i) Submits a completed application and any information requested by the department;

(ii) Pays the designated license fee; and

(iii) Meets the requirements of chapter 70.42 RCW and this chapter.

(b) License expiration dates will be based on a two-year licensure cycle, expiring on ((~~October 31st~~)) June 30th of ((~~even-numbered~~)) odd-numbered years. The license period for an initial license begins the day of the month that payment is received and expires on ((~~October 31st~~)) June 30th of ((~~the current or next even-numbered~~)) odd-numbered years.

(c) For licenses issued for a period of less than two years, the license fee will be prorated for the remainder of the two-year cycle under WAC 246-338-990.

(d) The department may issue a provisional license valid for a period of up to two years when a medical test site applies for licensure for the first time.

((~~(d)~~)) (e) The department will terminate a provisional license at the time a two-year license for the medical test site is issued.

((~~(e)~~)) (f) License fees are listed under WAC 246-338-990.

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

WAC 246-338-024 License renewal/reapplication process. (1) The department will issue a renewal license for a medical test site when the owner:

(a) At least thirty days prior to the expiration date of the current license, submits a completed renewal application form, available from the department, in compliance with WAC 246-338-022(1) and submits the designated fee; and

(b) Meets the requirements of chapter 70.42 RCW and this chapter.

(2) A license is issued for a period of two years. License expiration dates are based on a two-year cycle, expiring on ((~~October 31st~~)) June 30th of ((~~even-numbered~~)) odd-numbered years.

(3) For licenses issued for a period of less than two years, the license fee shall be prorated based on the two-year fees listed under WAC 246-338-990.

(4) The department may extend a license for a period not to exceed six months beyond the expiration date of the license.

((~~(4)~~)) (5) The department will require the owner of the medical test site to reapply for a license if proof of accreditation is not supplied to the department within eleven months of issuance of an accredited license.

((~~(5)~~)) (6) The owner or applicant of a medical test site must reapply for licensure within thirty days, if the acceptance of approval of the accreditation organization for the medical test site is denied or terminated.

((~~(6)~~)) (7) If at any time any of the changes listed in WAC 246-338-026 occur, the medical test site may require a different type of license than what the medical test site currently holds. If so, the owner must submit a reapplication form, within thirty days of the change, and pay applicable fees.

AMENDATORY SECTION (Amending WSR 02-12-105, filed 6/5/02, effective 7/6/02)

WAC 246-338-990 Fees. (1) The department will assess and collect biennial fees for medical test sites as follows:

(a) Charge fees, based on the requirements authorized under RCW 70.42.090 and this section;

(b) Assess additional fees when changes listed in WAC 246-338-026 occur that require a different type of license than what the medical test site currently holds; ((~~and~~))

(c) Charge prorated fees for the remainder of the two-year cycle when the owner or applicant applies for an initial license during a biennium as defined under WAC 246-338-022 (2)(c);

(d) Charge prorated fees for licenses issued for less than a two-year period under WAC 246-338-024(3); and

(e) Determine fees according to criteria described in Table 990-1.

Table 990-1 License Categories and Fees

Category of License	Number of Tests/Year	Biennial Fee
Certificate of Waiver	N/A	$ 150
PPMP	N/A	$ 200
Low Volume	1-2,000 tests	$ 450
Category A	2,001-10,000 tests, 1-3 specialties	$1,364
Category B	2,001-10,000 tests, 4 or more specialties	$1,769
Category C	10,001-25,000 tests, 1-3 specialties	$2,454
Category D	10,001-25,000 tests, 4 or more specialties	$2,818
Category E	25,001-50,000 tests	$3,382
Category F	50,001-75,000 tests	$4,187
Category G	75,001-100,000 tests	$4,991
Category H	100,001-500,000 tests	$5,835
Category I	500,001-1,000,000 tests	$10,369
Category J	> 1,000,000 tests	$12,443
Accredited:		
Low Volume	1-2,000 tests	$ 165
Category A	2,001-10,000 tests, 1-3 specialties	$ 211
Category B	2,001-10,000 tests, 4 or more specialties	$ 231
Category C	10,001-25,000 tests, 1-3 specialties	$ 531
Category D	10,001-25,000 tests, 4 or more specialties	$ 559
Category E	25,001-50,000 tests	$ 787
Category F	50,001-75,000 tests	$1,254
Category G	75,001-100,000 tests	$1,722
Category H	100,001-500,000 tests	$2,227
Category I	500,001-1,000,000 tests	$6,428
Category J	> 1,000,000 tests	$8,168
Follow-up survey for deficiencies		Direct staff time
Complaint investigation		Direct staff time

(2) The following programs are excluded from fee charges when performing only waived hematocrit or hemoglobin testing for nutritional evaluation and food distribution purposes:

(a) Women, infant and children programs (WIC); and

(b) Washington state migrant council.

WSR 06-11-165
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed May 24, 2006, 9:11 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-282-990 Sanitary control of shellfish—Fees.

Hearing Location(s): DOH Town Center 2, 111 Israel Road, Room 158, Tumwater, WA, on July 6, 2006, at 1:00 p.m.

Date of Intended Adoption: July 10, 2006.

Submit Written Comments to: Jan Jacobs, P.O. Box 47824, Olympia, WA 98504-7824, phone (360) 236-3316, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2257, by July 5, 2006.

Assistance for Persons with Disabilities: Contact Jan Jacobs by June 22, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule restructures the commercial shellfish operations fee schedule for paralytic shellfish poison (PSP) testing of commercially harvested geoduck. PSP fees are set for the purpose of recovering 100% of the cost of PSP testing performed at the State Public Health Lab in Seattle. The restructure is revenue neutral, but will increase fees over the fiscal growth factor for some operators. The 2005 legislature authorized the department to increase fees beyond the fiscal growth factor in ESSB 6090 (section 221(1), chapter 518, Laws of 2005).

Reasons Supporting Proposal: The proposed fees provide the revenue necessary for the department of health to conduct testing for PSP in commercial shellfish. This testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial shellfish and ensures toxic shellfish do not reach consumers.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250, chapter 518, Laws of 2006.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Jan Jacobs, 111 Israel Road S.E., Tumwater, WA, (360) 236-3316; Implementation and Enforcement: Nancy Napolilli, 111 Israel Road S.E., Tumwater, WA, (360) 236-3325.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules that set or adjust fees pursuant to legislative standards. This rule proposes to revise a fee necessary to defray the costs of administering the commercial shellfish license program. The department is directed under RCW 43.70.250 to set fees so that the cost of a business license program is fully borne by members of that business. During the 2006 legislative session, the legislature authorized the department to increase fees beyond the fiscal growth factor under chapter 518, Laws of 2006.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi), "significant rule analysis" does not apply to rules that set or adjust fees pursuant to legislative standards, as this proposal does.

May 19, 2006
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-17-120, filed 8/17/05, effective 9/17/05)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	$250((~~.~~))
Shellstock Shipper	
0 - 49 Acres	$282((~~.~~))
50 or greater Acres	$452((~~.~~))
Scallop Shellstock Shipper	$282
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	$514((~~.~~))
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	$622((~~.~~))
Plants with floor space > 5000 sq. ft.	$1,147((~~.~~))

(2) The fee for each export certificate is $10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category

Type of Operation	**Number of Harvest Sites**	**Fee**
Harvester	≤ 2	$173
Harvester	3 or more	$259
Shellstock Shipper 0 - 49 acres	≤ 2	$195
Shellstock Shipper 0 - 49 acres	3 or more	$292
Shellstock Shipper 50 or greater acres	N/A	$468
Shucker-Packer (plants < 2000 ft^2)	≤ 2	$354
Shucker-Packer (plants < 2000 ft^2)	3 or more	$533
Shucker-Packer (plants 2000 - 5000 ft^2)	≤ 2	$429
Shucker-Packer (plants 2000 - 5000 ft^2)	3 or more	$644
Shucker-Packer (plants > 5000 ft^2)	N/A	$1,189

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

(i) At the time of first licensure; or

(ii) January 1 of each year for companies licensed as harvesters; or

(iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	**Fee**
Department of natural resources (quota tracts harvested by DNR contract holders)	$((~~13,216~~)) 10,132
Jamestown S'Klallam Tribe	$((~~3,377~~)) 4,193

