WSR 10-06-003
PERMANENT RULES
CLARK COLLEGE
[Filed February 17, 2010, 2:12 p.m., effective March 20, 2010]

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

Purpose: To clarify procedures, align the code of student conduct with other college policies and procedures, and to make substantive changes to the code that will focus more on the educational outcomes of the disciplinary process, create a more student-friendly, easier-to-understand version of the code, and respond to new and different issues that have arisen since the last revision in 1997.

Statutory Authority for Adoption: RCW 28B.50.140(3).

Adopted under notice filed as WSR 10-01-126 on December 18, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 19, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 16, 2010.

Bob Williamson
Vice-President of
Administrative Services

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132N-120-010	Code of student conduct.
WAC 132N-120-020	Authority.
WAC 132N-120-030	Definitions.
WAC 132N-120-040	Jurisdiction.
WAC 132N-120-050	Student rights.
WAC 132N-120-060	Student responsibilities.
WAC 132N-120-065	Denial of access to Clark College.
WAC 132N-120-070	Disciplinary action.
WAC 132N-120-080	Initial disciplinary proceedings.
WAC 132N-120-090	Appeals.
WAC 132N-120-100	Committee on student conduct.
WAC 132N-120-110	Adjudicative proceedings before the committee on student conduct.
WAC 132N-120-120	Recordkeeping.
WAC 132N-120-130	Evidence admissible in hearings.
WAC 132N-120-140	Initial order—Petition for administrative review—Final order.
WAC 132N-120-150	Summary action.
WAC 132N-120-160	Suspension for failure to appear.
WAC 132N-120-170	Appeals from summary suspension hearing.
WAC 132N-120-180	Final decision.

Chapter 132N-121 WAC

CODE OF STUDENT CONDUCT

NEW SECTION

WAC 132N-121-010 Code of student conduct. (1) Clark College provides its community and students with education and services of the highest quality. We do this in a manner which exhibits concern and sensitivity to students, faculty, staff and others who utilize our services and facilities. It is essential that members of Clark College exhibit appropriate and conscientious behavior in dealing with others.

(2) Clark College expects all students to conduct themselves in a manner consistent with its high standards of scholarship and conduct. Student conduct, which distracts from or interferes with accomplishment of these purposes, is not acceptable. Students are expected to comply with these standards of conduct for students both on and off campus and acknowledge the college's authority to take disciplinary action.

(3) Admission to Clark College carries with it the presumption that students will conduct themselves as responsible members of the academic community. This includes an expectation that students will obey the law, comply with policies, procedures and rules of the college and its departments, maintain a high standard of integrity and honesty and respect the rights, privileges and property of other members of Clark College.

(4) It is assumed that students are and wish to be treated as adults. As such, students are responsible for their conduct. These standards of conduct for students promote Clark College's educational purposes and provide students a full understanding of their rights and responsibilities. Sanctions for violations of the standards of conduct for students will be administered under this chapter. When violations of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to proper authorities and in the case of minors, this conduct may be referred to parents or legal guardians.

NEW SECTION

WAC 132N-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student affairs or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132N-121-030 Definitions. As used in this chapter, the following words and phrases shall be defined as follows:

(1) "ASCC" means the associated students of Clark College as defined in the constitution of that body.

(2) "Assembly" means 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.

(3) "Board" means the board of trustees of Community College District No. 14, state of Washington.

(4) "College" means Clark College and any other community college centers or facilities established within Washington state Community College District No. 14.

(5) "College community" means trustees, students, staff, faculty, and visitors on college-owned or controlled facilities.

(6) "College facilities" and "college facility" mean and include any and all real and personal property owned, rented, leased or operated by the board of trustees of Washington state Community College District No. 14, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have educational agreement with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college.

(9) "Committee on student conduct" is the body authorized by the vice-president of student affairs to determine whether a student has violated the code of student conduct and the type of sanction(s) imposed when a violation has been committed.

(10) "Complainant" means any person who submits a charge alleging that a student violated the code of student conduct.

(11) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(12) "Day" means calendar day, and does not include Saturdays, Sundays, or legal holidays. Timelines set forth in this chapter may be extended in unusual circumstances as determined by the vice-president for student affairs. Also see WAC 10-08-080 Computation of time, adopted pursuant to WAC 132N-108-010.

(13) "Faculty member" and "instructor" mean any employee of Community College District No. 14 who is employed on a full-time or part-time basis as a teacher, instructor, counselor or librarian.

(14) "President" means the president of Clark College and Community College District No. 14, state of Washington, and for the purposes of these rules includes "acting president" or the delegated authority in the absence of the president.

(15) "RCW" means Revised Code of Washington which can be accessed at http://apps.leg.wa.gov/rcw/.

(16) "Student" means and includes any person who is registered for classes or is formally in the process of applying for admission to the college. Persons who are not registered for a particular term but who have a continuing relationship with the college, or persons who withdraw after allegedly violating the conduct code, are considered "students."

(17) "Student conduct officer (SCO)" means the college administrator designated by the vice-president of student affairs who is responsible for investigating alleged violations of this code and administrating the rights and responsibilities code. The term also includes a college official designated by the student conduct officer to act on his/her behalf in matters related to this chapter.

(18) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

(19) "Trespass" means the definition of trespass as contained within chapter 9A.52 RCW, as now law or hereafter amended.

NEW SECTION

WAC 132N-121-040 Jurisdiction. (1) The standards of conduct for students adopted herein apply to conduct that occurs on college premises, at college-sponsored activities, and to off-campus conduct as outlined below that adversely affects the well-being of the Clark College community and/or the pursuit of its objectives. Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel activities funded by ASCC, athletic events, training internships, cooperative and distance education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The vice-president of student affairs has sole discretion, on a case-by-case basis, to determine whether the code of student conduct will be applied to conduct occurring off campus.

(2) Faculty members, college employees, students, and members of the public who breach or aid or abet another in the breach of any provision of this chapter shall be subject to:

(a) Possible prosecution under the state criminal law;

(b) Any other civil or criminal remedies available to the public; or

(c) Appropriate disciplinary action pursuant to the state of Washington personnel resource board rules, collective bargaining agreements, or the district's policies and regulations.

(3) This chapter is not exclusive, and where conduct becomes known which may also violate any other rule or provision of law, nothing herein shall limit the right or duty of any person to report elsewhere or seek another remedy for that conduct.

NEW SECTION

WAC 132N-121-045 Students studying abroad. Students who participate in any college-sponsored or sanctioned international study program shall observe the following:

(1) The laws of the host country;

(2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(3) Any other agreements related to the student's study program in another country; and

(4) Clark College's standards of conduct for students.

NEW SECTION

WAC 132N-121-050 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132N-121-060 Grounds for discipline. Discipline may be imposed for the commission or attempted commission (including aiding or abetting in the commission or attempted commission) of the following types of misconduct, as well as such other violations as may be specified in college regulations:

(1) Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, whether occurring on or off college property; or

(b) Any other authorized noncollege activity when the conduct occurs on college premises.

(2) Assault, physical abuse, verbal abuse, threats, intimidation, harassment, coercion, or other conduct which harms, threatens, or endangers the health or safety of any person.

(3) Attempted or actual damage to, theft of, or misuse of real or personal property of:

(a) The college or state;

(b) Any student or college officer, employee, or organization; or

(c) Any other person or organization lawfully present on college property; or possession of stolen property.

(4) Unauthorized possession or unauthorized use of college equipment and supplies including, but not limited to, converting college equipment or supplies for personal gain or use without proper authority.

(5) Failure to comply with the directions of a college officer or employee who is acting in the legitimate performance of his/her duties, and/or failure to properly identify oneself to these persons when requested to do so.

(6) Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.

(7) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons which can be used to inflict bodily harm or to damage real or personal property is prohibited on the college campus, at any other facilities leased or operated by the college, or at any activity under the administration or sponsorship of the college.

Exceptions to this policy are permitted when the weapon is used in conjunction with an approved college instructional program, is carried by duly constituted law enforcement officer, or is otherwise permitted by law.

(8) 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 RCW 28B.10.900.

(9) Initiation violation. Conduct associated with initiation into a student club or organization, or any pastime or amusement engaged in with respect to such a group or organization, not amounting to a violation of RCW 28B.10.900. Conduct covered by this section may include embarrassment, ridicule, sleep deprivation, unprotected speech amounting to verbal abuse, or personal humiliation.

(10) Use, possession, delivering, selling or being under the influence of alcoholic beverages, except at sanctioned events approved by the college president or designee and in compliance with state law; or public intoxication.

(11) Use, possession, delivering, selling or being under the influence of legend drugs, including anabolic steroids, narcotic or any other controlled substance, except upon valid prescription by a licensed health care professional or practitioner.

(12) Obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity.

(13) Conduct which is disorderly, lewd, or indecent, disturbing the peace, or assisting or encouraging another person to disturb the peace. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his or her prior knowledge or without his or her effective consent, when such a recording is likely to cause injury or distress. This includes surreptitiously capturing images of another person in a gym, locker room, or restroom.

(14) Discrimination on the basis of race, color, religion, creed, national origin, sexual orientation, mental, physical, sensory disability, age or sex, gender identity, gender expression, political affiliation, disabled veteran status, marital status, honorably discharged veteran or Vietnam-era veteran status.

(15) Sexual harassment. This includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature where such behavior offends the recipient or a third party, causes discomfort or humiliation, unreasonably interferes with a person's work or educational performance, or creates an intimidating, offensive, or hostile work or learning environment.

(16) Stalking. Behavior or conduct either in person or through electronic communication in which a student willfully and repeatedly engages in a course of conduct directed at another person with the intent and/or reasonable effect of creating fear or emotional distress and where the college determines that such behavior or conduct serves no legitimate purpose.

(17) Smoking or other tobacco usage is not permitted within the perimeter of Clark College property. This includes all college sidewalks, parking lots, landscaped areas, recreational areas, and buildings on Clark College property. See Clark College Administrative Procedures 510.030 for complete smoking/tobacco products policy.

(18) Theft or abuse of computer facilities or information technology resources; use of computing facilities and resources to send obscene, abusive, harassing, or threatening messages; or violation of Student Computing Resources Policy. It is the obligation of students to be aware of their responsibilities as outlined in the Student Computing Resources Policy (http://www.clark.edu/student_services/computing_resources/policy.php).

(19) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(20) Abuse or misuse of any of the procedures relating to the code of student conduct, including:

(a) Failure to obey the notice from the committee on student conduct or college official to appear for a meeting or hearing as part of the student conduct system.

(b) Willful destruction, falsification, distortion, or misrepresentation of information before the committee on student conduct or the student conduct officer.

(c) Disruption or interference with the orderly conduct of a committee on student conduct proceeding.

(d) Filing fraudulent charges or initiating a student conduct proceeding in bad faith.

(e) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(f) Attempting to influence the impartiality of a member of the committee on student conduct prior to or during the course of a committee on student conduct proceeding.

(g) Harassment (verbal or physical) or intimidation of a member of the committee on student conduct prior to, during, or after a student conduct code proceeding.

(h) Failure to comply with any term or condition of any disciplinary sanction(s) imposed under the standards of conduct for students.

(i) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

(21) Trespassing. Knowingly entering or remaining unlawfully in or on college premises or any portion thereof. Any person who has been given notice by a college official excluding him or her from all or a portion of college premises is not licensed, invited, or otherwise privileged to enter or remain on the identified portion of college premises, unless given prior explicit written permission by a college official.

(22) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(23) Violation of any federal, state, or local law, rule, or regulation.

(24) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(25) Tampering with an election conducted by or for students.

NEW SECTION

WAC 132N-121-062 Academic dishonesty. Acts of academic dishonesty include:

(1) Cheating, which includes using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course; an act of deceit by which a student attempts to misrepresent academic skills or knowledge; unauthorized or attempted unauthorized copying or collaboration; or acquiring, without permission, tests or other

academic material belonging to a member of the college faculty or staff.

(2) Plagiarism, which includes using another person's ideas, words, or other work in an instructional course without properly crediting that person. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(3) Submitting information that is known to be false (while concealing that falsity).

(4) Forgery, alteration or misuse of any instrument of identification or any document or record used by the college.

(5) Fabrication, which is the intentional misrepresentation, invention or counterfeiting of information in the course of an academic activity. Fabrication includes:

(a) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(b) Counterfeiting a record of internship or practicum experiences;

(c) Submitting a false excuse for absence or tardiness;

(d) Unauthorized multiple submission of the same work; sabotage of others' work.

(6) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.

(7) Collusion. Facilitating dishonesty, failing to report known incidents of academic dishonesty; assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or increase the score on a test or assignment; taking a test or doing an assignment for someone else; participating in obtaining or distributing any part of a test or any information about a test; or allowing someone to do these things for one's own benefit.

(8) Knowingly furnishing false information to any college official, faculty member, or office including, but not limited to, submission of fraudulent transcripts from other institutions.

(9) Acts of academic dishonesty will be reported by the faculty member to the vice-president of student affairs' designated student conduct officer.

NEW SECTION

WAC 132N-121-065 Trespass. The vice-president of student affairs or designee shall have the authority and power to:

(1) Prohibit the entry, or withdraw the license or privilege of any person or group of persons to enter onto or remain in any college property or facility; or

(2) Give notice against trespass by any manner provided by law, to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from, entering onto or remaining upon all or any portion of college property or a college facility; or

(3) Order any person, persons, or group of persons to leave or vacate all or any portion of college property or a college facility.

Such power and authority may be exercised to halt any event which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any individual remaining on or reentering college property after receiving notice that his or her license or privilege to be on that property has been revoked shall be subject to disciplinary action and/or charges of criminal trespass.

NEW SECTION

WAC 132N-121-070 Disciplinary sanction. The following sanctions may be imposed by the student conduct officer on any student found to have violated the code of student conduct. In the case of minors, misconduct may be referred to parents or legal guardians pursuant to Family Educational Rights and Privacy Act (FERPA) guidelines. More than one sanction may be imposed for any one violation.

(1) Warning. Notice to a student, either verbally or in writing, by the student conduct officer that the student has failed to satisfy the college's expectations regarding conduct. Such warnings will include a statement that continuation or repetition of the specific conduct involved or other misconduct may be cause for more serious disciplinary action. There shall be no appeal from a warning.

(2) Reprimand. Formal action censuring a student for violating the student code of conduct. Reprimands shall be made in writing to the student by the student conduct officer. A reprimand indicates to the student that continuing or repeating the specific conduct involved or other misconduct will result in more serious disciplinary action. There shall be no appeal from a reprimand.

(3) Disciplinary probation. Formal action placing conditions upon the student's continued attendance. Notice shall be in writing and shall specify the period of probation and the conditions, such as limiting the student's participation in extracurricular activities. Probation may be for a specific term or may extend to graduation or other termination of the student's enrollment in the college. A student on probation is not eligible to run for or hold an office in any student organization. Repetition of the conduct which resulted in probation or failure to complete conditions of probation during the probationary period, may be cause for suspension or other disciplinary action.