Harvester	Fee
Lower Elwah Klallam Tribe	$((~~5,139~~)) 5,241
((~~Lummi Nation~~	~~$0~~))
Nisqually Indian Tribe	$((~~1,762~~)) 3,494
Port Gamble S'Klallam Tribe	$((~~11,306~~)) 6,639
Puyallup Tribe of Indians	$((~~4,992~~)) 5,940
Skokomish Indian Tribe	$((~~441~~)) 524
Squaxin Island Tribe	$((~~5,286~~)) 5,416
Suquamish Tribe	$((~~8,663~~)) 11,880
Swinomish Tribe	$((~~294~~)) 873
Tulalip Tribe	$((~~1,615~~)) 2,620
Discovery Bay Shellfish	$((~~1,175~~)) 1,048
((~~Seattle Shellfish~~	~~$734~~
~~Taylor Shellfish Company, Inc. (Shelton)~~	~~$0~~
~~Washington Shell Fish, Inc.~~	~~$0~~))

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 06-11-171
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed May 24, 2006, 10:11 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under WSR 06-07-170.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests (WAC 16-470-900 through 16-470-917). This proposal amends WAC 16-470-912 and 16-470-917 by increasing the laboratory diagnostic hourly fees, nematode laboratory diagnostic fees, and post entry inspection fee within the office of financial management fiscal growth factor for fiscal year 2007 (3.38%). In addition, this proposal repeals the current fee schedule for virus, bacteria, and fungus laboratory diagnostic fees and replaces them with an hourly charge that reflects the costs associated with performing these tests as required by RCW 17.24.131.

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, 2nd Floor, Conference Room 205, Olympia, WA 98504-2560, on June 27, 2006, at 2:00 p.m.

Date of Intended Adoption: July 11, 2006.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by June 27, 2006.

Assistance for Persons with Disabilities: Contact Henri Gonzales by June 20, 2006, TTY (360) 902-1996.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal increases the plant pathology laboratory diagnostic hourly fees, nematode laboratory diagnostic fees, and post entry inspection fee by the fiscal growth factor of 3.38% for fiscal year 2007. In addition, this proposal repeals the current schedule for virus, bacteria, and fungus laboratory diagnostic fees and replaces it with a time-and-materials charge that reflects the costs, as required by RCW 17.24.131, associated with performing specific testing. These fee increases and restructuring are necessary because new diagnostic technologies have made available a wider range of options for testing specific pathogens, and current fee levels no longer cover the costs of providing plant pathology laboratory and post entry inspection services. RCW 17.24.131 mandates that the department support these activities through fees for services. With these modest increases, the department anticipates that the program will be able to remain financially solvent.

Reasons Supporting Proposal: Current fee levels are not adequate to cover the costs of providing new types of testing technologies for plant diseases, existing testing in the plant pathology laboratory and post entry inspection services. The nursery advisory committee, which is appointed by the director of the department of agriculture to represent the interests of the nursery industry, supports the proposal.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Washington state department of agriculture with the support of the nursery advisory committee, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed fee increases, which are based upon the OFM fiscal growth rate factor for 2006, and revisions to the fee schedule for new testing technologies, and has concluded that they will not impose more than minor costs on the regulated industry. Therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

May 24, 2006
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 05-12-111, filed 5/31/05, effective 7/1/05)

WAC 16-470-912 Schedule of fees and charges—Applicable fees and charges. (1) Hourly rate.

Hourly rate - business hours	$((~~31.95~~)) 33.00
Hourly rate - nonbusiness hours	$((~~40.80~~)) 42.15

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) ((~~Plant pathology~~)) Nematology laboratory diagnostic fees are as follows:

Identity Determination	1 sample	5 samples	10 samples	50 samples	100+ samples
((~~virus (ELISA)~~)	~~At cost~~	~~At cost~~	~~$10.55 ea~~	~~$5.20 ea~~	~~$3.00 ea~~
~~bacteria~~	~~42.35 ea~~	~~40.90 ea~~	~~38.35 ea~~	~~37.10 ea~~	~~37.10 ea~~
~~fungus~~	~~44.80 ea~~	~~38.35 ea~~	~~37.10 ea~~	~~35.75 ea~~	~~33.20 ea~~))
nematode	((~~33.20~~)) 34.30 ea	((~~30.60~~)) 31.60 ea	((~~28.05~~)) 28.95 ea	((~~27.35~~)) 28.25 ea	((~~25.45~~)) 26.30 ea

Note: To receive volume rates, samples must be submitted as a unit and identification requests must be for one specific ((~~virus, bacterium, fungus, or~~)) nematode((~~. Samples tested for multiple pathogens will be considered as multiple samples~~)), unless ((~~all pathogens~~)) more than one nematode can be detected in a single test without additional inputs.

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

(a) Projects greater than one hundred samples;

(b) Projects requiring materials not readily available; or

(c) Projects requiring special handling or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 05-12-111, filed 5/31/05, effective 7/1/05)

WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services. (1) Post entry site inspection and/or permit review and approval $((~~64.05~~)) 66.20

(2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

WSR 06-11-172
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed May 24, 2006, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-169.

Title of Rule and Other Identifying Information: Chapter 16-401 WAC, Nursery inspection fees. This proposal increases the nursery inspection fees and the permit fee for businesses exempted from a nursery dealer's license by not more than the office of financial management (OFM) fiscal growth factor for fiscal year 2007 (3.38%).

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, 2nd Floor, Conference Room 205, Olympia, WA 98504-2560, on June 27, 2006, at 2:00 p.m.

Date of Intended Adoption: July 11, 2006.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by June 27, 2006.

Assistance for Persons with Disabilities: Contact Henri Gonzales by June 20, 2006, TTY (360) 902-2061.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule establishes the fees charged by the plant services program for activities authorized in chapters 15.13 or 15.14 RCW. This proposal increases the nursery inspection fees and permit fee for businesses exempted from a nursery dealer's license by not more than 3.38%, which is the OFM fiscal growth factor for fiscal year 2007. Current fees are not adequate to cover the costs of providing these inspection services; therefore, the proposed increases are necessary to ensure that the program will remain financially solvent. RCW 15.13.260(4) and 15.14.015(11) authorize the director of the Washington state department of agriculture to establish fees to cover the cost of providing inspection services.

Reasons Supporting Proposal: Current fee levels are not adequate to cover the costs of providing these inspection services. The nursery advisory committee, which is appointed by the director of the department of agriculture to represent the interests of the nursery industry, supports the proposal.

Statutory Authority for Adoption: Chapters 15.13, 15.14, and 34.05 RCW.

Statute Being Implemented: Chapters 15.13 and 15.14 RCW.

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

Name of Proponent: Washington state department of agriculture with the support of the nursery advisory committee, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforce-

ment: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed fee increases, which are based upon the OFM fiscal growth rate factor for 2007, and has concluded that they do not impose more than minor costs on the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

May 24, 2006
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 05-12-110, filed 5/31/05, effective 7/1/05)

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges. The following rates apply for requested inspection services:

(1) **Fee or Charge:**	
Hourly rate—business hours	$((~~31.95~~)) 33.00
Hourly rate—nonbusiness hours	$((~~40.80~~)) 42.15
Certificate issued at time of inspection	No charge
Certificate issued more than twenty-four hours after the inspection	$((~~15.20~~)) 15.70
Additional certificates	$((~~4.80~~)) 4.95
Fumigation lot or container fee	$((~~12.70~~)) 13.10
Certificate of plant health for noncommercial movement	$((~~6.25~~)) 6.45
Compliance agreement	$((~~31.95~~)) 33.00
Inspection tags or stickers (lots of 250)	$((~~6.25~~)) 6.45 per lot
Inspection tags or stickers (minimum 10)	$0.28 each

(2) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

(5) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.

(6) The department may issue a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge.

AMENDATORY SECTION (Amending WSR 05-12-110, filed 5/31/05, effective 7/1/05)

WAC 16-401-041 Nursery dealer license fees. Annual license fees as established below, must accompany the application for nursery dealer license:

(1) Retail nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars $38.73

(b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is $82.99

(c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more $166.00

(2) Wholesale nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars $82.99

(b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more $166.00

(3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.

(4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270 . . . . $((~~6.15~~)) 6.35

WSR 06-11-177

PROPOSED RULES

OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2006-03—Filed May 24, 2006, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-095.

Title of Rule and Other Identifying Information: Washington essential property and casualty inspection and placement program (FAIR plan) expansion.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on June 28, 2006, at 9:00 a.m.

Date of Intended Adoption: July 10, 2006.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by June 27, 2006.

Assistance for Persons with Disabilities: Contact Lori Villaflores by June 26, 2006, TDD (360) 586-0241.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these amendments is to expand the Washington essential property inspection and placement program (FAIR plan) to all counties within Washington state.

Reasons Supporting Proposal: Presently, only properties in all or part of three counties designated "urban areas," as defined in WAC 284-19-050(5), are eligible to apply for coverage in the FAIR plan. Certain properties outside of these designated areas cannot obtain property coverage and do not have access to the FAIR plan. In particular, information from insurance brokers indicates consumers with older homes in some rural areas of Washington have difficulty obtaining property insurance. This causes contract problems and economic insecurity for property owners outside the boundaries of the defined urban areas. Expanding the geographic area of the FAIR plan to include all counties in Washington helps address this problem.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.58.010.

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

Name of Proponent: Insurance Commissioner Mike Kreidler, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Carlson, P.O. Box 40255, Olympia, WA 98504-0256 [98504-0255], (360) 725-7042; Implementation: Pete Cutler, P.O. Box 40255, Olympia, WA 98504-0256 [98504-0255], (360) 725-7037; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed regulations will not have a negative economic impact on small businesses regulated by the office of the insurance commissioner.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule for the purposes of RCW 34.05.328.

May 24, 2006
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-020 Purposes of program. The purposes of the program are:

(1) To assure stability in the property insurance market of this state.

(2) To encourage maximum use, in obtaining essential property insurance, of the available, normal insurance market provided by authorized insurers.

(3) To make essential property insurance available where it cannot be obtained through the normal insurance market, subject to the conditions stated in this chapter.

(4) To encourage the improvement of the condition of properties located in ((~~the urban areas of~~)) the state of Washington and to further orderly community development.

(5) To establish a FAIR plan (fair access to insurance requirements), an industry placement facility and a joint reinsurance association for the equitable distribution and placement of risks among insurers in the manner and subject to the conditions stated in this chapter.

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-050 Definitions. (1) "Insurer" means any insurance company or other organization licensed to write and engage in writing property insurance business, including the property insurance components of multiperil policies, on a direct basis, in this state.

(2) "Essential property insurance" means the coverage against direct loss to real and tangible personal property at a fixed location that is provided in the standard fire policy and extended coverage endorsement, and shall include also the perils of vandalism and malicious mischief and such additional lines of property insurance as may be designated by the commissioner. Essential property insurance specifically includes insurance against direct loss to property which is being constructed or rehabilitated (builder's risk coverage). It does not include automobile insurance or insurance on farm or manufacturing risks.

(3) "Industry placement facility" (referred to as the facility) means the organization formed by insurers to assist applicants ((~~in urban areas~~)) in securing essential property insurance and to administer the FAIR plan and the joint reinsurance association.

(4) "Inspection bureau" means the Washington Surveying and Rating Bureau.

(((~~5) "Urban area" includes the following municipalities and counties and such additional counties, municipalities, and definitive political subdivisions as may be added by the commissioner:~~

~~Pasco~~	-	~~All~~
~~King County~~	-	~~All~~
~~Tacoma~~	-	~~All~~

~~(6)~~)) (5) "Premiums written" means gross direct premiums (excluding that portion of premiums on risks ceded to the joint reinsurance association) charged during the second preceding calendar year with respect to property in this state on all policies of property insurance and property insurance components of all multiperil policies, as defined and computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

((~~(7)~~)) (6) A "service insurer" means any company designated by the facility and approved by the commissioner to issue policies under this program.

((~~(8)~~)) (7) "Commissioner" means the commissioner of insurance of the state of Washington.

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-060 FAIR plan—Inspections and reports. (1) Any person having an insurable interest in real or tangible personal property at a fixed location ((~~in an urban area~~)) is entitled to an inspection of the property by the inspection bureau at no cost, upon application to the facility. The inspection may be requested by the property owner, a representative of the property owner, the insurer, or the insurance producer and need not be in writing. Requests for inspections shall be transcribed on a form approved by the facility. A deposit premium is not required as a precondition to inspection.

(2) The owner of the building need not be present for a tenant to obtain an inspection, but the inspection bureau must be provided full access to the property for which insurance is sought.

(3) An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

(4) During the inspection, the inspector shall point out features of structure and occupancy to the applicant or a representative of the applicant, if present, and shall indicate those features which may result in condition charges if the risk is accepted. The inspector has no authority to advise whether the facility will provide the coverage.

(5) The report shall include a rate make-up statement, including any condition charges or surcharges imposed by inspection or under the program, or under any substandard rating plan approved by the commissioner. A copy of the inspection report shall be made available to the applicant or the applicant's agent upon request.

WSR 06-11-182

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed May 24, 2006, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-159.

Title of Rule and Other Identifying Information: WAC 458-40-610 Timber excise tax—Definitions.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on June 27, 2006, at 10:00 a.m.

Date of Intended Adoption: June 29, 2006.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-5543, by June 27, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-40-610 (Rule 610) provides definitions of terms used in chapter 458-40 WAC when describing the policies and procedures for the taxation of timber harvested from public and private forest lands. The department is proposing a rewrite of the small harvester harvesting and marketing costs definition (subsection (9)) to clarify that costs associated with conversions are not deductible as harvesting and marketing costs.

Reasons Supporting Proposal: The proposed rule better explains that costs associated with conversions are not deductible as harvesting and marketing costs.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Washington state department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule and the proposed amendments do not impose any requirements or burdens that are not already specifically required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

May 24, 2006

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-02-007, filed 12/22/05, effective 1/22/06)

WAC 458-40-610 Timber excise tax—Definitions. (1) **Introduction.** The purpose of WAC 458-40-610 through 458-40-690 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 458-40-690. 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 (13) of this section.

(8) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, hauling distance zone, 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.

(9) **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.

(10) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting ((~~the~~)) merchantable timber from the land and delivering it to the buyer. The term includes the costs of ((~~slash disposal~~)) piling logging residue on site, and costs to abate extreme fire hazard when required ((~~to abate extreme fire hazard~~)) 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 ((~~the~~)) 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 can not be separated from other costs, the deduction for harvesting and marketing costs is thirty-five percent of the gross receipts from the sale of the logs.

(11) **Hauling distance zone.** An area with specified boundaries as shown on the statewide stumpage value area and hauling distance zone maps contained in WAC 458-40-640, having similar accessibility to timber markets.

(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 percent of the gross scale; and meeting the following minimum requirements:

(a) Minimum gross diameter—two inches.

(b) Minimum gross length—twelve feet.

(c) Minimum volume—ten board feet net scale.

(d) Minimum recovery requirements—one hundred 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 board feet in a calendar year.

(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 harvested in stumpage value areas 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 feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value areas 6 and 7, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ten 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 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 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 10:

(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 undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

WSR 06-11-183
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed May 24, 2006, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-160.

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables.

Hearing Location(s): Capital Plaza Building, 4th Floor, Large L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA, on June 27, 2006, at 10:00 a.m.

Date of Intended Adoption: June 29, 2006.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail MarkBohe@dor.wa.gov, fax (360) 586-5543, by June 27, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule contains eight tables of stumpage values used to determine timber excise taxes. These eight tables represent the areas in the state in which timber is harvested. Each table breaks out the values by timber species, quality, and a downward adjustment for hauling. The rule also contains two harvest adjustment tables for the volume per acre that is harvested, logging conditions, remote island harvesting, damaged timber, and thinning. In addition, the rule also contains a domestic market adjustment table for export restricted public timber not sold through a competitive bidding process. The proposed rule adjusts the stumpage value tables as required by RCW 84.33.091.

Reasons Supporting Proposal: RCW 84.33.091 requires the values to be updated twice a year. This is the semi-annual update to be used for the second half of the calendar year 2006.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Washington state department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required when a legislative rule is being adopted under RCW 34.05.328.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Roseanna Hodson, 1025 Union Avenue S.E., Suite #544, Olympia, WA 98504-7453, phone (360) 570-6119, fax (360) 586-5543, e-mail roseannah@dor.wa.gov.