(4) Loss of privileges. Denial of specified privileges for a designated period of time. Violation of any conditions in the written notice of loss of privileges may be cause for further disciplinary action.

(5) Suspension. Temporary dismissal from the college and termination of student status. Notice shall be given in writing and specify the duration of the dismissal and any special conditions that must be met before readmission. Refund of tuition or fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.

(6) Expulsion. Permanent termination of a student's status. Notice must be given in writing. The student may also be barred from college premises. There shall be no refund of tuition or fees for the quarter in which the action is taken but fees paid in advance for a subsequent quarter will be refunded.

(7) Restitution. Requirement of a student to compensate for damage or loss to college or other property, or perform a

public service activity. Failure to make restitution within the time limits established by the student conduct officer will result in suspension for an indefinite period of time. A student may be reinstated upon payment or completion of the required service activity.

(8) Education. The college may require the student to complete an educational requirement directly related to the violation committed, at the student's expense.

(9) Revocation of admission or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(10) Withholding degree. The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this chapter, including the completion of all sanctions imposed.

(11) No trespass order. A student may be restricted from college property based on his/her misconduct.

(12) Assessment. The student may be required to have an assessment at the student's expense, such as alcohol/drug or anger management, by a certified professional, and complete the recommended treatment. The student will sign all necessary releases to allow the college access to the assessment. Recommendations as part of an assessment may be included as required conditions of a disciplinary probation, suspension, or reinstatement after a period of suspension.

(13) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval from a student organization. Services and approval to be withdrawn include intramural sports, information technology services, college facility use and rental, and involvement in organizational activities.

(14) Hold on transcript or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold is released.

(15) No contact order. A prohibition of direct or indirect physical, verbal, or written contact (to include electronic) with another individual or group.

(16) Other than college expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record.

(17) If a student's behavior is found to have been motivated by another's race, color, religion, creed, national origin, sexual orientation, mental, physical, sensory disability, age, sex, gender identity, gender expression, political affiliation, disabled veteran status, marital status, honorably discharged veteran or Vietnam-era veteran status, such finding is considered an aggravating factor in determining a sanction for such conduct.

(18) Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(19) A disciplinary sanction, except a warning, shall be imposed through written notice either personally delivered or sent to the student's last known address of record by regular mail or certified mail. Each notice of disciplinary action shall state:

(a) A reasonable description of the facts on which the action is based;

(b) The provision(s) of the student conduct code found to have been violated;

(c) The sanction(s) imposed; and

(d) The student's right to appeal a disciplinary action, except for a warning or reprimand.

NEW SECTION

WAC 132N-121-080 Initial disciplinary proceedings. (1) Any member of the college community may file a written complaint alleging that a student has committed a violation of the code of student conduct with the office of the vice-president of student affairs. The complaint should state specifically the alleged violation and summarize the supporting evidence. If the student conduct officer determines the complaint has merit, the student conduct officer shall initiate disciplinary proceedings. The student may be placed on suspension pending commencement of disciplinary action, pursuant to the conditions set forth in WAC 132N-121-150.

(2) A student accused of violating the code of student conduct shall be notified of an initial disciplinary proceeding and the opportunity to meet with the student conduct officer to resolve the case without a formal hearing. The student shall be provided with written notice including the specific complaint, the policy, procedure, or section of the code of student conduct allegedly violated, and the range of possible sanctions which might result from disciplinary proceedings. The student will be given seven days to respond. If the student fails to respond or fails to appear, the initial disciplinary hearing may be held in the student's absence and shall not preclude the student conduct officer from making a decision and imposing or recommending sanctions.

(3) After considering the evidence in the case, and interviewing the student, if the student has appeared at the scheduled meeting, and reviewing the case with any new information, the student conduct officer may take any of the following actions:

(a) Terminate the proceedings and exonerate the student;

(b) Dismiss the case after whatever intervention and advice is deemed appropriate;

(c) Impose any of the disciplinary sanctions from WAC 132N-121-070.

NEW SECTION

WAC 132N-121-090 Appeals. (1) A student may appeal any disciplinary sanction imposed by the student conduct officer, other than warning or reprimand, by filing a written request with the chair of the committee on student conduct, within seven days from the date of receipt of the decision.

(2) The request should state clearly whether the student is requesting the appeal to be heard as a brief adjudicative proceeding informally by the chair of the committee on student conduct or for the appeal to be conducted formally by the entire committee membership, in an adjudicative proceeding according to RCW 34.05.410. Appeals from a sus-

pension or expulsion from the college shall be heard in an adjudicative proceeding.

(3) Appeals conducted as a brief adjudicative proceeding.

(a) Where an adjudicative proceeding is neither required by law nor requested by the student or the college, the matter may be resolved informally in a brief adjudicative proceeding conducted in accordance with RCW 34.05.485. Brief adjudicative proceedings shall be conducted in any manner which will bring about a prompt, fair resolution of the matter. The chair of the committee on student conduct shall serve as the sole presiding officer of the brief adjudicative proceeding. 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. No witnesses may appear to testify. Within ten days of the brief adjudicative proceeding, the chair shall render a written decision which will include a brief statement of the reasons for the decision. This shall be an initial order. If no further administrative review is requested, the initial order shall become the final order.

(b) Within twenty-one days after the initial order has either been personally delivered or sent to the student's last known address of record by regular mail or certified mail, he or she may petition for administrative review by the vice-president of student affairs or designee. A copy of the petition must be served on all parties or their representatives at the time the petition is filed. The reviewing officer may be the vice-president or an administrator who has not been involved in the action. The review shall be governed by RCW 34.05.491. The decision of the vice-president of student affairs or designee is final and no further administrative review is available.

(4) Appeals conducted as adjudicative proceedings by committee on student conduct. In all cases where the student is appealing suspension or expulsion from the college, the student shall be entitled to an adjudicative proceeding under WAC 132N-121-110 if he or she files a proper written application for such a proceeding. The vice-president of student affairs shall be responsible for convening the committee on student conduct, setting the time and place of the hearing, and providing notice of the hearing as prescribed in RCW 34.05.-434.

(5) A decision of the committee on student conduct or a sanction imposed by the student conduct officer may be appealed in writing to the president within ten days following receipt of the committee decision.

(a) Except as required to explain the basis of new information, an appeal to the president is limited to a review of the verbatim record of the committee hearing and supporting documents for one or more of the following purposes:

(i) To determine whether the committee on student conduct hearing was conducted fairly in light of the charges, and whether information was presented in conformity with prescribed procedures giving the accused student a reasonable opportunity to prepare and to present a response to the allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice is evident.

(ii) To determine whether the decision is supported by the evidence.

(iii) To determine whether the sanctions imposed are appropriate for the violation which the student was found to have committed.

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not disclosed in the original hearing because such information and/or facts were not known to the student appealing at the time of the committee on student conduct hearing.

(b) The president shall review the record within fifteen days of the notice of appeal and make one of the following determinations:

(i) Affirm the decision and uphold the sanctions; or

(ii) Reverse the decision; or

(iii) Affirm the decision and modify the sanctions imposed.

(c) The president shall provide a written conclusion to all parties within twenty days after completion of his or her review.

(d) If the appeal is upheld, the matter shall be returned to the committee on student conduct to reopen the hearing to reconsider of the original determination and/or sanctions.

(e) If the appeal is not upheld, the president's decision shall be final.

NEW SECTION

WAC 132N-121-100 Committee on student conduct. (1) The committee on student conduct consists of five members. The committee shall provide a fair and impartial hearing and will make decisions on all disciplinary decisions appealed to it. The committee shall include:

(a) Two full-time students and two alternates appointed by the ASCC of Clark College vice-president of elections and appointments (one-year appointments);

(b) Two faculty members and two alternates appointed by the president or designee (two-year appointments, staggered terms);

(c) One member of the administration, but not the vice-president of student affairs, and one alternate appointed by the president of the college (two-year appointment).

(2) Appointments to the committee will be made no later than November 1 of each academic year. Vacancies on the committee shall be filled as they arise.

(3) Hearings may be heard by a quorum of three members of the committee so long as a faculty member and one student are included on the hearing panel. If the case involves academic dishonesty, at least two of the individuals hearing the case must be members of the faculty. The vice-president of student affairs shall appoint the chair and that person will continue in office until he or she resigns or is recalled by the vice-president of student affairs. The vice-president for student affairs may appoint a special presiding officer to the committee on student conduct in complex cases or in any case in which the student is represented by legal counsel. Special presiding officers may participate in committee deliberations but shall not vote.

(4) Members of the committee on student conduct shall not participate in any case in which they are a defendant, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted

previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132N-121-110 Hearing procedures before the committee on student conduct. (1) An appeal before the committee on student conduct will be conducted as an adjudicative proceeding in accordance with RCW 34.05.413 through 34.05.476. The committee on student conduct shall commence the hearing within fifteen days after the written request has been received. The office of the vice-president of student affairs will notify the parties of the time and place of the hearing. The time limit for scheduling the hearing may be extended at the discretion of the vice-president of student affairs.

(2) The presiding officer shall be the chair of the committee on student conduct. The presiding officer is responsible for:

(a) Regulating the course of the hearing in accordance with RCW 34.05.449 and applicable college rules;

(b) Taking whatever steps are necessary during the hearing to ensure that the process is conducted in a respectful and orderly manner; and

(c) Issuing and signing the written decision(s) of the committee.

(3) The presiding officer is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and forms of any discovery, the possibility of obtaining stipulations, admissions, settlement, and other procedural matters.

(4) All procedural questions are subject to the final decision of the presiding officer. If a challenge arises concerning the application of any rule or policy, the hearing will continue and the challenge may be submitted by the chair in writing to the vice-president of student affairs, who will seek legal advice from an assistant attorney general.

(5) The student has a right to a fair and impartial hearing. However, the student's failure to answer the charges, appear at the hearing or cooperate in the hearing shall not preclude the committee on student conduct from making its findings of facts, conclusions, and recommendations. This shall not limit the possibility of a default pursuant to RCW 34.05.440.

(6) Hearings shall be closed in accordance with FERPA, 20 U.S.C. Sec. 1232g, unless the student waives this requirement in writing and requests to have the hearing open to the public. However, if education records or information from education records will be disclosed at the hearing, or more than one student is involved, the hearing will remain closed unless all students have consented to open the hearing. In hearings involving more than one accused student, the presiding officer may permit joint or separate hearings. If at any time during the hearing, a visitor disrupts the proceedings, the presiding officer may exclude that person from the hearing.

(7) The complainant, the student, and their respective advisors may attend those portions of the appeal hearing at which information is received, but may not attend the committee's deliberations. Admission of any other person to the hearing is at the discretion of the presiding officer.

(8) The student and complainant are entitled to be assisted by an advisor of their choosing, at their own expense. The complainant and student are responsible for presenting their own information, therefore, an advisor is not permitted to address the committee or participate directly in the hearing. An advisor may communicate only with the person they are advising. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays or continuances will not be allowed due to the scheduling conflicts of an advisor. If the student is the subject of a pending subsequent criminal matter arising out of the same circumstances, the student may be allowed to have an attorney serve as their advisor, at the student's own expense, to behave in the same manner as any other advisor.

(9) Formal rules of process, procedure, and/or technical rules of evidence such as are applied in criminal or civil cases, will not apply in student conduct proceedings.

(10)(a) The student is entitled to present evidence in his or her behalf and to cross-examine witnesses testifying on behalf of the college. The student is responsible for informing his or her witnesses of the time and place of the hearing.

(b) Direct examination, cross-examination, and rebuttal may be limited to the extent necessary for the full disclosure of all relevant facts and issues.

(c) The committee may receive sworn written testimony in lieu of oral testimony at the hearing.

(d) If not inconsistent with this subsection, the presiding officer may refer to the Washington Rules of Evidence as guidelines for evidentiary rulings in accordance with RCW 34.05.452.

(e) In determining the appropriate sanction that should be recommended, evidence of past misconduct that the presiding officer deems relevant may be considered.

(11) Members of the committee on student conduct must avoid ex parte (one-sided) communications with any party involved in the hearing regarding any issue other than communications necessary to maintain an orderly procedural flow to the hearing.

(12) There will be a single verbatim record, such as a tape recording or transcript, of the information gathering portion of the hearing. Deliberations shall not be recorded. The record shall be the property of the college.

NEW SECTION

WAC 132N-121-112 Decision by the committee on student conduct and notification. (1) At the conclusion of the hearing and deliberations, the committee on student conduct shall meet in closed session to consider all evidence presented and decide by majority vote whether the student has violated the code of student conduct, and if so, the committee determines and imposes the appropriate sanctions from WAC 132N-121-070.

(2) The burden of proof that guides the committee's decision is the preponderance of evidence, whether it is more likely than not that the student violated the code of student conduct.

(3) The committee's written decision shall include findings of fact and conclusions which inform the parties of the basis for the decision. The decision should also include information about the appeal process.

(4) The presiding officer notifies the student in writing, in person, by mail or electronic mail of the committee's decision. Notice is sent within ten days after the hearing is concluded. If the college is not in session, this period may be reasonably extended.

(5) The written decision of the committee shall become the final order, without further action, unless within ten days following receipt of the decision, the student files a written appeal with the college president.

NEW SECTION

WAC 132N-121-120 Recordkeeping. (1) The record in an adjudicative proceeding shall consist of all documents as required by law and as specified in RCW 34.05.476.

(2) The office of the vice-president of student affairs shall maintain records of student grievance and disciplinary proceedings for at least six years.

(3) The disciplinary record is confidential.

(4) Students may request a copy of their own disciplinary record at their own reasonable expense by making a written request to the vice-president of student affairs. Personally identifiable student information is redacted to protect another student's privacy.

(5) Students may authorize release of their own disciplinary record to a third party in compliance with FERPA, 20 U.S.C. Sec. 1232g, by making a written request to the vice-president of student affairs.

(6) The college may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence or nonforcible sex offense, as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(7) The college may not communicate a student's disciplinary record to any person or agency outside the college without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent, if the student is a minor and disciplinary action involves the use or possession of alcohol or controlled substance, or in connection with a health or safety emergency regardless if the student is a dependent or a minor, as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(b) To another educational institution, upon request, where the student seeks to, intends to, or has enrolled.

(c) Information concerning registered sex offenders.

NEW SECTION

WAC 132N-121-150 Summary suspension proceedings. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which the student might otherwise be eligible, during which an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer or designee may impose a summary suspension:

(a) In situations involving an immediate danger to the health, safety, or welfare of any part of the college community or the public at large;

(b) To ensure the student's own physical safety and well-being; or

(c) If the student poses an ongoing threat of disruption to, or interference with, the operations of the college and the student's conduct prevents other students, employees, or members of the college community from completing their duties as employees or students.