May 24, 2006

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-02-005, filed 12/22/05, effective 1/1/06)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((~~January~~)) July 1 through ((~~June 30~~)) December 31, 2006:

((TABLE 1—Stumpage Value Table
Stumpage Value Area 1
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir	DF	1	$480	$473	$466	$459	$452
		2	462	455	448	441	434
		3	424	417	410	403	396
		4	371	364	357	350	343
Western Redcedar(2)	RC	1	597	590	583	576	569
Western Hemlock(3)	WH	1	342	335	328	321	314
		2	278	271	264	257	250
		3	278	271	264	257	250
		4	278	271	264	257	250
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood(4)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks(5)	RCS	1	174	167	160	153	146
RC & Other Posts(6)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(7)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(7)	TFX	1	0.50	0.50	0.50	0.50	0.50))

TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir	DF	1	$632	$625	$618	$611	$604
		2	469	462	455	448	441
		3	463	456	449	442	435
		4	412	405	398	391	384
Western Redcedar[2]	RC	1	559	552	545	538	531
Western Hemlock[3]	WH	1	383	376	369	362	355
		2	347	340	333	326	319
		3	302	295	288	281	274
		4	302	295	288	281	274
Red Alder	RA	1	367	360	353	346	339
		2	268	261	254	247	240
Black Cottonwood	BC	1	34	27	20	13	6
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles	DFL	1	796	789	782	775	768
Western Redcedar Poles	RCL	1	1373	1366	1359	1352	1345
Chipwood[4]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks[5]	RCS	1	174	167	160	153	146
RC & Other Posts[6]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[7]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[7]	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Alaska-Cedar.

(3) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(4) Stumpage value per ton.

(5) Stumpage value per cord.

(6) Stumpage value per 8 lineal feet or portion thereof.

(7) Stumpage value per lineal foot.

((TABLE 2—Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir	DF	1	$543	$536	$529	$522	$515
		2	514	507	500	493	486
		3	474	467	460	453	446

((TABLE 2—Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
		4	440	433	426	419	412
Western Redcedar(2)	RC	1	597	590	583	576	569
Western Hemlock(3)	WH	1	384	377	370	363	356
		2	362	355	348	341	334
		3	333	326	319	312	305
		4	326	319	312	305	298
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood(4)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks(5)	RCS	1	174	167	160	153	146
RC & Other Posts(6)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(7)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(7)	TFX	1	0.50	0.50	0.50	0.50	0.50))

TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir	DF	1	$632	$625	$618	$611	$604
		2	505	498	491	484	477
		3	490	483	476	469	462
		4	474	467	460	453	446
Western Redcedar[2]	RC	1	559	552	545	538	531
Western Hemlock[3]	WH	1	383	376	369	362	355
		2	361	354	347	340	333
		3	334	327	320	313	306
		4	334	327	320	313	306
Red Alder	RA	1	367	360	353	346	339
		2	268	261	254	247	240
Black Cottonwood	BC	1	34	27	20	13	6
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles	DFL	1	796	789	782	775	768
Western Redcedar Poles	RCL	1	1373	1366	1359	1352	1345
Chipwood[4]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks[5]	RCS	1	174	167	160	153	146
RC & Other Posts[6]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[7]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[7]	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Alaska-Cedar.

(3) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(4) Stumpage value per ton.

(5) Stumpage value per cord.

(6) Stumpage value per 8 lineal feet or portion thereof.

(7) Stumpage value per lineal foot.

((TABLE 3—Stumpage Value Table
Stumpage Value Area 3
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir(2)	DF	1	$486	$479	$472	$465	$458
		2	428	421	414	407	400
		3	428	421	414	407	400
		4	340	333	326	319	312

((TABLE 3—Stumpage Value Table
Stumpage Value Area 3
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar(3)	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer(4)	WH	1	384	377	370	363	356
		2	259	252	245	238	231
		3	259	252	245	238	231
		4	259	252	245	238	231
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks(6)	RCS	1	174	167	160	153	146
RC & Other Posts(7)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(8)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(8)	TFX	1	0.50	0.50	0.50	0.50	0.50))

TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$542	$535	$528	$521	$514
		2	457	450	443	436	429
		3	402	395	388	381	374
		4	402	395	388	381	374
Western Redcedar[3]	RC	1	559	552	545	538	531
Western Hemlock and Other Conifer[4]	WH	1	383	376	369	362	355
		2	347	340	333	326	319
		3	288	281	274	267	260
		4	247	240	233	226	219
Red Alder	RA	1	367	360	353	346	339
		2	268	261	254	247	240
Black Cottonwood	BC	1	34	27	20	13	6
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles	DFL	1	796	789	782	775	768
Western Redcedar Poles	RCL	1	1373	1366	1359	1352	1345
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks[6]	RCS	1	174	167	160	153	146
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes Alaska-Cedar.
(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
(5) Stumpage value per ton.
(6) Stumpage value per cord.
(7) Stumpage value per 8 lineal feet or portion thereof.
(8) Stumpage value per lineal foot.

((TABLE 4—Stumpage Value Table
Stumpage Value Area 4
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir(2)	DF	1	$543	$536	$529	$522	$515
		2	485	478	471	464	457
		3	482	475	468	461	454

((TABLE 4—Stumpage Value Table
Stumpage Value Area 4
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
		4	426	419	412	405	398
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar(3)	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer(4)	WH	1	384	377	370	363	356
		2	319	312	305	298	291
		3	313	306	299	292	285
		4	313	306	299	292	285
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks(6)	RCS	1	174	167	160	153	146
RC & Other Posts(7)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(8)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(8)	TFX	1	0.50	0.50	0.50	0.50	0.50))

TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$632	$625	$618	$611	$604
		2	528	521	514	507	500
		3	465	458	451	444	437
		4	465	458	451	444	437
Lodgepole Pine	LP	1	221	214	207	200	193
Ponderosa Pine	PP	1	317	310	303	296	289
		2	211	204	197	190	183
Western Redcedar[3]	RC	1	559	552	545	538	531
Western Hemlock and Other Conifer[4]	WH	1	383	376	369	362	355
		2	320	313	306	299	292
		3	316	309	302	295	288
		4	316	309	302	295	288
Red Alder	RA	1	367	360	353	346	339
		2	268	261	254	247	240
Black Cottonwood	BC	1	34	27	20	13	6
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles	DFL	1	796	789	782	775	768
Western Redcedar Poles	RCL	1	1373	1366	1359	1352	1345
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks[6]	RCS	1	174	167	160	153	146
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes Alaska-Cedar.
(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
(5) Stumpage value per ton.
(6) Stumpage value per cord.
(7) Stumpage value per 8 lineal feet or portion thereof.
(8) Stumpage value per lineal foot.

((TABLE 5—Stumpage Value Table
Stumpage Value Area 5
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir(2)	DF	1	$602	$595	$588	$581	$574
		2	511	504	497	490	483
		3	489	482	475	468	461
		4	426	419	412	405	398
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar(3)	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer(4)	WH	1	394	387	380	373	366
		2	330	323	316	309	302
		3	330	323	316	309	302
		4	330	323	316	309	302
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks(6)	RCS	1	174	167	160	153	146
RC & Other Posts(7)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(8)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(8)	TFX	1	0.50	0.50	0.50	0.50	0.50))

TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir[2]	DF	1	$655	$648	$641	$634	$627
		2	534	527	520	513	506
		3	493	486	479	472	465
		4	493	486	479	472	465
Lodgepole Pine	LP	1	221	214	207	200	193
Ponderosa Pine	PP	1	317	310	303	296	289
		2	211	204	197	190	183
Western Redcedar[3]	RC	1	559	552	545	538	531
Western Hemlock and Other Conifer[4]	WH	1	383	376	369	362	355
		2	348	341	334	327	320
		3	331	324	317	310	303
		4	328	321	314	307	300
Red Alder	RA	1	367	360	353	346	339
		2	268	261	254	247	240
Black Cottonwood	BC	1	34	27	20	13	6
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles	DFL	1	796	789	782	775	768
Western Redcedar Poles	RCL	1	1373	1366	1359	1352	1345
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks[6]	RCS	1	174	167	160	153	146
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes Alaska-Cedar.
(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
(5) Stumpage value per ton.
(6) Stumpage value per cord.
(7) Stumpage value per 8 lineal feet or portion thereof.
(8) Stumpage value per lineal foot.

((TABLE 6—Stumpage Value Table
Stumpage Value Area 6
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir(2)	DF	1	$358	$351	$344	$337	$330
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar(3)	RC	1	496	489	482	475	468
True Firs and Spruce(4)	WH	1	262	255	248	241	234
Western White Pine	WP	1	336	329	322	315	308
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	496	489	482	475	468
Small Logs(5)	SML	1	34	33	32	31	30
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks(6)	RCF	1	76	69	62	55	48
LP & Other Posts(7)	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees(8)	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(9)	DFX	1	0.25	0.25	0.25	0.25	0.25))

TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$357	$350	$343	$336	$329
Lodgepole Pine	LP	1	221	214	207	200	193
Ponderosa Pine	PP	1	317	310	303	296	289
		2	211	204	197	190	183
Western Redcedar[3]	RC	1	480	473	466	459	452

TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
True Firs and Spruce[4]	WH	1	253	246	239	232	225
Western White Pine	WP	1	320	313	306	299	292
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	480	473	466	459	452
Small Logs[5]	SML	1	37	36	35	34	33
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks[6]	RCF	1	76	69	62	55	48
LP & Other Posts[7]	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees[8]	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[9]	DFX	1	0.25	0.25	0.25	0.25	0.25

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes Alaska-Cedar.
(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
(5) Stumpage value per ton.
(6) Stumpage value per cord.
(7) Stumpage value per 8 lineal feet or portion thereof.
(8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
(9) Stumpage value per lineal foot.

((TABLE 7—Stumpage Value Table
Stumpage Value Area 7
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir(2)	DF	1	$358	$351	$344	$337	$330
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184

((~~TABLE 7—Stumpage Value Table~~
~~Stumpage Value Area 7~~
~~January 1 through June 30, 2006~~

~~Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)~~

~~Species Name~~	~~Species Code~~	~~Timber Quality Code Number~~	~~Hauling Distance Zone Number~~				
			~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
~~Western Redcedar(3)~~	~~RC~~	~~1~~	~~496~~	~~489~~	~~482~~	~~475~~	~~468~~
~~True Firs and Spruce(4)~~	~~WH~~	~~1~~	~~262~~	~~255~~	~~248~~	~~241~~	~~234~~
~~Western White Pine~~	~~WP~~	~~1~~	~~336~~	~~329~~	~~322~~	~~315~~	~~308~~
~~Hardwoods~~	~~OH~~	~~1~~	~~50~~	~~43~~	~~36~~	~~29~~	~~22~~
~~Western Redcedar Poles~~	~~RCL~~	~~1~~	~~496~~	~~489~~	~~482~~	~~475~~	~~468~~
~~Small Logs(5)~~	~~SML~~	~~1~~	~~26~~	~~25~~	~~24~~	~~23~~	~~22~~
~~Chipwood(5)~~	~~CHW~~	~~1~~	~~1~~	~~1~~	~~1~~	~~1~~	~~1~~
~~RC Shake & Shingle Blocks(6)~~	~~RCF~~	~~1~~	~~76~~	~~69~~	~~62~~	~~55~~	~~48~~
~~LP & Other Posts(7)~~	~~LPP~~	~~1~~	~~0.35~~	~~0.35~~	~~0.35~~	~~0.35~~	~~0.35~~
~~Pine Christmas Trees(8)~~	~~PX~~	~~1~~	~~0.25~~	~~0.25~~	~~0.25~~	~~0.25~~	~~0.25~~
~~Other Christmas Trees(9)~~	~~DFX~~	~~1~~	~~0.25~~	~~0.25~~	~~0.25~~	~~0.25~~	~~0.25~~))

TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir[2]	DF	1	$402	$395	$388	$381	$374
Lodgepole Pine	LP	1	265	258	251	244	237
Ponderosa Pine	PP	1	321	314	307	300	293
		2	200	193	186	179	172
Western Redcedar[3]	RC	1	480	473	466	459	452
True Firs and Spruce[4]	WH	1	285	278	271	264	257
Western White Pine	WP	1	320	313	306	299	292
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	480	473	466	459	452

TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Small Logs[5]	SML	1	33	32	31	30	29
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks[6]	RCF	1	76	69	62	55	48
LP & Other Posts[7]	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees[8]	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[9]	DFX	1	0.25	0.25	0.25	0.25	0.25

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes Alaska-Cedar.
(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
(5) Stumpage value per ton.
(6) Stumpage value per cord.
(7) Stumpage value per 8 lineal feet or portion thereof.
(8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
(9) Stumpage value per lineal foot.

((~~TABLE 8—Stumpage Value Table~~
~~Stumpage Value Area 10~~
~~January 1 through June 30, 2006~~

~~Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)~~

~~Species Name~~	~~Species Code~~	~~Timber Quality Code Number~~	~~Hauling Distance Zone Number~~				
			~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
~~Douglas-Fir(2)~~	~~DF~~	~~1~~	~~$529~~	~~$522~~	~~$515~~	~~$508~~	~~$501~~
		~~2~~	~~471~~	~~464~~	~~457~~	~~450~~	~~443~~
		~~3~~	~~468~~	~~461~~	~~454~~	~~447~~	~~440~~
		~~4~~	~~412~~	~~405~~	~~398~~	~~391~~	~~384~~
~~Lodgepole Pine~~	~~LP~~	~~1~~	~~250~~	~~243~~	~~236~~	~~229~~	~~222~~
~~Ponderosa Pine~~	~~PP~~	~~1~~	~~387~~	~~380~~	~~373~~	~~366~~	~~359~~
		~~2~~	~~212~~	~~205~~	~~198~~	~~191~~	~~184~~
~~Western Redcedar(3)~~	~~RC~~	~~1~~	~~583~~	~~576~~	~~569~~	~~562~~	~~555~~
~~Western Hemlock and Other Conifer(4)~~	~~WH~~	~~1~~	~~370~~	~~363~~	~~356~~	~~349~~	~~342~~

((TABLE 8—Stumpage Value Table
Stumpage Value Area 10
January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
		2	305	298	291	284	277
		3	299	292	285	278	271
		4	299	292	285	278	271
Red Alder	RA	1	376	369	362	355	348
		2	311	304	297	290	283
Black Cottonwood	BC	1	26	19	12	5	1
Other Hardwood	OH	1	164	157	150	143	136
Douglas-Fir Poles	DFL	1	639	632	625	618	611
Western Redcedar Poles	RCL	1	1179	1172	1165	1158	1151
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks(6)	RCS	1	174	167	160	153	146
RC & Other Posts(7)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(8)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(8)	TFX	1	0.50	0.50	0.50	0.50	0.50))

TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10
July 1 through December 31, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir[2]	DF	1	$618	$611	$604	$597	$590
		2	514	507	500	493	486
		3	451	444	437	430	423
		4	451	444	437	430	423
Lodgepole Pine	LP	1	221	214	207	200	193
Ponderosa Pine	PP	1	317	310	303	296	289
		2	211	204	197	190	183
Western Redcedar[3]	RC	1	545	538	531	524	517
Western Hemlock and Other Conifer[4]	WH	1	369	362	355	348	341
		2	306	299	292	285	278
		3	302	295	288	281	274
		4	302	295	288	281	274
Red Alder	RA	1	353	346	339	332	325
		2	254	247	240	233	226
Black Cottonwood	BC	1	20	13	6	1	1
Other Hardwood	OH	1	151	144	137	130	123
Douglas-Fir Poles	DFL	1	782	775	768	761	754
Western Redcedar Poles	RCL	1	1359	1352	1345	1338	1331
Chipwood[5]	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks[6]	RCS	1	174	167	160	153	146
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes Alaska-Cedar.
(4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
(5) Stumpage value per ton.
(6) Stumpage value per cord.
(7) Stumpage value per 8 lineal feet or portion thereof.
(8) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest

unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as 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 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber—**Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber—**Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((~~January~~)) July 1 through ((~~June 30~~)) December 31, 2006:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
((~~January~~)) July 1 through ((~~June 30~~)) December 31, 2006

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- $15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- $35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- $30.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- $145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- $50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
((~~January~~)) July 1 through ((~~June 30~~)) December 31, 2006

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 ((~~3~~)) 8 thousand board feet ((~~to 8 thousand board feet~~)) per acre and less.	- $((~~7.00~~)) 8.00
((~~Class 3~~)	~~Harvest of less than 3 thousand board feet per acre.~~	~~- $10.00~~))
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.	-$20.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-$30.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- $145.00

Note: A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
III. Remote island adjustment:		
	For timber harvested from a remote island	- $50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	$0.00
Class 2:	SVA 7	$0.00

Note: The adjustment will not be allowed on special forest products.

(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.

WSR 06-11-184
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed May 24, 2006, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-05-062.

Title of Rule and Other Identifying Information: WAC 458-20-24003 Tax incentives for high technology businesses.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on July 6, 2006, at 9:30 a.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Allan C. Lau, P.O. Box 47453, Olympia, WA 98504-7453, e-mail AllanL@dor.wa.gov, fax (360) 586-5543, by July 6, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

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

The department is proposing a revision to this rule to incorporate provisions of chapter 2, Laws of 2004 and chapter 514, Laws of 2005. These provisions:

- Extend the expiration date of the credit and the deferral program to January 1, 2015;
- Require completion of an annual survey by a person claiming the credit and by an applicant of the deferral program;
- Revise the method of calculating the credit; and
- Add or revise definitions for eligible investment project, person, initiation of construction, and qualified research and development expenditures.