(3) The student conduct officer or designee shall give the student oral or written notice of the reasons for the summary suspension, and of any possible additional disciplinary or corrective actions that may be taken. If oral notice is given, a written notification shall be personally served on the student, or sent to the student's last known address of record by regular or certified mail within two working days.

(4) The notification shall be entitled "notice of summary suspension proceedings" and shall include:

(a) The charges against the student including reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location that the student must appear before the student conduct officer for a hearing on the summary suspension; and

(c) A notice against trespass that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the student shall be considered trespassing and subject to arrest for criminal trespass, if the student enters the college campus other than to meet with the student conduct officer or designee, or to attend the hearing.

(5) The hearing on the summary suspension shall be held as soon as practicable after the summary suspension. The hearing may be combined with an initial disciplinary proceeding in accordance with WAC 132N-121-080.

(6) The summary suspension does not replace the regular process, which shall proceed on the schedule described in this chapter, up to and through a hearing before the committee on student conduct, if required.

(7) The student conduct officer or designee shall determine whether there is probable cause to believe that summary suspension is necessary and/or whether some other disciplinary action is appropriate.

(8) The student shall have the opportunity to explain why summary suspension is not necessary either through oral testimony or written statement. If the notice to appear for a summary suspension hearing has been personally delivered to the student or sent to the student's last known address of record by regular mail, certified mail and the student fails to appear at the time designated, the student conduct officer or designee may enforce the suspension, and shall send written notice of summary suspension to the student at the last known address of record on file.

(9) The student conduct officer or designee may continue the summary suspension and may impose any other disciplinary action that is appropriate, if he or she finds that there is probable cause to believe that:

(a) The student has committed one or more violations of the student conduct code;

(b) Such violation(s) constitute grounds for disciplinary action; and

(c) Summary suspension is necessary.

(10) **Notice of suspension.**

(a) If summary suspension is upheld and/or if the student is otherwise disciplined, the student will be provided with a written copy of the student conduct officer or designee's findings of fact and conclusions that support the decision that summary suspension of the student should continue.

(b) The student suspended pursuant to the authority of this rule shall receive a copy of the "notice of suspension" either personally or sent to the student's last known address of record by regular mail, certified mail, within three days following the conclusion of the hearing with the student conduct officer or designee.

(c) The "notice of suspension" shall inform the student of the duration of the summary suspension or nature of the disciplinary action(s), conditions under which the summary suspension may be terminated or modified, and procedures by which the validity of the summary suspension can be appealed.

(11) The student conduct officer or designee shall provide copies of the notice of suspension to all persons or offices that may be bound by it.

NEW SECTION

WAC 132N-121-151 Appeals from summary suspension hearing. Any student aggrieved by an order issued at the summary suspension proceeding may appeal by filing a written request with the chair of the committee on student conduct within ten days from the date on which the student was notified of the decision. However, no such appeal shall be entertained, unless:

(1) The student has first appeared through oral testimony or by a written statement at the student hearing in accordance with WAC 132N-121-150; and

(2) The appeal conforms to the standards set forth in WAC 132N-121-090.

NEW SECTION

WAC 132N-121-500 Classroom misconduct and authority to suspend for no more than one day. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one instructional day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the vice-president of student affairs or designee who, in consultation with the faculty member, may set conditions for the student upon return to the class or activity.

WSR 10-06-011
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed February 19, 2010, 11:02 a.m., effective March 22, 2010]

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

Purpose: These amendments are required to implement ESSB 5892 which authorizes state purchasing health care programs to maximize appropriate prescription drug use in a cost-effective manner.

Citation of Existing Rules Affected by this Order: Amending WAC 388-530-4100 and 388-530-4150.

Statutory Authority for Adoption: RCW 74.04.050, 74.09.700, and 74.08.090; chapter 575, Laws of 2009 (ESSB 5892).

Adopted under notice filed as WSR 09-23-074 on November 16, 2009.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-530-4100(11), added a new last sentence as follows:**

(11) When a brand name drug has been reviewed by the P&T committee, the department may immediately designate an available, less expensive, equally effective, generic equivalent as a preferred drug. For the purpose of this chapter, generic equivalent drugs are those identified in the FDA's approved drug products with therapeutic equivalence evaluations (orange book).

WAC 388-530-4100(12), fixed one place where the incorrect word was used and fixed cross-reference:

"… as a client's first ~~choice~~ course of treatment within that therapeutic class may be subject to restrictions under WAC 388-530-4125 and WAC 388-530-4150 ~~(8)~~ (10)."

WAC 388-530-4125, fixed two places where the incorrect word was used:

Intro and under (1)(b): "… client's first ~~choice~~" of treatment should have been "client's first course" of treatment.

WAC 388-530-4125(3), added "and nonpreferred generics":

"Endorsing practitioners' prescriptions written "Dispense as written (DAW)" for preferred nonpreferred brand name drugs and nonpreferred generics in the specific drug classes on the …."

WAC 388-530-4150(5) Therapeutic interchange program (TIP), cross-reference correction:

(5) With the exception of subsection (7) and ~~(8)~~ (10) of this section, when an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

Renumbered the proposed subsections (7)(c) to (9).

New subsection (8) as follows:

(8) While the endorsing practitioner is engaged in the activities described in subsection (7)(b)(ii) or (7)(b)(iii) of

this section, his or her endorsing practitioner status is maintained.

Renumbered proposed subsection (8) to (10) with the following revision:

~~(8)~~ (10) Except as otherwise provided in subsection (11) of this section, for a client's first course of treatment within a therapeutic class of drugs, the endorsing practitioner's option to write DAW does not apply when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition; and

(b) The drug use review (DUR) board established under WAC 388-530-4000 has reviewed the drug class and recommended to the department that the drug class is appropriate to require generic drugs as a client's first course of treatment.

Renumbered proposed subsection (9) to (11) as a result of previous changes and inserted a missing cross reference:

~~(9)~~ (11) In accordance with WAC 388-530-4125(3) and WAC 388-501-0165, the department will request and review the endorsing practitioner's medical justification for preferred and nonpreferred brand name drugs and nonpreferred generic drugs for the client's first course of treatment.

A final cost-benefit analysis is available by contacting Siri A. Childs, PharmD, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1564, fax (360) 586-9727, e-mail childsa@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: February 18, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

WAC 388-530-4100 Washington preferred drug list (PDL). Under RCW 69.41.190 and 70.14.050, the department((,)) and other state agencies cooperate in developing and maintaining the Washington preferred drug list.

(1) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(3) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL((,)) under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL((,)) that have been studied by the evidence-based practice center(s) and reviewed by the P&T committee((,)) and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as written (DAW) rules under WAC 388-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug((,)) which the department determines as covered((,)) is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met department established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) Combination drugs that have been studied by the evidence-based practice center and have been reviewed by the P&T committee may be included in the Washington PDL.

(11) When a brand name drug has been reviewed by the P&T committee, the department may immediately designate an available, less expensive, equally effective, generic equivalent as a preferred drug. For the purpose of this chapter, generic equivalent drugs are those identified in the FDA's approved drug products with therapeutic equivalence evaluations (orange book).

(12) The dispensing of a brand name drug in a drug class on the Washington PDL as a client's first course of treatment within that therapeutic class may be subject to restrictions under WAC 388-530-4125 and WAC 388-530-4150(10).

NEW SECTION

WAC 388-530-4125 Generics first for a client's first course of treatment. The department uses point-of-sale (POS) claim messaging to communicate to pharmacies to use a preferred generic drug for the client's first course of treatment in specific drug classes.

(1) The department may require preferred generic drug(s) on the Washington preferred drug list (PDL) be used before any brand name drugs for a client's first course of treatment within that therapeutic class of drugs, when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition; and

(b) The drug use review (DUR) board established under WAC 388-530-4000 has reviewed the drug class and recom-

mended to the department that the drug class is appropriate to require generic drugs as a client's first course of treatment.

(2) For drug classes selected by the department which meet the criteria of subsection (1) of this section, only preferred generic drugs are covered for a client's first course of treatment, except as identified in subsection (3) of this section.

(3) Endorsing practitioners' prescriptions written "Dispense as written (DAW)" for preferred and nonpreferred brand name drugs and nonpreferred generics in the specific drug classes on the Washington PDL reviewed by the DUR board will be subject to authorization to establish medical necessity as defined in WAC 388-500-0005.

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

WAC 388-530-4150 Therapeutic interchange program (TIP). This section contains the department's rules for the endorsing practitioner therapeutic interchange program (TIP). TIP is established under RCW 69.41.190 and 70.14.-050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The therapeutic interchange program (TIP) applies only to drugs:

(a) Within therapeutic classes on the Washington PDL;

(b) Studied by the evidence-based practice center(s);

(c) Reviewed by the pharmacy and therapeutics (P&T) committee; and

(d) Prescribed by an endorsing practitioner.

(2) TIP does not apply:

(a) When the ((~~pharmacy and therapeutics (~~))P&T((~~)~~)) committee determines that TIP does not apply to the therapeutic class on the PDL; or

(b) To a drug prescribed by a nonendorsing practitioner.

(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner((~~;~~)) under the provisions of chapter 182-50 WAC and RCW 69.41.190(2).

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's population or indication, and indicates that substitution is permitted, the pharmacist must:

(a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) With the exception of subsection (7) and (10) of this section, when an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The pharmacist dispenses the nonpreferred drug as prescribed; and

(c) The department does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.

(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage((~~, and samples~~))):

(a) Antipsychotic;

(b) Antidepressant;

(c) Antiepileptic;

(d) Chemotherapy;

(((~~d~~))) (e) Antiretroviral;

(((~~e~~))) (f) Immunosuppressive; or

(((~~f~~))) (g) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

(7) The department may impose nonendorsing status on an endorsing practitioner only under the following circumstances:

(a) The department runs three quarterly reports demonstrating that, within any therapeutic class of drugs on the Washington PDL, the endorsing practitioner's frequency of prescribing DAW varies from the prescribing patterns of the endorsing practitioner's department-designated peer grouping with a ninety-five percent confidence interval; and

(b) The medical director has:

(i) Delivered by mail to the endorsing practitioner the quarterly reports described in subsection (7)(a) of this section which demonstrate the endorsing practitioner's variance in prescribing patterns; and

(ii) Provided the endorsing practitioner an opportunity to explain the variation in prescribing patterns as medically necessary as defined under WAC 388-500-0005; or

(iii) Provided the endorsing practitioner two calendar quarters to change his or her prescribing patterns to align with those of the department-designated peer groupings.

(8) While the endorsing practitioner is engaged in the activities described in subsection (7)(b)(ii) or (7)(b)(iii) of this section, his or her endorsing practitioner status is maintained.

(9) The nonendorsing status restrictions imposed under this section will remain in effect until the quarterly reports demonstrate that the endorsing practitioner's prescribing patterns no longer vary in comparison to his or her department designated peer-grouping over a period of four calendar quarters, with a ninety-five percent confidence interval.

(10) Except as otherwise provided in subsection (11) of this section, for a client's first course of treatment within a therapeutic class of drugs, the endorsing practitioner's option to write DAW does not apply when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition; and

(b) The drug use review (DUR) board established under WAC 388-530-4000 has reviewed the drug class and recommended to the department that the drug class is appropriate to require generic drugs as a client's first course of treatment.

(11) In accordance with WAC 388-530-4125(3) and WAC 388-501-0165, the department will request and review the endorsing practitioner's medical justification for preferred and nonpreferred brand name drugs and nonpreferred generic drugs for the client's first course of treatment.

WSR 10-06-012

PERMANENT RULES

COMMUNITY COLLEGES OF SPOKANE

[Filed February 19, 2010, 12:21 p.m., effective March 22, 2010]

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

Purpose: On September 15, 2009, the board of trustees of Washington State Community College District 17 (Community Colleges of Spokane) directed administration to amend WAC 132Q-07-030 Outside speakers, 132Q-07-040 Distribution of materials, 132Q-30-242 Discrimination and 132Q-30-246 Harassment, in accordance with terms of the agreed order settling the *Sheeran vs. Shea First Amendment Rights* suit filed in United States District Court, Eastern District of Washington.

On January 19, 2010, at its open public meeting, the board of trustees of Community Colleges of Spokane (CCS) approved and adopted the changes to WAC 132Q-07-030, 132Q-07-040, 132Q-30-242, and 132Q-30-246. Per this rule-making order (CR-103P), we are requesting the adoption of the changes to these WACs.

Citation of Existing Rules Affected by this Order: Amending 132Q-07-030, 132Q-07-040, 132Q-30-242, and 132Q-30-246.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 09-24-110 on December 2, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: January [February] 19, 2010.

Anne Tucker

Public Information Officer

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-07-030 Outside speakers. (1) Any recognized campus student organization may invite speakers on campus ((~~with the written approval of its advisor~~)), subject to provisions of this section.

(2) The appearance of an invited speaker on a campus does not represent an endorsement, either implicit or explicit, of views or opinions of the speaker by CCS, its students, its faculty, its college personnel, its administration or its board.

(3) The scheduling of speakers including, but not limited to, those expecting to use campus facilities, including notification of the identity of the speaker(s), time of the speech, the place of the speech and the manner in which the speech will be transmitted shall be made through the facilities scheduling office of the campus at which the speaker will appear((~~, with prior approval from the appropriate college student activities office~~)).

(4) If it is expected that an outside speaker is to be compensated with any institutional funds, the appropriate student activities office will be notified at least thirty days prior to the appearance of an invited speaker, at which time a personal services contract (available in the student activities office) must be completed with all particulars regarding speaker, time, place, etc., signed by the sponsoring organization's advisor, and filed with the student activities office. Exceptions to the thirty-day ruling may be made by the appropriate administrator.

((~~(5) The appropriate student activities office may require a question period or arrange to have views other than those of the invited speakers represented at the meeting, or at a subsequent meeting.~~))

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-07-040 Distribution of materials. (1) Handbills, leaflets, newspapers, and similarly related material (including religious matter) distributed free of charge by any student, nonstudent, ((~~by~~)) member of a recognized student organization or ((~~by~~)) college personnel((~~,~~)) may be distributed upon a college campus ((~~with prior approval by the appropriate student center administrator~~)), provided that such distribution does not interfere with the free flow of vehicle or pedestrian traffic.

(2) Newspapers, leaflets, and similarly related materials offered for sale by any student or nonstudent person or organization may be distributed and sold only through the college book store as are other commercial forms of merchandise, subject to reasonable rules and regulations that may be imposed by the bookstore manager. Exceptions may be made by the appropriate vice-president or designee.