Reasons Supporting Proposal: To update the rule to reflect legislative changes and to clarify the application of taxes.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.4452, chapter 82.63 RCW, RCW 82.04.190(6).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Allan C. Lau, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6134; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

May 24, 2006
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-12-053, filed 5/30/03, effective 6/30/03)

WAC 458-20-24003 Tax incentives for high technology businesses. (1) **Introduction.** This ((~~rule~~)) section 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 section 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) ((~~Definitions. For purposes of this rule, the following definitions apply unless otherwise required by the context.~~

~~(a) "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.~~

~~(b) "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.~~

~~(c) "Applicant" means a person applying for a tax deferral under chapter 82.63 RCW.~~

~~(d) "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 pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.~~

~~(e) "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.~~

~~(f) "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. 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.~~

~~(g) "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.~~

~~(i) 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.~~

~~(A) Pollutants include waste materials or by-products from manufacturing or other activities.~~

~~(B) Environmental technology includes technology to reduce emissions of harmful pollutants but does not include technology to increase fuel economy. Where technology both reduces emissions and increases fuel economy, it is environmental technology if the primary purpose is to reduce emissions. That reducing emissions is the primary purpose of technology can be demonstrated by showing the technology is developed to meet governmental emission standards.~~

~~(C) Environmental technology does not include technology for preventive health measures for, or medical treatment of, human beings.~~

~~(ii) Environmental cleanup is corrective or remedial action to protect human health or the environment from releases of pollutants into the environment.~~

~~(iii) 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.~~

~~(h) "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.~~

~~(i) "Person" has the meaning given in RCW 82.04.030.~~

~~(j) "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.~~

~~(k) "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, including 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.~~

~~(i) If a building is used partly for pilot scale manufacturing or qualified research and development 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 pilot scale manufacturing or research and development may be deferred.~~

~~(B) Tax on the cost of construction of areas not used at all for pilot scale manufacturing or research and development may not be deferred.~~

~~(C) Tax on the cost of construction of areas used in common for pilot scale 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 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:~~

$$\frac{\text{Square feet devoted to research and development or pilot scale manufacturing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

~~(D) The apportionment method described in (A), (B), and (C) above shall 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.~~

~~(ii) Building construction does not include the construction of landscaping or most other work outside the building itself. However, it does include the 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 research and development in the building.~~

~~(l) "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 certificateholder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificateholder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.~~

~~(i) 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 could not be accomplished without it. A laboratory table would be integral and necessary to qualified research and development. Decorative artwork would not be integral and necessary to qualified research and development.~~

~~(ii) Qualified machinery and equipment must be used exclusively for pilot scale manufacturing or qualified research and development to qualify for the deferral. 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 e-mail.~~

~~(iii) Unlike buildings, if machinery and equipment is used for both qualifying and nonqualifying purposes, the costs may not be apportioned. Sales or use tax may not be deferred on the purchase or use of machinery and equipment used for both qualifying and nonqualifying purposes.~~

~~(m) "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.~~

~~(n) "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 development 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 within the meaning of this rule is any property with a useful life that extends beyond the accounting year in which it is acquired, regardless of whether the property is depreciated or currently expensed. Expenditures related to depreciable property are not qualified research and development expenditures within the meaning of this rule even though they are currently expensed.~~

~~(iv) Computer expenses do not include the purchase, lease, rental, or repair of equipment. 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.~~

~~(o) "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 licensing by the Federal Food and Drug Administration under chapter 21 CFR, 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. An activity is technical if it involves the application of scientific, engineering, or computer science methods or principles. The term "nonroutine" refers to the specific activities undertaken to achieve a desired result. A customized or unique result is not by itself conclusive proof that it was the product of nonroutine activities. Indicia of nonroutine activities include, but are not limited to:~~

~~(A) The activity involves overcoming one or more technological barriers under circumstances where the outcome is not certain;~~

~~(B) The activity has not been done before; or~~

~~(C) The activity involves a process of experimentation.~~

~~(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.~~

~~(vi) 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.~~

~~(vii) 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.~~

~~(p) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.~~

~~(q) "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 for information on the multiple activities tax credit.~~

~~(3) Sales and use tax deferral. Chapter 82.63 RCW provides for the deferral of sales and use taxes on eligible investment projects. These are projects that involve research and development or pilot scale manufacturing in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.~~

~~(a) Application process.~~

~~(i) 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. The date of application is the earlier of the postmark date or the date of receipt by the department.~~

~~(A) Construction is initiated when workers start on-site building tasks. The initiation of construction does not include land clearing or site preparation prior to excavation of the building site. Also, the initiation of construction does not include design or planning activities.~~

~~(B) Equipment or machinery is acquired at the time the applicant or its agent obtains dominion and control of the equipment or machinery.~~

~~(ii) Application forms may be obtained at department of revenue district offices, by downloading from the department's web site (dor.wa.gov), by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:~~

~~Department of Revenue~~
~~Special Programs Division~~
~~Post Office Box 47477~~
~~Olympia, WA 98504-7477~~
~~FAX 360-586-2163~~

~~(iii) Applicants must mail or fax applications to the special programs division at the address or fax number given above.~~

~~(iv) The application form shall 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.~~

~~(v) Applicants must agree to supply the department with nonproprietary information necessary to measure the results of the tax deferral program.~~

~~(vi) Applications and other information received by the department in connection with the deferral program are not confidential and are subject to public disclosure.~~

~~(vii) The department must rule on an application within sixty days. If an application is denied, the department must explain in writing the basis for the denial. An applicant may appeal a denial within thirty days under WAC 458-20-100.~~

~~(b) Deferral certificate.~~

~~(i) If an application is approved, the department must issue the applicant a sales and use tax deferral certificate.~~

~~(ii) 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.~~

~~(iii) 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.~~

~~(iv) In cases of leases of qualifying machinery and equipment, the deferral certificate allows for deferral of tax on payments made during the initial term of the lease, and does not allow for deferral 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.~~

~~(v) The certificate may not be used to defer tax on repairs to, or replacement parts for, qualified machinery and equipment.~~

~~(vi) The department may not issue a certificate for an investment project that has already received a deferral under chapters 82.60, 82.61, or 82.63 RCW, except that 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. However, a certificate may be amended or a certificate issued for a new investment project at an existing facility.~~

~~(c) Amendment of application or certificate.~~

~~(i) Applicants and recipients may make written requests to the special programs division to amend an application or certificate.~~

~~(ii) Grounds for requesting amendment include, but are not limited to:~~

~~(A) The project will exceed the costs originally stated;~~

~~(B) The project will take more time to complete than originally stated;~~

~~(C) The original application is no longer accurate because of changes in the project;~~

~~(D) Transfer of ownership of the project.~~

~~(iii) The department must rule on the request within sixty 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 days under WAC 458-20-100.~~

~~(d) Certification.~~

~~(i) When the building, machinery, or equipment is ready for use, the recipient must notify the special programs division in writing that the eligible investment project is operationally complete. The department shall, 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.~~

~~(ii) 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.~~

~~(iii) 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 appealed under WAC 458-20-100 within thirty days.~~

~~(e) Repayment of deferred taxes.~~

~~(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 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%~~
~~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.~~

~~(iii) However, if the investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the first eight years, 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.~~

~~(iv) 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.~~

~~(f) Transfer of 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 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.~~

~~(g) No extinguishment of debt. The debt for deferred taxes will not be extinguished by the insolvency or other failure of the recipient.~~

~~(h) Expiration of sales and use tax deferral program. The authority of the department to issue deferral certificates expires July 1, 2004.~~

~~(4) Examples relating to the sales and use tax deferral program.~~

~~(a) 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 value of the deferral through reduced rent payments. A applies for the deferral before construction begins. 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. C and D each apply for a deferral on the costs of the tenant improvements before work on the tenant improvements has begun. Both applications may 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.~~

~~(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. 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.~~

~~(b) Apportionment of building costs. 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 one hundred thousand square feet. Sixty thousand square feet are used only for research and development, twenty thousand square feet are used only for marketing, and the remaining twenty thousand square feet are used in common by research and development employees and marketing employees. Tax on the cost of constructing the sixty thousand square feet used only for research and development may be deferred. Tax on the cost of constructing the twenty thousand square feet used only for marketing may not be deferred. Tax on seventy-five percent of the cost of constructing the common areas may be deferred. (Sixty thousand square feet devoted solely to research and development divided by eighty thousand square feet devoted solely to research and development and marketing results in a ratio expressed as seventy-five percent.)~~