(3) ((~~All~~)) The organization or individual publishing and distributing handbills, leaflets, newspapers, and similarly related material (including religious matter) ((~~must bear identification as to the publishing agency and distributing organization or individual~~)) is encouraged but not required to include its or his/her name and contact information on the distributed material.

(4) Any distribution of the materials regulated in this section shall not be construed as endorsement of the same by the college or by the board of trustees of Community Colleges of Spokane.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-30-242 Discrimination. Discrimination on the basis of race, national or ethnic origin, creed, age, sex, marital status, ((~~veteran's~~)) veteran status, sexual orientation((~~,~~)) or disability is prohibited in conformity with federal and state laws. Discrimination includes ((~~sexual or racial harassment which is defined as~~)) conduct that is severe, persistent or pervasive, and objectively offensive as to substantially disrupt or undermine a person's ability to participate in or to receive the benefits, services or opportunities of Community Colleges of Spokane and includes conduct that:

(1) Is sexually or racially motivated and has the purpose or effect of unreasonably interfering with a person's work or educational performance; and/or

(2) ((~~Creating~~)) Creates an intimidating, hostile, or offensive environment.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-30-246 Harassment. Conduct by any means that is sufficiently severe, pervasive((~~,~~)) or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, or participate in the activities of the college.

WSR 10-06-043
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 23, 2010, 2:44 p.m., effective April 1, 2010]

Effective Date of Rule: April 1, 2010.

Purpose: The installer certification program certifies all individuals who install manufactured housing. The program provides training and testing for all installers and assists harmed consumers if the job is not done properly.

The following changes are being made:

- Increasing the installer certification fees by thirty percent to cover operating expenses.
- Updating the rules to reflect the new application process for certified installers.
- Developing new rules, which set a time frame on how long a certificate will be suspended or revoked.

Citation of Existing Rules Affected by this Order: Amending WAC 296-150I-0050 What is the application process?, 296-150I-0070 Manufactured home installer certification renewal—Application process, 296-150I-0080 Notification to employer, 296-150I-0120 Manufactured home installation permit and inspections—Obligation of certified installer, 296-150I-0140 Manufactured home installation—Installer certification tags required, 296-150I-0200 How does the department ensure compliance with the requirements of chapter 43.22A RCW?, 296-150I-0310 What instructions are used for a manufactured home installation?, 296-150I-0350 Who may install a manufactured home?, 296-150I-0370 Does a manufactured home installation require an inspection?, 296-150I-0410 What are the requirements if a home is damaged during transit or during set-up?, and 296-150I-3000 Penalties, fees, and refunds.

Statutory Authority for Adoption: Chapter 43.22A RCW and chapter 464, Laws of 2009 (ESHB 1244).

Adopted under notice filed as WSR 10-01-189 on December 22, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: February 23, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0050 What is the application process? A person desiring to be certified as a manufactured home installer under chapter 43.22A RCW must submit a signed application form and fee specified in WAC 296-150I-3000 to the department, which contains the following information:

(1) The applicant's full name, date of birth, driver's license number or other government identification number, and Social Security number ((~~of the person applying for certification~~)). Social Security numbers are required on applications for professional licenses pursuant to RCW 26.23.150 and federal law PL 104-193, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) ((~~Application fee specified in WAC 296-150I-3000.~~

~~(3)~~)) Written affidavit documenting evidence of experience as required under RCW 43.22A.040.

(((~~(4) Any application received after the class cut-off date is subject to the late application fee specified in WAC 296-150I-3000.~~)) (3) Business name, phone number, and contractor registration number, if applicable. Status of applicant, i.e., owner or employee.

(4) Training/examination location and date preference.

(5) If the application is denied by the department as a result of the applicant's failure to meet the requirements of

chapter 43.22A RCW and this chapter, the department will attempt to notify the applicant prior to the date the applicant is scheduled to attend the training and examination.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0070 Manufactured home installer certification renewal—Application process. (1) A certified manufactured home installer desiring to renew certification as a manufactured home installer under chapter 43.22A RCW must file a certification renewal application with the department.

(((~~(1)~~))) (2) The application must:

(a) Be ((~~hand-delivered to the department or postmarked no later than midnight on the date of expiration of an installer's current certification~~)) received by the department on or before the installer's certification expiration date.

(b) Be accompanied by the certification renewal fee specified in WAC 296-150I-3000.

(((~~(2)~~))) (3) If a certified installer fails to apply for renewal and provide proof of continuing education within ninety days ((~~of~~)) prior to the expiration of the installer's current certification, the installer must reapply for installer certification and meet all requirements for installer certification as set forth in chapter 43.22A RCW and this chapter.

(((~~(3)~~))) (4) Before a new certification is issued, the certified installer must provide proof to the department that the certified installer has met the continuing education requirements set forth in this chapter.

(((~~(4)~~))) (5) The department will attempt to notify installers prior to expiration; however, it is the installer's responsibility to ensure timely renewal.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0080 ((~~Notification to employer.~~)) Installer certification—Revocation. (1) The department will revoke an installer's certification if they receive three or more final infractions during their current three year certification period. The department will judge the installer to be incompetent of the state installation code. Revocation of the installer certification will be valid for two years from the effective date of the revocation.

(2) Where applicable, the department must send notice to the certificate holder's employer regarding revocation of an installer certification.

(3) A person may reapply for a manufactured home installer certification two years after the effective date of the revocation by submitting a completed application and payment for training and examination. Upon passing the written examination, a certificate of manufactured home installation will be issued.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0120 Manufactured home installation permit and inspections—Obligation of certified installer. (1) If a certified installer obtains the manufactured home installation or placement permit from the local enforcement agency, the certified installer shall ensure that all required installation inspections, relative to the work performed by the certified installer, are completed.

(2) Installer certification requirements do not eliminate any requirements of chapter 18.27 RCW to become a registered contractor.

(3) An out-of-state mobile/manufactured home dealer who performs the set-up, installation, or repair work must be an active registered contractor. The mobile/manufactured home dealer must employ at least one certified installer to supervise the installation.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0140 Manufactured home installation—Installer certification tags required. Prior to installing, performing on-site work or equipment installation work on a manufactured home, certified manufactured home installers or the retailers by whom they are employed must obtain an "installer certification tag" from the department or from the local enforcement agency who participates in tag sales. The installer certification tag shall be in the form approved by the department. No manufactured home may be installed by a certified installer without an installer certification tag affixed thereto. Only currently certified manufactured home installers shall be issued installer certification tags.

Homeowners performing the installation, on-site work or equipment installation work on their own manufactured home are not required to acquire and affix an installer certification tag.

(1) Installer certification tags may only be purchased by a certified manufactured home installer or by a manufactured home retailer licensed by Washington state department of licensing.

(a) The certified manufactured home installer or manufactured home retailer purchasing the installer certification tag is responsible for complying with the security, use, and reporting requirements of this chapter.

(b) Manufactured home retailers may purchase installer certification tags in bulk and issue them to certified manufactured home installers employed by the manufactured home retailer.

(2) In order to purchase installer certification tags, the certified manufactured home installer or manufactured home retailer shall submit an application to the department or local enforcement agency on a form approved by the department. The application shall be accompanied by the appropriate installer certification tag fee as set forth in WAC 296-150I-3000.

(3) The department or manufactured home retailer may issue a maximum of thirty certification tags to a certified manufactured home installer. A certified manufactured home installer may not have more than thirty installer certification tags issued at any one time for which the reporting requirements of this section have not been met.

(4) Installer certification tags cannot be transferred or assigned without the written approval of the department. Fees paid for installer certification tags are not refundable.

(a) If a certified manufactured home installer's certification is suspended, revoked, or expires, all unused installer certification tags assigned to the certified manufactured home installer must be returned to the department.

(b) If a certified manufactured home installer or manufactured home retailer ceases to do business, all unused installer certification tags must be returned to the department.

(c) If a manufactured home retailer changes ownership, unused installer certification tags may be transferred to the new ownership if the department approves the transfer following receipt of a written request for transfer from the manufactured home retailer.

(5) Issuance of installer certification tags may be denied if:

(a) The certified manufactured home installer's certification has been revoked or suspended pursuant to chapter 43.22A RCW;

(b) The certified manufactured home installer has failed to comply with the reporting requirements of this chapter;

(c) The department has evidence that the certified manufactured home installer has misused the installer certification tag by not complying with the requirements of this chapter; ((~~or~~))

(d) The certified manufactured home installer possesses installer certification tags in excess of the quantity authorized by subsection (3) of this section for which the reporting requirements of this chapter have not been met; or

(e) The certified manufactured home installer is not an active registered contractor or an employee of a manufactured home retailer or active registered contractor licensed in Washington.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0200 How does the department ensure compliance with the requirements of chapter 43.22A RCW? The department of labor and industries will ensure installers comply with the requirements of RCW 43.22A.130 which requires a certified manufactured/mobile home installer to be present for each phase of the installation being performed by all members of the installation crew by:

(1) Random site inspections; and

(2) Audit of installers certification tag reports.

The certified installer must enter their Washington installer certification number ((~~(WAINS)~~)) on the installer tag for each element they are supervising.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0310 What instructions are used for a manufactured home installation? To the extent that the installation of a manufactured home is not covered by a manufacturer's, engineer's, or architect's instructions, the manufactured home shall comply with the installation requirements of this section.

(1) Installation of a new manufactured home.

(a) The initial manufactured home installation must be conducted according to the manufacturer's instructions.

(b) If the manufacturer's instructions do not address an aspect of the installation, you may request:

(i) Specific instructions from the manufacturer; or

(ii) Specific instructions from a professional engineer or architect licensed in Washington state.

For example:

• A manufactured home is installed over a basement and the manufacturer's instructions do not address this application;

• A manufactured home is installed on a site where the specific soil bearing capacity is not addressed in the manufacturer's instructions.

(c) All manufactured homes installed in Washington state must be permanently anchored except for those installed on dealer lots. On dealer lots, temporary sets are permitted without anchoring being installed. A manufactured home must be anchored according to the manufacturer's installation instructions or according to the design of a professional engineer or architect licensed in Washington state. Local jurisdictions **may not** prescribe anchoring methods.

(d) A manufactured home must have a skirting around its entire perimeter. It must be installed per the manufacturer's installation instructions or if the manufacturer is not specific, to the standards in this section. Do not enclose with skirting areas under recessed entries, porches or decks, (whether constructed as part of the home or added on-site) unless skirting is of the fully vented type and installed so as to allow water to freely flow out from under the home. Porch areas open to the crawl space area of the home must have ground cover removed; ground directly below the porch must slope away from the home. It must be vented and allow access to the under floor area per the manufacturer's installation instructions or per the standards below if the manufacturer's instructions are not available.

If the manufacturer's skirting and access instructions are not specific, skirting, ventilation and access shall be installed as follows:

(i) Skirting:

• Must be made of materials suitable for ground contact.

• Metal fasteners must be made of galvanized, stainless steel or other corrosion-resistant material.

• Ferrous metal members in contact with the earth, except those made of galvanized or stainless steel, must be coated with an asphaltic emulsion.

• Must not trap water between the skirting and siding or trim.

• Must be recessed behind the siding or trim.

(ii) Ventilation:

For homes sited in a flood plain, contact the local jurisdiction regarding proper skirting ventilation. Except for those manufactured homes sited in a flood plain, all skirting and vent openings must:

• Be covered with corrosion-resistant wire mesh to prevent the entrance of rodents. The size of the mesh opening cannot exceed 1/4 inch.

• Have a net area of not less than one square foot for each one hundred fifty square feet of under floor area.

• Be located as close to corners and as high as practical and they must provide cross ventilation on at least two opposite sides.

(iii) Access:

• The under floor area of a manufactured home must have a finished opening at least eighteen inches by twenty-four inches in size.

• Opening must be located so that all areas under a manufactured home are available for inspection.

• Opening must be covered and that cover must be made of metal, pressure treated wood or vinyl.

(e) A manufactured home site must be prepared per the manufacturer's installation manual or per ANSI A225.1, 1994 edition, section 3.

(f) Heat duct crossovers must be installed per the manufacturer's installation instruction manual or per ANSI A225.1 or the following instructions if the manufacturer's instructions are not available:

Heat duct crossovers must be supported at least one inch above the ground by strapping or blocking. They must be installed to avoid standing water. Also, they must be installed to prevent compression, sharp bends, and to minimize stress at the connections.

(g) Dryer vents must exhaust to the exterior side of the wall or skirting. Dryer ducts outside the manufactured home shall comply with the dryer manufacturer's specifications or shall be made of metal with smooth interior surfaces.

(h) Hot water tank pressure relief lines must exhaust to the exterior side of the exterior wall or skirting and must exhaust downward. The end of the pipe must be at least six inches but not more than two feet above the ground.

(i) Water heater pans are only required where the installation instructions are specific for warranty or the home was produced after June 2006. The pressure relief line must exit the skirting of the home as well as the relief line for any pan installed and not to be interconnected.

(ii) Expansion tanks are not required by the department; however, you may want to check with your local jurisdiction prior to installation of your water heater.

(i) Water piping must be protected against freezing as per the manufacturer's installation instructions or by use of a heat tape listed for use with manufactured homes and installed per the heat tape manufacturer's installation instructions.

(j) The testing of water lines, waste lines, gas lines, and electrical systems must be as per the manufacturer's installation instructions. If the manufacturer's installation instructions require testing of any of these systems, the local jurisdiction is responsible for verifying that the tests have been performed and passed. Electrical connections and testing are the responsibility of the electrical section of labor and industries except where a city has assumed the electrical inspection responsibilities for their jurisdiction. In that case, the city's electrical inspectors are responsible for the electrical connections and testing.

(k) During the installation process, a ground cover must be installed under all manufactured homes. The ground cover must be a minimum of six-mil **black** polyethylene sheeting or its equivalent (exception to ANSI A225.1 (3.5.2)). The ground cover may be omitted if the under floor area of the home has a concrete slab floor with a minimum thickness of three and one-half inches.

(l) Clearances underneath manufactured homes must be maintained at a minimum of eighteen inches beneath at least seventy-five percent of the lowest member of the main frame (I-beam or channel beam) and the ground or footing. No more than twenty-five percent of the lowest member of the main frame of the home shall be less than eighteen inches above the ground or footing. In no case shall clearance be less than twelve inches anywhere under the home (exception to ANSI A225.1 (4.1.3.3)).

(m) Heat pump and air conditioning condensation lines must be extended to the exterior of the manufactured home.

(2) Installation of a relocated manufactured (mobile) home.

(a) A relocated manufactured home installation should be conducted according to the manufacturer's installation instructions.

(b) If the manufacturer's instructions are unavailable, you may use either:

(i) The American National Standard Institute (ANSI) standard ANSI A225.1 - Manufactured Homes Installation, 1994 edition instructions; or

(ii) The instructions of a professional engineer or architect licensed in Washington state.