~~(5) 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) Eligibility for the credit. Persons are eligible for the credit if their 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.~~

~~(b) Calculating the credit.~~

~~(i) 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.~~

~~(ii) On and after 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 0.00484 in the case of a nonprofit corporation or association, and~~

~~multiplied by 0.015 in the case of all other persons.~~

~~(iii) Persons calculating the credit on the basis of amounts received for conducting qualified research and development must actually perform the research and development themselves. Amounts received for conducting qualified research and development that are paid to other persons who actually perform some or all of the qualified research and development contracted for may not be included in the calculation.~~

~~(iv) The credit for any calendar year may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due for the calendar year.~~

~~(v) Credits may not be carried forward or carried back to other calendar years.~~

~~(c) Claiming the credit.~~

~~(i) The first time persons claim the credit they must complete an Initial Survey, Research and Development Credit form (26 0005) and mail it to the address indicated on the form. The purpose of the initial survey is to gather information necessary to measure the results of the credit program. By law, persons claiming the credit must agree to provide this information.~~

~~(ii) Credits are claimed on the person's combined excise tax return. Every time a credit is claimed, the person making the claim must complete and attach a Declaration, Research and Development Credit form (26 0003) to the return.~~

~~(iii) The Initial Survey and Declaration forms used in the credit program may be obtained at department of revenue district offices, by downloading from the department's web site (dor.wa.gov), or by telephoning the telephone information center (800-647-7706).~~

~~(d) Assignment of the credit.~~

~~(i) 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.~~

~~(ii) The assignment is accomplished by use of the Declaration, Research and Development Credit form, referred to in (c)(ii) of this subsection.~~

~~(iii) Both the person assigning the credit and the person receiving the credit must be eligible under (a) of this subsection for the assignment to be valid.~~

~~(iv) The total of the credit claimed and the credit assigned by a person assigning credit may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignor in any calendar year.~~

~~(v) The total of the credit claimed, including credit received by assignment, may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignee in any calendar year.~~

~~(e) Expiration. The business and occupation tax credit program for high technology businesses expires December 31, 2004.~~

~~(6) Examples relating to the credit program.~~

~~(a) A business, not a nonprofit corporation or association, which engages in qualified research and development has a taxable amount of ten million dollars in 2002. It pays eighty thousand dollars in 2002 in wages and benefits to employees directly engaged in qualified research and development. Also during 2002, it pays twenty thousand dollars to a person that is not a public educational or research institute to conduct qualified research and development. It is eligible to claim the credit for 2002. Its research and development spending, ninety-six thousand dollars (eighty thousand dollars in wages plus eighty percent of twenty thousand dollars for contracted research and development) is more than ninety-two thousand dollars (0.92 percent of its taxable amount, ten million dollars).~~

~~The amount of credit is one thousand two hundred dollars. This is determined by multiplying its qualified research and development expenditures, eighty thousand dollars, by 0.015. The contracted amount is not included in the credit computation.~~

~~(b) 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 research and development in performing this contract. It applied existing technologies in a routine manner, considering the nature of its business, and the outcome was certain.~~

~~(c) 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 is it 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.~~

~~(d) Company C is engaged in research and development. It enters into a contract with Company D requiring Company D to provide employees to work under the direction of Company C. Company D's only obligation is to provide employees. It is not obligated to perform any other task. Company D's provision of employees is not research and development and it is not entitled to the credit on account of the contract. Company D is neither discovering technological information nor is it translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.~~)) **Organization of the section.** The information provided in this section 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 survey 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 section?** "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 section?** "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 licensing by the Federal Food and Drug Administration under chapter 21 CFR, 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 section?** "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.

(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 pharmaceutical 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 dam-

age 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 renovation of qualified buildings and acquisition of qualified machinery and equipment.

(a) **What is an "eligible investment project" for purposes of this section?** "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 section?** "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 section?** "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) **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 section, apportionment is necessary.

(e) **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 (e)(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.

(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%.)

(f) **What is "qualified machinery and equipment" for purposes of this section?** "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 section, 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 e-mail.

(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 reve-

nue 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.

(a) **What is "initiation of construction" for purposes of this section?**

(i) **On or after June 10, 2004.**

(A) 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, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7); or

(III) 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).

(B) 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.

(C) If the investment project is a phased project, initiation of construction must apply separately to each building. For purposes of this section, 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.

(ii) **Prior to June 10, 2004.** Construction is initiated when workers start on-site building tasks. The initiation of construction does not include land clearing or site preparation prior to excavation of the building site. Also, the initiation of construction does not include design or planning activities.

(b) **What is "acquisition of machinery and equipment" for purposes of this section?** "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 surveys. 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 surveys. 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 surveys. 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 web site (dor.wa.gov), by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

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. Applications received by the department in connection with the deferral program are not confidential and are subject to public disclosure.

For purposes of this section, "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 days. If an application is denied, the department must explain in writing the basis for the denial. An applicant may appeal a denial within thirty days under WAC 458-20-100 (Appeals).

(6) **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 section, "recipient" means a person receiving a tax deferral under chapter 82.63 RCW.

(7) **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.

(8) **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.

(9) **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 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 days under WAC 458-20-100 (Appeals).

(10) **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, 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.

(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 appealed under WAC 458-20-100 (Appeals) within thirty days.

(11) **Is a recipient of a tax deferral required to submit annual surveys?** Each recipient of a tax deferral granted under chapter 82.63 RCW must complete an annual survey. 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 survey and the applicant is not required to complete the annual survey. See WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(12) **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%
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 section, the date of deferral is the date tax-deferred items are purchased.

(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.

(13) **When will the tax deferral program expire?** The authority of the department to issue deferral certificates expires January 1, 2015.

(14) **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.

(15) **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

(16) **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

(17) **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. Effective June 10, 2004, "person" also includes state universities as defined in RCW 28B.10.016.

(b) **What is "research and development spending" for purposes of this section?** "Research and development spending" means qualified research and development expenditures plus eighty 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 section?** "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 section?** "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 development expenditures under this section. 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 section?** 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 section?** See subsection (3)(b) of this section for more information.

(g) **What is "research and development" for purposes of this section?** See subsection (3)(c) of this section 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 section for more information.

(18) **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 section, "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 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 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.

(19) **Is the person claiming the business and occupation tax credit required to submit annual surveys?** Each person claiming the credit granted under RCW 82.04.4452 must complete an annual survey. See WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(20) **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 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 or the amount of business and occupation tax otherwise due from the assignee in any calendar year.

(21) **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.

(22) **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.

(23) **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 survey 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.

WSR 06-11-185
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed May 24, 2006, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-05-061.

Title of Rule and Other Identifying Information: WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed after March 31, 2004 and 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed prior to April 1, 2004.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on July 6, 2006, at 1:30 p.m.

Date of Intended Adoption: July 13, 2006.

Submit Written Comments to: Allan C. Lau, P.O. Box 47453, Olympia, WA 98504-7453, e-mail AllanL@dor.wa.gov, fax (360) 586-5543, by July 6, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 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 under 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.

These rules explain the sales and use tax deferral program's eligible area criteria, hiring requirements, reporting and monitoring procedures, and tax repayment requirements. They also explain the application procedure and review process, how the deferral certificate is to be used, and the recordkeeping requirements of the deferral program.

The department is proposing a revision to these rules to incorporate provisions of chapter 25, Laws of 2004 and chapter 142, Laws of 2006. These provisions:

- Extend the expiration date of the deferral program to July 1, 2010;
- Require a recipient of the deferral to complete an annual survey;
- Revised the definitions of eligible area and eligible investment project; and
- Expanded the definition of manufacturing for purposes of the deferral program to include the conditioning of vegetable seed.

Rule 24001 is being revised to address the deferral program as it applies to persons who file applications after

March 31, 2004. Information addressing the deferral program for the period of August 1, 1999, through March 31, 2004, is being moved from Rule 24001 to Rule 24001A.

Reasons Supporting Proposal: To update the rule to reflect legislative changes and to clarify the application of taxes.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: Chapter 82.60 RCW.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Allan C. Lau, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6134; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

May 24, 2006
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-01-127, filed 12/18/03, effective 1/18/04)

WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in ((~~distressed areas~~)) rural counties—Applications filed after ((~~July 31, 1999~~)) March 31, 2004. (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 under 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.

(a) This deferral program applies to taxes imposed on 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~~)) section 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.

(b) This program was first enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, ((~~and~~)) 1999, and 2004, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This ((~~rule~~)) section sets forth the requirements for applications made after ((~~July 31, 1999~~)) March 31, 2004. For applications made prior to ((~~August 1, 1999~~)) April 1, 2004, see WAC 458-20-24001A.

(c) The employment security department and the department of community, trade, and economic development administer programs for ((~~distressed areas~~)) rural counties and job training and should be contacted directly for information concerning these programs.

(2) ((~~Definitions. The following definitions apply to applications made after July 31, 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 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 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 on-site construction work. Neither planning~~

~~nor land clearing prior to excavation of the building site constitutes the commencement of on-site 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, and the activities performed by research and development laboratories and commercial testing laboratories.~~

~~(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 consecutive months. Full-time means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty 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.~~

~~(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.~~

~~(3) 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.~~

~~(4) 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 persons per square mile. Monitoring and reporting procedures are explained in subsection (12) 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 (5) 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 web site 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.~~

~~(5) 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.~~

~~(6) 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.~~

~~(7) 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:~~

~~State of Washington~~
~~Department of Revenue~~
~~Special Programs~~
~~P.O. Box 47477~~
~~Olympia, WA 98507-7477~~

~~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 construction, 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 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 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.~~

~~(8) Program termination. No applications for deferral of taxes will be accepted after June 30, 2004.~~

~~(9) Eligible area criteria. The office of financial management will determine annually the counties with fewer than one hundred 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 persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.~~

~~(10) 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 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 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.~~

~~(11) 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.~~

~~(12) Reporting and monitoring procedure. 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.~~

~~(13) 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%~~

~~Repayment Year~~	~~Percentage of Deferred Tax Waived~~
~~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, small claims and settlements. 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 section 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 for three years 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.~~

~~(14) 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 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.~~

~~(15) 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.)~~)) **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 section?** "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 section?** "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, in addition, includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories. Effective July 1, 2006, manufacturing also includes the conditioning of vegetable seeds.

For purposes of this section, "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 section, "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 section?** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. For purposes of this section, "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.

(3) **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 section?** "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 section?** "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 section?** "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 section, 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 section?** "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.

For purposes of this section, "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 section?** "Eligible area" means:

(i) **Rural county.** A rural county is a county with fewer than one hundred persons per square mile or a county smaller than two hundred twenty-five 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 community, trade, and economic development, 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 persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements. Refer to subsection (4) of this section 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 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. Refer to subsection (4) of this section 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 infor-

mation 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 web site 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. Refer to subsection (7) of this section 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 section?** "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 consecutive months. "Full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty 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.

(4) **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 section?** "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(b) **What is "acquisition of machinery and equipment" for purposes of this section?** "Acquisition of machinery and equipment" means the machinery 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 web site (dor.wa.gov), by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

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. 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 section, "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 (6) of this section 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 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 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.

(5) **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 section, "recipient" means a person receiving a tax deferral under this program.

(6) **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 section. 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.

For purposes of this section, "certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(7) **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 section, "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 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) **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.

(8) **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.

(9) **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 458-20-100 (Appeals). 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 section 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 (3)(i) of this section, 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.

(10) **When will the tax deferral program expire?** No applications for deferral of taxes will be accepted after June 30, 2010.

(11) **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.

(12) **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.

AMENDATORY SECTION (Amending WSR 04-01-127, filed 12/18/03, effective 1/18/04)

WAC 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in ((~~distressed areas~~)) rural counties—Applications filed prior to ((~~August 1, 1999~~)) April 1, 2004. 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.

This program was enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, ((~~and~~)) 1999, and 2004, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This rule is written in ((~~three~~)) four parts and covers applications made prior to ((~~July 31, 1999~~)) April 1, 2004. 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 ((~~July 31, 1999~~)) March 31, 2004, 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 August 1, 1999, to March 31, 2004

(1) **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 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 on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site 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, and the activities performed by research and development laboratories and commercial testing laboratories.

(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 consecutive months. Full-time means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty 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.

(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.

(2) **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.

(3) **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 persons per square mile. Monitoring and reporting procedures are explained in subsection (10) of this section. 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 (4) of this section 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 web site 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.

(4) **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.

(5) **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.

(6) **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:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98504-7477

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 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 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(7) **Eligible area criteria.** The office of financial management will determine annually the counties with fewer than one hundred 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 persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

(8) **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.

(9) **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.

(10) **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.

(11) **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, appeals, small claims and settlements. 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 section 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.

(12) **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 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.

(13) **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 ((I)) II
Applications ((after)) from July 1, 1995, to July 31, 1999

(((1))) (14) **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 percent. In making this calculation, the department will compare the county's average unemployment rate in the prior three years to one hundred twenty 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 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 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 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 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 on-site 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, and the activities performed by research and development laboratories and commercial testing laboratories.

(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 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.

(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 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.

((~~(2)~~)) (15) **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.

((~~(3)~~)) (16) **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 ((~~(10)~~)) (23) of this ((~~rule~~)) section. 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 ((~~(4)~~)) (17) of this ((~~rule~~)) section 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, 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 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 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 web site 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 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 ((~~(11)~~)) (24) of this ((~~rule~~)) section.

(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 consecutive days.

((~~(4)~~)) (17) **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.

((~~(5)~~)) (18) **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.

((~~(6)~~)) (19) **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:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA ((~~98507~~)) 98504-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty 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 days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

((~~(7)~~)) (20) **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.

((~~(8)~~)) (21) **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 this Part ((~~I~~)) II. 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.

((~~(9)~~)) (22) **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.

((~~(10)~~)) (23) **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.

((~~(11)~~)) (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.

(24) **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, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action. See subsection ((~~(11)~~)) (24)(d) of this ((~~rule~~)) section 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 percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half 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 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.

((~~(12)~~)) (25) **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.

((~~(13)~~)) (26) **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 ((~~II~~)) III
Applications from July 1, 1994, to June 30, 1995

((~~(14)~~)) (27) **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 percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty 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 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 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 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 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 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 percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty 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 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, and the activities performed by research and development laboratories and commercial testing laboratories.

(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 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 recipient. "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.

(s) "Recipient" means a person receiving a tax deferral under this program.

((~~(15)~~)) (28) **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.

((~~(16)~~)) (29) **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 of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, 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 ((~~(23)~~)) (36) of this ((~~rule~~)) section. 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 ((~~(17)~~)) (30) of this ((~~rule~~)) section 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 of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, 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 ((~~(23)~~)) (36) of this ((~~rule~~)) section. 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 ((~~(17)~~)) (30) of this ((~~rule~~)) section 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 web site at http://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 consecutive days.

((~~17~~)) (30) **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.

((~~18~~)) (31) **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.

((~~19~~)) (32) **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:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA ((~~98507~~)) 98504-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty 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 days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

((~~20~~)) (33) **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.

((~~21~~)) (34) **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 this Part ((~~II~~)) III. 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.

((~~22~~)) (35) **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 days from the date of the notice of disallowance pursuant to the provisions of WAC 458-20-100, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

((~~(23)~~)) (36) **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.

((~~(24)~~)) (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.

(37) **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%
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, appeals, small claims and settlements. 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 percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half 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.

((~~(25)~~)) (38) **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 owner-

ship 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.

((~~(26)~~)) (39) **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~~)) IV
Applications from July 1, 1992, to June 30, 1994

((~~(27)~~)) (40) **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 percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty 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 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 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 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 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 percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty 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, and the activities performed by research and development laboratories and commercial testing laboratories.

(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 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.

((~~(28)~~)) (41) **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.

((~~(29)~~)) (42) **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, 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 ((~~(37)~~)) (50) of this ((~~rule~~)) section. 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 ((~~(30)~~)) (43) of this ((~~rule~~)) section 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 consecutive days.

((~~(30)~~)) (43) **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:

Eligible square feet of building(s) Total square feet of building(s)	=	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.

((~~31~~)) (44) **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.

((~~32~~)) (45) **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:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA ((~~98507~~)) 98504-7477

(b) The department will verify the information contained in the application and either approve or disapprove the application within sixty 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, appeals, small claims and settlements, within thirty 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.

((~~33~~)) (46) **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.

((~~34~~)) (47) **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 this Part ((~~III~~)) IV. 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.

((~~35~~)) (48) **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 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 days from the date of the notice of disallowance.

((~~36~~)) (49) **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.

((~~(37)~~)) (50) **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 31 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 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, appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

((~~(38)~~)) (51) **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.

((~~(39)~~)) (52) **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.)