(c) If either (b)(i) or (ii) of this subsection is used, all of the requirements of subsection (1)(c) through (m) of this section must also be followed.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0350 Who may install a manufactured home? (1) A manufactured home may be installed by:

• A homeowner;

• A certified installer;

• An individual who is supervised by an on-site certified installer; or

• A specialty trades person, such as a plumber or electrician, for certain aspects of installation.

(2) A certified installer must be a registered contractor, an employee of a registered contractor, or an employee of a registered dealership. (See chapter 43.22A RCW for details about which aspects of installation require the presence of a certified installer.)

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0370 Does a manufactured home installation require an inspection? All manufactured home installations must be inspected and approved by the local enforcement agency.

Local enforcement agencies may enter into interagency agreements with the department to perform on-site installation inspections on behalf of the authority having jurisdiction (AHJ). A permit must be purchased with the department for these inspections.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0410 What are the requirements if a home is damaged during transit or during set-up? (1) Manufactured and mobile homes that are structurally damaged during transportation or when being set up on a new or secondary set-up and are repaired at a location other than the manufacturer's facility shall require ((~~a permit~~)) an approval with labor and industries.

The repair and inspection shall be performed to either:

(a) Plans approved by the manufacturer's design approval primary inspection agency; or

(b) Plans approved by an engineer or architect licensed in Washington and have the plans approved by the FAS plan review section;

(2) ((~~An alteration insignia shall be placed upon the home after the repair has been approved.~~

~~(3)~~)) Electrical and plumbing alterations to the damaged manufactured/mobile home shall be performed by a Washington state licensed electrician and/or plumber.

EXCEPTIONS: Damaged home is taken back to the factory.

Minor damage such as shingles, broken window(s), paint damage, minor siding damage, torn bottom paper etc., would not require a permit.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-3000 Penalties, fees, and refunds. Monetary penalties for an infraction shall be assessed for each violation of chapter 43.22A RCW in the amount of $1,000.00.

The following fees are payable to the department in advance:

Training and certification	$((~~200.00~~)) 260.00
Training only ((~~8~~)) 10 hours	$((~~100.00~~)) 130.00
Manufactured/mobile home installation inspector training	$((~~100.00~~)) 130.00
((~~Late application~~	~~$20.00~~))
Refund	$((~~20.00~~)) 26.00
Certification renewal	$((~~100.00~~)) 130.00
Continuing education class	$((~~40.00~~)) 52.00
Retake failed examination and training((~~:~~))	$39.00
((~~First retake~~	~~$0.00~~
~~Subsequent retakes~~	~~$30.00~~))
Manufactured home installer ((~~certification~~)) training manual	$((~~10.00~~)) 13.00
Installer certification tag	$((~~7.00~~)) 9.10

(1) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(2) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

(a) Change to another scheduled training and examination; or

(b) Request a refund.

(3) An applicant who fails the examination shall not be entitled to a refund.

WSR 10-06-049
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 24, 2010, 9:23 a.m., effective April 1, 2010]

Effective Date of Rule: April 1, 2010.

Purpose: The purpose of this rule making is to make clarification and technical changes to the Board of boiler rules—Substantive (chapter 296-104 WAC) based on actions and requests of the board of boiler rules. The changes will:

- As a result of HB 1366, extend the inspection of frequencies for internal inspection of low pressure heating boilers.
- Amend the definitions of low pressure heating boiler and hot water heaters. The department has policies that have been approved and enforced as rules but need to be formally added to the rules.
- Amend the shop inspection requirements to allow the program to discontinue services when the shop inspection program cannot support the activity.
- Move three of the most frequently used fees to the beginning of the fee table in WAC 296-104-700 for easy identification. The fee amounts remain the same.

Citation of Existing Rules Affected by this Order: Amending WAC 296-104-010, 296-104-100, 296-104-170, and 296-104-700.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, 70.79.350, and chapter 90, Laws of 2009 (HB 1366).

Adopted under notice filed as WSR 10-01-190 on December 22, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: February 24, 2010.

Robert E. Olson, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 08-12-015, filed 5/27/08, effective 6/30/08)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or **"board"** shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

Owner/user inspection agency's, and Washington specials are exempt from "boiler and unfired pressure vessel installation/reinstallation permit."

"Boilers and/or unfired pressure vessels" - below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements and appropriately marked by an inspector.
- **"Expansion tank"** shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the system. All vessels must be listed by a nationally recognized testing agency and shall be protected with an approved temperature and pressure safety relief valve and shall not exceed any of the following limits:

* Pressure of 160 psi (1100 kpa);
* Temperature of 210 degrees F (99°C)((~~:~~)). Additional requirements:
* ((~~Capacity of~~)) Hot water heaters exceeding 120 ((~~U.S.~~)) gallons (454 liters) must be ASME code stamped;

((~~* Input of 200,000 BTU/hr (58.58 kw). Note that if input exceeds 200,000 BTU/hr (58.58 kw), other terms defined in this section may apply.~~))

* Hot water heaters exceeding 200,000 BTU/hr (58.58 kw) input must be ASME code stamped.

- **"Low pressure ((~~heating~~)) boiler"** shall mean a steam ((~~or vapor~~)) boiler operating at a pressure not exceeding 15 psig or a boiler in which water ((~~or other fluid~~)) is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy((~~, excluding lined hot water heaters supplying potable hot water for external use to the system~~)). Low pressure boilers open to atmosphere and vacuum boilers are excluded.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:

* Fired process tubular heaters;
* Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;

* Piping whose primary function is to transport fluids from one location to another;
* Those vessels defined as low pressure heating boilers or power boilers.

• **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

"Certificate of competency" shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

"Certificate of inspection" shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

"Code, API-510" shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, ASME" shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, NBIC" shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Commission" shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

"Department" as used herein shall mean the department of labor and industries of the state of Washington.

"Director" shall mean the director of the department of labor and industries.

"Domestic and/or residential purposes" shall mean serving a private residence or an apartment house of less than six families.

"Existing installations" shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

"Inspection certificate" see "certificate of inspection."

"Inspection, external" shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

"Inspection, internal" shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"Inspector" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

• **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.

• **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.

• **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

"Nationwide engineering standard" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"Operating permit" see "certificate of inspection."

"Owner" or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"Owner/user inspection agency" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"Place of public assembly" or **"assembly hall"** shall mean a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing and boarding homes.

"Special design" shall mean a design using nationwide engineering standards other than the codes adopted in WAC 296-104-200 or other than allowed in WAC 296-104-230.

AMENDATORY SECTION (Amending WSR 09-12-033, filed 5/27/09, effective 6/30/09)

WAC 296-104-100 Inspection—How often must boilers and unfired pressure vessels be inspected? In accordance with RCW 70.79.080, 70.79.090, and 70.79.240 the following inspection requirements shall apply:

(1) **Power boilers** shall be inspected:

(a) Externally while under pressure - Annually.

(b) Internally and externally while not under pressure - Annually, except as noted in the following paragraph.

A power boiler in a national board accredited owner-user inspection program may have the internal inspection intervals extended by the owner-user inspection organization to five years maximum under the following conditions:

(i) The boiler water treatment and specific chemical limits are prescribed and monitored by an individual or company that specializes in the water treatment field;

(ii) Nondestructive examination (NDE) is performed along with the internal inspections;

(iii) The boiler is monitored within a manned operating facility;

(iv) Inspection, maintenance, and water treatment records are maintained;

(v) There is sufficient inspection history for the boiler or a boiler in similar service to justify the increase in the inspection interval; and

(vi) This provision shall not apply to a black liquor recovery boiler or any boiler with an unsuitable corrosion rate, remaining life, and/or repair history.

(2) **Organic vapor boilers** shall be inspected:

(a) Externally while under pressure - Annually.

(b) Internally and externally while not under pressure - Biennially.

(3) **Low pressure ((~~heating~~)) boilers** shall be inspected:

(a) Externally while in operation and under pressure - Biennially.

(b) Internally while not under pressure (except where construction does not permit((~~s, internally while not under pressure. Also, as a minimum, an internal of their low water fuel cutoff(s) must be completed, where construction permits - Biennially~~)) an internal) - every fourth year.

(c) Internally, all steam heating boilers will have as a minimum, an internal of their low water fuel cut off - Biennially.

(d) Internally, none required for nonvapor boilers using glycol, or adequately treated with corrosion inhibitor.

(4) **Hot water heaters** shall be inspected:

(a) Externally - Biennially.

(b) Internally - None required.

(5) **Unfired pressure vessels** shall be inspected:

(a) Externally - Biennially.

(b) Internally:

(i) When subject to corrosion and construction permits - Biennially. Vessels in an owner-user inspection program may follow intervals established by the NBIC or API-510 ninth edition with addenda.

(ii) Pulp or paper dryer rolls may be inspected on a five-year basis in accordance with TAPPI TIP 0402-16 2001 edition, provided the owner has established a written inspection program accepted by the inspector that meets the minimum requirements of TAPPI TIP 0402-16 2001 edition.

(iii) Vessels not subject to corrosion do not require an internal.

AMENDATORY SECTION (Amending WSR 06-24-042, filed 11/30/06, effective 1/1/07)

WAC 296-104-170 Inspection—When are shop inspections required? Shop inspections shall be as required in the standards of construction as adopted in WAC 296-104-200. Only inspectors and supervisors of inspectors holding a national board commission with the appropriate endorsements shall make shop inspections in this state.

Upon request from a boiler or pressure vessel manufacturer holding an ASME Certificate of Authorization within the jurisdiction, the department ((~~shall~~)) may provide inspection services as required by the ASME Code. The manufacturer receiving such inspection services shall reimburse the department for the time and expenses in accordance with the fee schedule established in WAC 296-104-700.

AMENDATORY SECTION (Amending WSR 08-12-015, filed 5/27/08, effective 6/30/08)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee): $50.00.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is $20.70.

Hot water heaters per RCW 70.79.090, inspection fee: $6.50.

Heating boilers:	Internal	External
Cast iron—All sizes	$34.80	$27.80
All other boilers less than 500 sq. ft.		$27.80
500 sq. ft. to 2500 sq. ft.	$69.40	$34.80
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	$27.80	$13.70

Power boilers:	Internal	External
Less than 100 sq. ft.	$34.80	$27.80
100 sq. ft. to less than 500 sq. ft.	$42.10	$27.80
500 sq. ft. to 2500 sq. ft.	$69.40	$34.80
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	$27.80	$13.70

Pressure vessels:

((~~Automatic utility hot water supply heaters per RCW 70.79.090~~ ~~$6.50~~

~~All other pressure vessels:~~))

Square feet shall be determined by multiplying the length of the shell by its diameter.

	Internal	External
Less than 15 sq. ft.	$27.80	$20.70
15 sq. ft. to less than 50 sq. ft.	$41.30	$20.70
50 sq. ft. to 100 sq. ft.	$48.10	$27.80
For each additional 100 sq. ft. or any portion thereof	$48.10	$13.70

((~~Certificate of inspection fees: For objects inspected, the certificate of inspection fee is $20.70 per object.~~

~~Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee) $50.00~~))

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours	$42.10
For each hour or part of an hour in excess of 8 hours	$62.80

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours	$62.80
For each hour or part of an hour in excess of 8 hours	$98.20

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

For each hour or part of an hour up to 8 hours	$42.10
For each hour or part of an hour in excess of 8 hours	$62.80

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours	$62.80
For each hour or part of an hour in excess of 8 hours	$98.20

Examination fee: A fee of $77.70 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: An initial fee of $26.30 and an annual renewal fee of $10.50 along with an annual work card fee of $15.80.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of $390.50 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 10-06-050
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Division of Credit Unions)

[Filed February 24, 2010, 9:24 a.m., effective March 27, 2010]

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

Purpose: To correct a typographical error in WAC 208-418-040.

Citation of Existing Rules Affected by this Order: Amending WAC 208-418-040.

Statutory Authority for Adoption: RCW 31.12.516, 43.320.040, chapter 43.135 RCW.

Adopted under notice filed as WSR 10-01-062 on December 10, 2009.

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

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

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

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

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

Date Adopted: February 24, 2010.

Linda Jekel, Director
Division of Credit Unions

AMENDATORY SECTION (Amending WSR 08-24-057, filed 11/26/08, effective 12/31/08)

WAC 208-418-040 Quarterly asset assessments. (1) The director will charge each credit union a quarterly asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January 1, April 1, July 1, and October 1. Asset assessments must be paid no later than thirty days after their due date. The assessments will be computed on total assets as of the prior June 30 for the October 1 and January 1 assessments, and as of the prior December 31 for the April 1 and July 1 assessments.

(2)

Credit Union's Total Assets	Quarterly Asset Assessment
over $500M	$21,163 + (.00001729 x total assets over $500M)
over $100M up to $500M	$5,883 + (.00003819 x total assets over $100M)

Credit Union's Total Assets	Quarterly Asset Assessment
over $25M up to $100M	0.00005883 x total assets
over $10M up to $25M	$1,296
over $2M up to $10M	$863
over $500K up to $2M	$575
up to $500K	$0

M = Million K = Thousand

(3) Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the quarter. A credit union converting to state charter will pay a prorated quarterly asset assessment for the quarter during which the conversion is completed.

(4) From time to time, the director may determine that asset assessments on an out-of-state credit union or foreign credit union are inappropriate relative to the level of examination and supervision of that credit union by the division. In that event, the director may charge the credit union hourly fees for examination and supervision of the credit union, including, but not limited to, offsite monitoring, in lieu of asset assessments. Such fees are due upon receipt of billing from the division.

WSR 10-06-051
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 24, 2010, 9:25 a.m., effective April 1, 2010]

Effective Date of Rule: April 1, 2010.

Purpose: The purpose of this rule making is to review the plumber certification rules for housekeeping changes in order to further clarify the rules. The plumber certification rules are reviewed on a regular basis to ensure the rules are consistent with the national consensus standards, industry practice, and to clarify the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 296-400A-005 What definitions do I need to know to understand these rules?, 296-400A-022 What procedure is required for renewal of a journeyman medical gas endorsement?, 296-400A-045 What fees will I have to pay?, 296-400A-100 For certification purposes, how are "years of employment" computed and documented?, 296-400A-120 What do I need to know about plumber trainee certificates (excluding backflow assembly maintenance and repair specialty certification)?, 296-400A-140 How does the department enforce plumbers certification requirements?, 296-400A-300 What procedure does the department follow when issuing a notice of infraction?, and 296-400A-400 What are the monetary penalties for violating certification requirements?

Statutory Authority for Adoption: RCW 18.106.040, 18.106.140.

Adopted under notice filed as WSR 10-02-103 on January 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-400A-120 was amended [to] clarify what was intended: That these trainees must attend all hours of a course in order to receive credit for attending the course.

WAC 296-400A-120:

(k) Apprentices registered in an approved program according to chapter 49.04 RCW who are obtaining classroom training consistent with the continuing education requirements under chapter 18.106 RCW and this chapter, as approved by the department, are deemed to have met the continuing education requirements necessary to renew a trainee certificate. Included under this exemption are active trainees that are not in the formal approved program according to chapter 49.04 RCW but are ~~taking~~ attending all hours of required classroom training along with the apprentices and meeting the work experience as required under chapter 18.106 RCW and this chapter. The plumber craft training school shall be required to supply the department the necessary documentation to prove there was full hourly attendance of these trainees as is required of the apprentices while they attend the classroom training.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: February 24, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-005 What definitions do I need to know to understand these rules? Unless a different meaning is clearly required by the context, the following terms and definitions are important:

"Advisory board" is the state advisory board of plumbers.

"Audit" means an assessment, evaluation, examination or investigation of, contractor's accounts, books and records for the purpose of verifying the contractor's compliance with RCW 18.106.320.

"Backflow assembly" or **"backflow prevention assembly"** or **"backflow preventer"** is a device as described in the *Uniform Plumbing Code* used to prevent the undesired reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

"Backflow assembly tester" is an individual certified by the department of health to perform tests to backflow assemblies.

"Continuing education" is approved plumbing and electrical courses for journeymen, domestic pump specialty plumbers, and residential specialty plumbers, to meet the requirements to maintain their plumbing certification and for trainees or individuals to become certified plumbers in Washington.

"Continuing education course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide continuing education training for journeymen, domestic pump specialty plumbers, residential specialty plumbers, and trainees. All training course providers must comply with the requirements in WAC 296-400A-028.

"Continuity affidavit" is a form developed by the department that is used to verify whether medical gas pipe installation work (brazing process) has been performed biannually. This form is provided to the department annually by the person holding the medical gas piping installer endorsement and requires the signature of the employer of the medical gas piping installer or another qualified verifier as determined by the department. Continuity is a visual examination by the employer of the brazing that was performed.

"Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of chapter 18.106 RCW by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of chapter 18.106 RCW and is registered as a contractor under chapter 18.27 RCW.

"Course of study" means classroom training and practical work experience in the plumbing industry as defined in WAC 296-400A-100.

"Department" is the department of labor and industries.

"Director" is the director of the department of labor and industries.

"Dispatcher" means the contractor's employee who authorized the work assignment of the person employed in violation of chapter 18.106 RCW.

((~~**"Department"** is the department of labor and industries.~~

~~**"Director"** is the director of the department of labor and industries.~~))

"Journeyman plumber" is anyone who has learned the commercial plumbing trade and has been issued a journeyman certificate of competency by the department. A journeyman plumber may work on plumbing projects including residential, commercial and industrial worksite locations.

"Medical gas piping installer" is anyone who has been issued a medical gas piping installer endorsement of competency by the department.

"Medical gas piping systems" are piping systems that convey or involve oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, or medical vacuum systems.

"Plumbing" is that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems and medical gas piping systems in the footprint of a building. Potable water systems, liquid waste systems, and medical gas piping systems are defined by the current *Uniform Plumbing Code* (UPC) and amendments adopted by the state building code council. All piping, fixtures, pumps and plumbing appurtenances that are used for a reclaimed water system are included in the definition of liquid waste systems. The installation of water softening or water treatment equipment into a water system is not considered plumbing.

"Records" include, but are not limited to, all bids, invoices, billing receipts, time cards and payroll records that show the work was performed, advertised, or bid.

"Specialty plumber" is anyone who has been issued a specialty plumbers certificate of competency by the department limited to:

(a) Installation, maintenance and repair of plumbing for single-family dwellings, duplexes and apartment buildings which do not exceed three stories;

(b) Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" includes cleaning and replacing internal parts of an assembly, but does not include installing or replacing backflow assemblies.

(c) "Domestic pump specialty" means the installation, maintenance, and repair of a domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:

(i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to:

(A) A single-family dwelling, duplex, or other similar place of residence;

(B) A public water system, as defined in RCW 70.119.-020 and as limited under RCW 70.119.040; or

(C) A farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;

(ii) Are located within the interior space, including but not limited to an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;

(iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either:

(A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a journeyman plumber, specialty plumber, or trainee, as defined in this chapter; or

(B) A person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150.

For the purposes of the domestic pump specialty, residential structure includes any improvement to real property where that property is primarily used as a residence.

"Story" is defined by the current building codes and amendments adopted by the state building code council which includes basements or garages.

"Supervision" for the purpose of these rules means within sight or sound. Supervision requirements are met when the supervising plumber is on the premises and within sight or sound of the individual who is being trained.

"Trainee plumber" is anyone who has been issued a trainee certificate and is learning or being trained in the plumbing trade with direct supervision of either a journeyman plumber or specialty plumber working in their specialty.

"Training course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide medical gas piping installer training. All training course providers must comply with the requirements in WAC 296-400A-026.

((~~**"Trainee plumber"** is anyone who has been issued a trainee certificate and is learning or being trained in the plumbing trade with direct supervision of either a journeyman plumber or specialty plumber working in their specialty.~~))

AMENDATORY SECTION (Amending WSR 05-11-061, filed 5/17/05, effective 6/30/05)

WAC 296-400A-022 What procedure is required for renewal of a journeyman medical gas endorsement? (1) Maintain an active Washington state journeyman certification((~~;~~)).

(2) Submit affidavit of continuity((~~;~~)).

(3) Submit affidavit of review of current medical gas code adopted by the Washington state building code council((~~;~~)).

(4) Pay the appropriate fee: If renewal occurs before expiration of current endorsement, the renewal fee shown in WAC 296-400A-045; if renewal occurs within ninety days of expiration of current endorsement, you must pay a double renewal fee; if the current endorsement has been expired for ninety-one days or more, you must take an examination relating to medical gas installation administered by the department and pay the examination application fee shown in WAC 296-400A-045((~~; and~~)). Medical gas endorsement is renewed every two years.

(5) Contractors shall accurately verify and attest to brazing performed by the journeyman by sending an affidavit to the department or in lieu of the biannual braze requirement from the contractor, a performed brazed coupon test documenting that the coupon was certified as passing from a department approved medical gas training course provider would be accepted.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-045 What fees will I have to pay? The following are the department's plumbers nonrefundable fees:

((~~(1)~~)) Fees related to journeyman and specialty plumber certification:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Examination application	Per examination	$((~~133.00~~)) 139.90
Domestic pump specialty application fee*******	Per application	$((~~133.00~~)) 139.90
Reciprocity application*	Per application	$((~~133.00~~)) 139.90
Trainee certificate**	One year or when hours are updated	$((~~39.70~~)) 41.70
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	((~~90~~)) 120 days	$((~~66.10~~)) 69.50
Journeyman or residential specialty certificate renewal or 1st card***	Two years ((~~(fee may be prorated based on months)~~))	$((~~106.50~~)) 112.00
Domestic pump specialty plumber certificate renewal or 1st card***	Three years ((~~(fee may be prorated based on months)~~))	$((~~159.80~~)) 168.10
Backflow assembly maintenance and repair specialty certificate renewal or 1st card***	Two years ((~~(fee may be prorated based on months)~~))	$((~~73.50~~)) 77.30
Medical gas endorsement application	Per application	$((~~49.00~~)) 51.50
Medical gas endorsement renewal or 1st card***	((~~One~~)) Two years	$((~~36.60~~)) 77.00
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Domestic pump specialty examination fee****		See note below.
Reinstatement fee for residential and journeyman certificates		$((~~213.50~~)) 224.60
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		$((~~122.90~~)) 129.20
Reinstatement fee for domestic pump		$((~~319.70~~)) 336.30
Replacement fee for all certificates		$((~~18.00~~)) 18.90
Refund processing fee		$((~~28.70~~)) 30.10
Unsupervised trainee endorsement		$((~~28.70~~)) 30.10
Inactive status fee		$((~~28.70~~)) 30.10
Honorary plumbing certification		$((~~106.50~~)) 120.00
Certified letter fee/verification of licensure		$((~~28.70~~)) 30.10
Documents copied from a plumber's file		$2.00 per page maximum copy charge $30.00
Continuing education new course fee******		$((~~173.00~~)) 181.90
Continuing education renewal course fee******		$((~~86.40~~)) 90.80
Continuing education classes provided by the department		$12 per continuing education training hour $8 per continuing education training hour for correspondence and internet courses

* Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.

** The trainee certificate shall expire one year from the date of issuance and must be renewed on or before the date of expiration. ((~~Updating a training certificate is optional and not required.~~)) Trainee update fee required when hours are submitted outside of renewal period.

*** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.

The ((~~annual~~)) two-year renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed ((~~biannually~~)) every six months during the renewal cycle.

**** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement or the domestic pump or pump and irrigation examination. **This fee is not paid to the department.**

***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**

****** This fee is for a three-year period or code cycle.

******* The domestic pump specialty application is valid for one year.

(((~~(2) If your birth year is:~~

~~(a) In an even-numbered year, your certificate will expire on your birth date in the next even-numbered year.~~

~~(b) In an odd-numbered year, your certificate will expire on your birth date in the next odd-numbered year.~~))

AMENDATORY SECTION (Amending WSR 02-14-074, filed 6/28/02, effective 7/1/02)

WAC 296-400A-100 For certification purposes, how are "years of employment" computed and documented? (1) For certification purposes, 2,000 hours of employment is considered one year. See RCW 18.106.070(2).

(2) When you renew your certificate, you must document your previous years' plumbing work by accurately completing the department's approved form and submitting it to the department.

(3) If you have completed a one, two, three, four or more years plumbing construction trainee program, you must have the necessary training hours for the year in which you are registered. No more than fifty percent of the minimum work experience needed to qualify for plumbing certification is allowed for any training school program. See RCW 18.106.040.

(4) Subsections (1) through (3) of this section do not apply to the backflow assembly maintenance and repair specialty certification as years of employment are not required for this specialty. Applicants for this specialty designation are required to have fulfilled the requirements in WAC 296-400A-122 and pay the applicable fees in WAC 296-400A-045(2).

(5) Experience obtained as a backflow assembly maintenance and repair specialty may not be applied toward journeyman or specialty plumber certification.

(6) For experience in another country, if an individual has a journeyman plumbing certificate from a country outside the United States that requires that at least four years of plumbing construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington journeyman plumbers examination. No more than two years of the required training to become a Washington journeyman plumber may be for work described for specialty plumbers or technicians in WAC 296-400A-010. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a journeyman plumber. Documentation substantiating the individual's out-of-country experience must be submitted in English.

(7) Out of country experience credit is not allowed toward a specialty plumbing certificate.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-120 What do I need to know about plumber trainee certificates (excluding backflow assembly maintenance and repair specialty certification)? (1) **Journeyman and specialty plumber trainee certification:**

(a) Original trainee certificates. The department will issue an original trainee certificate when the trainee applicant submits a complete trainee certificate application including:

(i) Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC 296-400A-045.

(iii) If an individual has previously held a plumbing trainee certificate, then that individual is not eligible for a subsequent original trainee certificate.

All applicants for a plumbing trainee certificate must be at least sixteen years of age and must follow requirements as defined in WAC 296-125-030.

(b) Renewal. The department issues separate trainee certificates once a year.

(c) The plumbing trainee may not apply for renewal more than ninety days prior to the expiration date. Plumber trainee certificates are valid for one year.

(d) All applicants for trainee certificate of renewal must:

(i) Submit a complete renewal application;

(ii) Pay all appropriate fees; and

(iii) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in chapter 296-400A WAC.

(e) If an individual files inaccurate or false evidence of continuing education information when renewing a plumbing trainee certificate, the individual's certificate may be suspended or revoked.

(f) An individual who has not completed the required hours of continuing education cannot renew a trainee certificate.

(g) Individuals will not be able to apply to test for journeyman plumber, domestic pump specialty plumber, or residential specialty plumber certificates until the continuing education requirements have been met.

(h) If continuing education hours have not been met, trainee certificates will become expired and any experience obtained by the trainee in expired status will not be credited toward plumbing certificate application.

(i) An individual may renew an expired certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in an expired status for the duration of the expired period.

(j) An individual may not renew a revoked trainee certificate.

(k) Apprentices registered in an approved program according to chapter 49.04 RCW who are obtaining classroom training consistent with the continuing education requirements under chapter 18.106 RCW and this chapter, as approved by the department, are deemed to have met the continuing education requirements necessary to renew a trainee certificate. Included under this exemption are active trainees that are not in the formal approved program according to chapter 49.04 RCW but are attending all hours of required classroom training along with the apprentices and meeting the work experience as required under chapter 18.106 RCW and this chapter. The plumber craft training school shall be required to supply the department the necessary documentation to prove there was full hourly attendance of these trainees as is required of the apprentices while they attend the classroom training.

(l) If you are a trainee applying for a journeyman certificate, you must complete a minimum of two of the required four years in commercial plumbing experience.

(m) A certified residential specialty plumber or domestic pump specialty plumber working on a commercial job site may work as a journeyman trainee only if they have a current trainee certificate on their person while performing commercial plumbing work.

(n) On a job site, the ratio of certified plumbers to noncertified plumbers must be:

(i) One residential specialty plumber or journeyman working on a residential plumbing job site may supervise no more than two trainees.

(ii) One journeyman plumber working on a commercial job site may supervise no more than one trainee or one residential specialty plumber who holds a current trainee certificate.

(iii) One appropriate domestic pump specialty plumber or one journeyman plumber working on a domestic pump system may supervise no more than two trainees.

(o) A plumber trainee who has a current trainee certificate with the state of Washington and has successfully completed or is enrolled in an approved medical gas piping installer training course may work on medical gas piping systems. Work may only occur when there is direct supervision by an active Washington state certified journeyman plumber with an active medical gas piping installer endorsement issued by the department. Supervision must be one hundred percent of the working day on a one-to-one ratio.

(p) Plumber trainee shall renew the certificate annually but not more than ninety days before the expiration date.

(q) The trainee will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(r) Trainee hours will not be credited if the trainee owes outstanding penalties for violations of this chapter.

(2) At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous annual period. The individual must submit a completed, signed, and notarized affidavit(s) of experience. The affidavit of experience must accurately attest to:

(a) The plumbing installation work performed for each employer the individual worked for in the plumbing trade during the previous period;

(b) The correct plumbing category the individual worked in; and

(c) The actual number of hours worked in each category, worked under the proper supervision of a Washington certified journeyman plumber, certified domestic pump specialty plumber, or residential specialty plumber.

(3) The trainee should ask each employer and/or apprenticeship-training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request.

(4) If hours for previous period are not submitted within the thirty days after renewing a plumbing training certificate, the individual may not receive credit for these previous period hours.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-140 How does the department enforce plumbers certification requirements? The department enforces plumber certification requirements by means of job-site inspections conducted by an authorized representative of the department. The representative must determine whether:

(1) Each person doing plumbing ((~~work~~)) has ((~~a proper certificate on their person~~)) their department issued certification card and governmental issued photo identification in their possession on the job site; and

(2) The ratio of certified specialty and/or journeyman plumbers to certified trainees is correct; and

(3) Each certified trainee is directly supervised by either a certified specialty plumber or a certified journeyman; and

(4) Persons who are installing medical gas piping systems have active medical gas piping installer endorsements in addition to their active plumber certification((~~.~~)); and

(5) Persons who are certified as backflow assembly maintenance and repair specialties ((~~must~~)) have an active backflow assembly tester certification from the department of health.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-300 What procedures does the department follow when issuing a notice of infraction? (1) If an authorized representative of the department determines that an individual has violated plumber certification requirements, including medical gas piping installer endorsement requirements, the department must issue a notice of infraction describing the reasons for the infraction.

(2) For plumber certification violations, the department may issue a notice of infraction to:

(a) An individual who is plumbing without a current plumber certificate; and

(b) The employer of the individual who is plumbing without a current plumber certificate; and

(c) The employer's authorizing agent or foreman that made the work assignment to the individual who is plumbing without a current plumber certificate; and

(d) An individual for not having their department issued certification card and governmental issued photo identification in their possession on the job site.

(3) For medical gas piping installer endorsement violations, the department may issue a notice of infraction to:

(a) An individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(b) The employer of the individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(c) The employer's authorizing agent or foreman that made the work assignment to the individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(d) An individual for not having their department issued certification card and governmental issued photo identification in their possession on the job site.

(4) The department may issue an infraction to a contractor advertising or performing work under this chapter or chapter 18.27 RCW who is not properly registered under chapter 18.27 RCW.

(5) An individual may appeal a notice of infraction by complying with the appropriate provisions of RCW 18.106.220.

(6) If good cause is shown, an administrative law judge may waive, reduce or suspend any monetary penalties resulting from the infraction.

(7) Any monetary penalties collected under this chapter, must be deposited in the plumbing certificate fund.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-400 What are the monetary penalties for violating certification requirements? (1) A person cited for an infraction under ((~~RCW 18.106.020 or 18.106.320~~)) chapter 18.106 RCW or this chapter shall be assessed a monetary penalty based upon the following schedule:

(a) Individual

First Infraction	$250.00
Second Infraction	$500.00
Third Infraction	$750.00
Fourth and each additional infraction	Not more than $1,000.00

(b) Contractor or dispatcher

First Infraction	$250.00
Second Infraction	$500.00
Third and each additional infraction	Not more than $1,000.00

(2) Each day a person is in violation is considered a separate infraction.

(3) Each job site at which a person is in violation is considered a separate infraction.

WSR 10-06-055
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Optometry)

[Filed February 24, 2010, 2:59 p.m., effective March 27, 2010]

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

Purpose: WAC 246-851-495, the rule provides for a temporary practice permit to be issued to an otherwise qualified applicant for a license to practice optometry if a fingerprint-based national background check must be conducted. The rule will improve access to care by avoiding delays in licensing for qualified applicants who would otherwise be prohibited from providing optometric services while awaiting national background checks.

Statutory Authority for Adoption: RCW 18.54.070, 18.130.064, 18.130.075.

Adopted under notice filed as WSR 10-01-186 on December 22, 2009.

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

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

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

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

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

Date Adopted: February 23, 2010.

Michael D. VanBrocklin, OD
Chair, Board of Optometry

NEW SECTION

WAC 246-851-495 How to obtain a temporary practice permit while the national background check is completed. Fingerprint-based national background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active license to practice optometry in another state that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington state.

(2) A temporary practice permit grants the individual the full scope of the practice of optometry.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the optometry license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license to practice optometry from another state that has substantially equivalent licensing standards to Washington state.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

WSR 10-06-056
PERMANENT RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)

[Filed February 24, 2010, 3:01 p.m., effective March 27, 2010]

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

Purpose: WAC 246-933-255 and 246-935-135, how to obtain a temporary practice permit while the national background check is completed for veterinarians and veterinary technicians.

Statutory Authority for Adoption: RCW 18.130.064, 18.130.075, 18.92.030.

Adopted under notice filed as WSR 10-01-177 on December 22, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: January 26, 2010.

Timothy D. Gintz, DVM, Chair
Veterinary Board of Governors

NEW SECTION

WAC 246-933-255 How to obtain a temporary practice permit while the national background check is completed. Fingerprint-based national background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active license to practice veterinary medicine, surgery and dentistry in another state that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington state.

(2) A temporary practice permit grants the individual the full scope of practice of veterinary medicine, surgery and dentistry.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license to practice veterinary medicine, dentistry and surgery from another state that has substantially equivalent licensing standards as Washington state.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

NEW SECTION

WAC 246-935-135 How to obtain a temporary practice permit while the national background check is completed. Fingerprint-based national background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active license to practice as a veterinary technician in another state that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington state.

(2) A temporary practice permit grants the individual the full scope of practice as a veterinary technician.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license to practice as a veterinary technician from another state that has substantially equivalent licensing standards as Washington state.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

WSR 10-06-058
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed February 25, 2010, 7:38 a.m., effective March 28, 2010]

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

Purpose: One amendment will help ensure that temporary subagency licenses will be issued timely. Another

amendment would require that the location of a sale be reflected in documents of sale.

Citation of Existing Rules Affected by this Order: Amending WAC 308-66-140 and 308-66-170.

Statutory Authority for Adoption: RCW 46.70.160.

Adopted under notice filed as WSR 09-24-034 on November 23, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 25, 2010.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-140 Place of business and places of business. Which business names and locations do I need to license?

(1) A dealer must inform the department in writing of each and every:

(a) Name under which the dealer does business, and

(b) Location at which the dealer does business.

The dealer must inform the department in writing within ten days of any addition, deletion or change in the name or location. The dealer must apply for a temporary subagency license at least ten days prior to the sales event that requires that license. There must be at least one day with no sales activity between any two ten day temporary permit periods.

(2) A dealer shall designate one name and one location as the principal name and principal place of business.

(a) All other names under which the dealer does business shall be designated and licensed as subagencies of that dealership;

(b) All other locations that are physically and geographically separated from the principal place of business shall be designated and licensed as subagencies of that dealership;

(c) If a dealer is required to obtain a subagency license under (2)(b) of this section, the dealer shall not be required to obtain an additional subagency license under (2)(a) of this section, unless the dealer does business under more than one name at that subagency location;

(d) The department will not require a subagency license for a name solely due to the use of a ".com" or other URL extension in an internet address; or because a dealership uses a derivative of its licensed "doing business as" name for its internet address. The web site must clearly display the licensed "doing business as" name.

(3) If the dealer ceases to maintain "an established place of business" at that subagency location, the director shall suspend, revoke and/or refuse to renew a subagency license of a dealership.

(4) All temporary subagencies must be covered by the bond of the dealer's principal place of business.

(5) A vehicle dealer, whether franchised or nonfranchised, that is unable to locate the dealer's used vehicle sales facilities adjacent to or at the established place of business need not obtain and hold a subagency license if:

(a) The vehicle sales lot is contained within the same city block, or

(b) Is directly across the street, or

(c) Is within sight, and

(d) Its location is zoned properly, and

(e) The dealer bond covers the sales lot.

(6) If the sales lot referred to in section 5 is in sight of the principal place of business, no sign is required at that sales lot.

(7) The department may require that a dealer provide evidence that each place of business conforms to all zoning and land use ordinances.

(8) Each and every subagency license of a dealership shall automatically be deemed ((~~cancelled~~)) canceled upon the termination, for whatever reason, of the principal license of that dealership.

(9) No license shall be issued to any applicant for a vehicle dealer or vehicle manufacturer license under a name that is the same as that of any dealer or manufacturer holding a current license issued pursuant to chapter 46.70 RCW.

(10) The sign at the certified location and the business telephone listing must reflect the "doing business as" (dba) name.

AMENDATORY SECTION (Amending WSR 98-20-039, filed 9/30/98, effective 10/31/98)

WAC 308-66-170 Denial, suspension or revocation of license. (1) When the license of a vehicle dealer has been suspended or revoked, the department shall post a closure notice at or near the principal entry to the place of business. Such notice shall include a statement that the dealership is closed as to the sale of vehicles because of the suspension or revocation of a license. In case of a suspension, the duration of the suspension shall be stated on the notice. A dealer shall not remove any closure notice without permission from an authorized representative of the director.

(2) Practices inimical to the health and safety of the citizens of the state of Washington pursuant to RCW 46.70.101 (1)(b)(viii) and (2)(k) shall include, but not be limited to, failure to comply with the following federal and state standards, as presently constituted and as hereafter amended, amplified or revised, pertaining to the construction and safety of vehicles:

(a) "Federal motor vehicle safety standards," 49 Code of Federal Regulations, part 571;

(b) "Control of air pollution from new motor vehicles and new motor vehicle engines," 40 Code of Federal Regulations, part 85;

(c) "Vehicle lighting and other equipment," chapter 46.37 RCW;

(d) Rules and regulations adopted by the Washington state patrol pursuant to RCW 46.37.005, Title 204 WAC;

(e) "Mobile/manufactured homes, commercial coaches, park trailers, and recreational vehicles," chapter 296-150B WAC;

(f) Housing and Community Development Act of 1974, Public Law 93-383, Title VI Mobile home construction and safety standards, §§ 603, 604, 610, 615, 616, 617.

(3) The department may deny a temporary subagency license if it is not applied for at least ten days prior to the sales event that requires the license.

WSR 10-06-069
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed February 25, 2010, 1:36 p.m., effective March 28, 2010]

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

Purpose: Effective January 1, 2010, reseller permits replaced resale certificates as the means to substantiate wholesale purchases, chapter 563, Laws of 2009. The department has amended a number of rules to recognize the change by adding language to state that resale certificates are no longer valid after December 31, 2009, and that reseller permits should be used.

In addition the department has removed tax-reporting information applying to tax periods outside the normal limitation periods for assessments and refunds from the following:

- WAC 458-20-119(1), elimination of reference to food and beverage service workers' permits.
- WAC 458-20-124 (6)(a), elimination of reference to food and beverage service workers' permits.
- WAC 458-20-146, "Reporting procedures" subsection, elimination of subsection as it provided outdated information and is unnecessary.

Minor editing and correction of citations, not intended to change other provisions of the sections, have been made.

Citation of Existing Rules Affected by this Order: WAC 458-20-110 Delivery charges, explains the manner in which delivery charges are subject to the business and occupation (B&O), retail sales, and use taxes.

WAC 458-20-115 Sales of packing materials and containers, explains the B&O, retail sales, and use taxes which apply to persons who sell packing materials and to those who use packing materials.

WAC 458-20-116 Sales and/or use of labels, name plates, tags, premiums, and advertising material, explains Washington's B&O and retail sales tax applications to the sale of labels, name plates, tags, and advertising material.

WAC 458-20-119 Sales of meals, explains Washington's B&O and retail sales tax application to the sales of meals, meals provided to employees, and meals provided without a specific charge.

WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses, explains Washington's B&O and retail sales tax applications to sales by restaurants and similar businesses.

WAC 458-20-135 Extracting natural products, explains the application of the B&O, retail sales, and use taxes to persons extracting natural products. It also provides guidance for determining when an extracting activity ends and the manufacturing activity begins.

WAC 458-20-136 Manufacturing, processing for hire, fabricating, explains the application of the B&O, retail sales, and use taxes to manufacturers.

WAC 458-20-139 Trade shops—Printing plate makers, typesetters, and trade binderies, explains the B&O tax and retail sales tax applications to altering or improving tangible personal property owned by printing plate makers, typesetters or trade binderies intended for sale or altering or improving tangible personal property owned by customers.

WAC 458-20-146 National and state banks, mutual savings banks, savings and loan associations and other financial institutions, explains the applicability of B&O and retail sales tax to gross income earned by such institutions.

WAC 458-20-150 Optometrists, ophthalmologists, and opticians, explains the application of Washington's B&O, retail sales, and use taxes to the business activities of optometrists, ophthalmologists, and opticians.

WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians, explains the application of B&O, retail sales, and use taxes to the business activities of the same.

WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies, and the Washington state health insurance pool, explains the applicability of B&O tax to income received by the same.

WAC 458-20-168 Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities, explains the application of B&O, retail sales, and use taxes to persons operating hospitals as defined in RCW 70.41.020, nursing homes as defined in RCW 18.51.010, boarding homes as defined in RCW 18.20.020, adult family homes as defined in RCW 70.128.010, and similar health care facilities.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapters 82.04, 82.08, 82.12 and 82.32 RCW, as they apply to wholesale sales and reseller permits.

Adopted under notice filed as WSR 10-01-193 on December 22, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 13, Repealed 0.

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

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

Date Adopted: February 24, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-026, filed 6/20/08, effective 7/21/08)

WAC 458-20-110 Delivery charges. (1) **Introduction.** This section explains the manner in which delivery charges are considered for purposes of business and occupation (B&O), retail sales, and use taxes. For information about delivery charges with regard to promotional materials, see WAC 458-20-17803 (Use tax on promotional materials).

(2) **What are delivery charges?** "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. ((~~RCW 82.08.010 and chapter 168, Laws of 2003, adopted the national Streamlined Sales and Use Tax Agreement definition of "delivery charges."~~))

(3) **Do the business and occupation (B&O) and retail sales taxes apply to delivery charges?** The measure of the tax is "gross proceeds of sales" for B&O tax (RCW 82.04.070) and "selling price" for retail sales tax (RCW 82.08.010). Gross proceeds of sales and selling price include all consideration paid by the buyer, without any deduction for costs of doing business such as material, labor, and transportation costs, including delivery charges. Thus, delivery charges by the seller are a component of these tax measures.

(a) **What if delivery charges are separately itemized on the sales invoice?** Amounts received by a seller from a buyer for delivery charges are included in the measure of tax regardless of whether charges for such costs are billed separately, itemized, or whether the seller is also the carrier. Limiting delivery charges to the actual cost of delivery to the seller does not affect taxability.

(b) **Does retail sales tax apply to all delivery charges by the seller?** Delivery charges by the seller making a retail sale are a component of the selling price. If the sale of the tangible personal property or service is exempt from retail sales tax, such as certain "food and food ingredients," retail sales tax does not apply to the selling price, including delivery charges, associated with that sale. Similarly, if the product is sold at wholesale, retail sales tax does not apply to the delivery charges of that sale.

If a retail sale consists of both taxable and nontaxable tangible personal property, and delivery charges are a component of the selling price, retail sales tax applies to the percentage of delivery charges allocated to the taxable tangible personal property. Retail sales tax is not due on delivery charges allocated to exempt tangible personal property.

The seller may use either of the following percentages to determine the taxable portion of the delivery charges:

(i) A percentage based on the total sales price of the taxable tangible personal property compared to the total sales price of all tangible personal property in the shipment; or

(ii) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment.

(c) **Are there any situations in which delivery charges by the seller may be excluded from the measure of tax?** There is no specific exclusion from the measure of tax for delivery charges by the seller. Actual delivery costs, regardless of whether separately charged, may be excluded from the measure of the manufacturing and extracting B&O taxes when the products are delivered outside the state. For further discussion, refer to WAC 458-20-112 (Value of products). WAC 458-20-13501 (Timber harvest operations) provides guidance regarding this issue for persons engaged in activities associated with timber harvesting.

(d) **Delivery charges in cases of payments to third parties.** Delivery charges incurred after the buyer takes delivery of the goods are not part of the selling price when the seller is not liable for payment of the delivery charges. To be excluded from the gross proceeds of sales for B&O tax and selling price for retail sales tax, the seller must document that the buyer alone is responsible to pay the carrier for the delivery charges.

(e) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In these examples, if the seller had been required to collect use tax (RCW 82.12.040) instead of retail sales tax (RCW 82.08.050), the use tax collection responsibility remains the same as for retail sales tax. This is because, in this context, the "value of article used" has the same meaning as the "purchase price" or "selling price."

(i) **Example 1.** Jane Doe orders a life vest from Marine Sales and requests that the vest be mailed by the United States Postal Service to her home. Marine Sales places the correct postage on the package using its postage meter and separately itemizes a charge on the sales invoice to Jane at the exact amount of the postage cost. Marine Sales is subject to the retailing B&O tax on the gross proceeds of the sale and must collect retail sales tax on the selling price, both of which measures of tax include the charge for postage.

(ii) **Example 2.** XYZ Corporation orders equipment from ABC Distributors and provides ABC with a properly completed resale certificate (WAC 458-20-102A), for purchases made before January 1, 2010, or a reseller permit (WAC 458-20-102), for purchases made on or after January 1, 2010. ABC ships the equipment using overnight air delivery and itemizes the actual amount of its shipping costs on the sales invoice. ABC must remit wholesaling B&O tax on the gross proceeds of sale, which includes the amount billed as shipping charges. Since the equipment is purchased for resale, ABC does not collect or report retail sales tax.

(iii) **Example 3.** The facts in this example are the same as those in (ii) of this subsection except that XYZ provides ABC with a properly completed exemption certificate. Retail

sales tax does not apply to the delivery charge because the selling price, of which the delivery charge is a component, is exempt from retail sales tax. However, the delivery charge is included in the gross proceeds of the sale, and thus, is subject to retailing B&O tax.

(iv) **Example 4.** Jones Computer Supply, a distributor, makes retail sales of computer products primarily by mail order. It is the practice of Jones Computer Supply to add a ten-dollar handling charge for each order. No separate charge is made for actual transportation. The handling charge is part of the measure of tax for the retailing B&O and retail sales taxes.

(v) **Example 5.** ABC Construction in Seattle purchased a new saw from XYZ, Inc. The sales contract specifies that ABC will contract with MNO, Inc. for shipping to Seattle and that MNO, Inc. will pick up the saw in Spokane. ABC does contract with MNO for the shipping and is shown as the consignor on the bill of lading. The transportation charge is not included in the measure of tax for purposes of the retailing B&O and retail sales taxes because ABC, the buyer, is liable for payment to MNO, for shipping the new saw.

(4) **Delivery charges and use tax.** ((~~Beginning June 1, 2002,~~)) "Value of article used," which is the measure of the use tax for tangible personal property, includes the amount of any delivery charge paid or given to the seller or on behalf of the seller with respect to the purchase of such article. Beginning July 1, 2004, both the "value of the article used" and the "value of the service used" will be the "purchase price" in instances where the seller is required under RCW 82.12.040 to collect use tax from the purchaser. RCW 82.12.010. "Purchase price" has the same meaning as "selling price" as described in subsection (3) of this section. Consumers responsible for remitting use tax directly to the department should refer to WAC 458-20-178 (Use tax).

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. Presume that all transactions in the following examples occur July 1, 2004, or later.

(a) **Example 1.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. XYZ contracted with MNO Freight to ship the parts from Chicago. ABC is subject to use tax on the value of the article used (presumed to be the purchase price of the parts) including the cost of the transportation, regardless of whether the transportation costs are itemized.

(b) **Example 2.** The facts in this example are the same as those in (a) of this subsection except that instead of ordering a replacement part, ABC Construction sends a broken part to XYZ, Inc. in Chicago for repair. ABC is subject to use tax on the repair service. The cost of transportation is included in the value of the service used, regardless of whether the transportation costs are itemized.

(c) **Example 3.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. ABC hired MNO Freight to ship the parts from Chicago and was responsible for payment. ABC may exclude the cost of the transportation from the value on which use tax is due. The transportation costs ABC pays MNO are not a component of the value of the article used because the cost is not part of the consideration paid to XYZ for the replacement parts. ABC is subject to use tax on the value of the parts, which is presumed to be their purchase price.

AMENDATORY SECTION (Amending WSR 93-19-017, filed 9/2/93, effective 10/3/93)

WAC 458-20-115 Sales of packing materials and containers. (1) **Introduction.** This section explains the B&O, retail sales, and use taxes which apply to persons who sell packing materials and to those who use packing materials.

(2) **Definitions.** The term "packing materials" means and includes all boxes, crates, bottles, cans, bags, drums, cartons, wrapping papers, cellophane, twines, gummed tapes, wire, bands, excelsior, waste paper, and all other materials in which tangible personal property may be contained or protected within a container, for transportation or delivery to a purchaser.

(3) **Business and occupation tax.**

(a) Sales of packing materials to persons who sell tangible personal property contained ((~~therein~~)) in or protected ((~~thereby~~)) by packing materials are sales for resale and subject to tax under the wholesaling classification. Sellers must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from ((~~the~~)) purchasers to ((~~support that these sales are for resale. Refer to WAC 458-20-102~~)) document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(b) Sales of containers to persons who sell tangible personal property ((~~therein~~)) contained within the containers, but who retain title to such containers which are to be returned, are sales for consumption and subject to tax under the retailing classification. This class includes wooden or metal bottle cases, barrels, gas tanks, carboys, drums, bags and other items, when title ((~~thereto~~)) to the container remains ((~~in~~)) with the seller of the tangible personal property contained ((~~therein~~)) within the container, and even though a deposit is not made for the containers, and when such articles are customarily returned to the seller. If a charge is made against a customer for the container, with the understanding that such charge will be ((~~cancelled~~)) canceled or rebated when the container is returned, the amount charged is deemed to be made as security for the return of the container and is not part of the selling price for tax purposes. However, refer to the comments below for sales of containers for beverages and foods.

(c) Title to containers, whether designated as returnable or nonreturnable, for beverages and food sold at retail, including beer, milk, soft drinks, mixers and the like, will be deemed to pass to the customer along with the contents. In such cases, amounts charged for the containers are part of the selling price of the food or beverage and subject to retailing

tax when sold to consumers. Sales to persons who will resell the food or beverages are wholesale sales.

(d) Persons who perform custom or commercial packing for others are generally taxable under the service B&O tax classification on the income from the packing activity.

(i) Under RCW 82.04.190, persons taxable under the service B&O tax classification are consumers of any materials used in performing the service. Sales of packing materials to persons engaged in the business of custom or commercial packing are sales for consumption and are subject to the retail sales tax. However, there is a specific statutory exemption from the B&O tax for persons who perform packing of fresh perishable horticultural products for the grower. These persons are also exempt from retail sales tax on the purchase of any materials and supplies used in performing the packing service.

(ii) Persons who perform custom or commercial packing for others and who also manufacture the boxes, containers, or other packaging materials used by them in the packing are subject to the manufacturing tax and use tax on the value of the packing materials which they manufacture. Refer to WAC 458-20-136 Manufacturing, processing for hire, fabricating.

(e) Persons who operate cold storage warehouses or who perform processing for hire for others, which includes packaging the processed items, are not the consumers of the containers or other packaging materials. Sales of boxes, cartons, and packaging materials to these persons are taxable under the wholesaling tax classification. Refer to WAC 458-20-136 and 458-20-133 Frozen food lockers.

(f) Persons who manufacture packing materials for delivery outside Washington or for their own commercial or industrial use are manufacturers and should refer to WAC 458-20-136, 458-20-134 Commercial or industrial use, and WAC 458-20-112 Value of products.

(4) **Retail sales tax.**

(a) All sales taxable under the retailing classification of the business and occupation tax as indicated above are also subject to retail sales tax except those specifically distinguished hereafter in this subsection.

(b) Retail sales tax does not apply to sales of returnable food and beverage containers, and vendors may take a deduction from gross retail sales for the amount of such sales in reporting sales tax due, providing (i) the seller separately states the charge for the container and (ii) the separately stated charge is the amount the vendor will pay for a repurchase of the container. Return of the containers is a repurchase by the vendor, and sales tax is not due on amounts paid to the customer on such repurchases, since the vendor will resell the containers in the regular course of business. (RCW 82.08.0282.)

(c) No deduction is allowed in computing tax under the retail sales tax classification where the retail sales tax is collected from the customer upon the charge for the container.

(d) Sales of packing materials to cooperative marketing associations, agents, or independent contractors for the purpose of packing fresh perishable horticultural products for the growers thereof, are not subject to retail sales tax. See also WAC 458-20-214 Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce.

(5) **Use tax.**

(a) The use tax applies to uses of packing materials and containers to which retail sales tax would apply but, for any reason, was not paid at the time such materials and containers were acquired.

(b) The use tax applies to the use of packing materials, such as boxes, cartons, and strapping materials, by a manufacturer in Washington where the packing materials are used to protect materials while being transported to another site of the manufacturer for further processing.

(c) The use tax applies to the use of pallets by a manufacturer or seller where the pallets will not be sold with the product, but are for use in the manufacturing plant or warehouse.

(6) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Packing Co. does custom packing of small parts for a Washington manufacturer. The parts are sent by truck to ABC who then places the parts into plastic bags and seals the bags through a heat fusion process. ABC is the consumer of the bags and must pay either retail sales tax or use tax on the use of the bags. This is true even though the bags will remain with the parts until delivered to the ultimate user of the parts.

(b) XY manufactures paper products in Washington. The paper is placed on large rolls. These large rolls are shipped to another of its own plants where the paper goes through a slitter for conversion into reams of paper. These large rolls involve the use of "cores" made of heavy fiber board on which the paper is rolled. "Plugs" are placed in the ends to give additional support. The rolls are also wrapped and banded with steel banding. The cores, plugs, wrapping materials, and banding are all eventually removed during the additional processing. XY is the consumer of the plugs, cores, and other packing materials and must pay retail sales or use tax on these items.

(c) XY uses three types of pallets in its manufacturing operation. One type of pallet is used strictly for storing paper which is in the manufacturing process. A second type of pallet is returnable and the customer is charged a deposit which is refunded at the time the pallet is returned. The third type of pallet is nonreturnable and is sold with the product. XY is required to pay retail sales or use tax on the first two types of pallets. The third type of pallets may be purchased by XY without the payment of retail sales or use tax since these pallets are sold with the paper products.

(d) Cold Storage Co. does custom fish processing for various customers. The processing involves cutting whole fish into fillets or steaks, vacuum packaging the pieces, and freezing the packages. The packing activity is considered to be part of a processing for hire activity. As a processor for hire, Cold Storage Co. is not the consumer of the packing materials.

AMENDATORY SECTION (Amending WSR 93-19-018, filed 9/2/93, effective 10/3/93)

WAC 458-20-116 Sales and/or use of labels, name plates, tags, premiums, and advertising material. (1) **Introduction.** This section explains Washington's B&O and retail sales tax applications to the sale of labels, name plates, tags, and advertising material. It also gives tax reporting information to persons offering premiums at reduced or no cost to customers.

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Labels," "name plates," and "tags" are slips, generally made of paper or cloth, which are affixed to articles or containers for identification or description.

(b) A "premium" is an item offered free of charge or at a reduced price to prospective customers as an inducement to buy.

(3) **Sales for resale.** Sales of labels, name plates, tags, premiums, and advertising material to persons for use in the following manner are sales for resale (wholesale sales) and not subject to retail sales tax:

(a) Sales of labels, name plates, and tags to persons who will attach these items to articles or containers sold by them, or enclose these items with articles sold by them. However, the labels, name plates, or tags may not be purchased for resale if they will be put to intervening use by such persons.

(b) Sales of premiums to persons who pass title to the premium along with other articles which are sold by them, when the passing of title to the premiums is not contingent upon the returning of coupons or other evidence of prior purchase.

(c) Sales of premiums to persons who in turn sell the same to customers at a reduced price.

(d) Sales of advertising material to persons who enclose the advertising material with articles sold by them, when such advertising material relates primarily to the articles with which it is enclosed. Persons who enclose advertising material with articles being sold for the purpose of promoting sales of other products are consumers and may not purchase this advertising material for resale. (See RCW 82.12.010(5).)

(4) **Retail sales tax.** Sales of labels, name plates, tags, premiums, and advertising material to consumers are retail sales. The retail sales tax applies to the following:

(a) Sales of labels, name plates, and tags to persons who attach the same to containers enclosing articles sold by them, when such persons retain title to the containers which are to be returned. Such sales are sales for consumption and subject to the retail sales tax. Since the container is not being resold, any labels, name plates, tags, or similar items attached to the container are also not being resold.

(b) Sales of labels, name plates, and tags to persons who use them for inventory, statistical, or other business purposes. Such sales are sales for consumption and the retail sales tax applies, notwithstanding the labels, name plates, or tags remain attached to the articles or containers delivered to the customer.

(c) Sales of premiums to persons who do not pass title thereto with other articles which are sold by them, but which are given as an inducement to perform a service, or are given upon the returning of coupons or other evidence of prior purchase. Such sales are sales for consumption and are subject to the retail sales tax.

(d) Sales of premiums to persons who offer them as an inducement to potential customers at no charge and with no requirement that the customer purchase any other article or service as a condition to receive the premium. Such sales are sales for consumption and subject to the retail sales tax.

(5) **Business and occupation tax.** The B&O tax applies to the sale of labels, name plates, tags, premiums, and advertising material as follows:

(a) **Wholesaling.** Persons who sell labels, name plates, tags, premiums, and advertising material to persons who will resell these items as described in subsection (3) of this section are subject to the wholesaling B&O tax on the gross proceeds of these sales. Sellers must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from their customers to ((~~support the resale nature of these transactions. (Refer to WAC 458-20-102.)~~)) document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(b) **Retailing.** Persons who sell labels, name plates, tags, premiums, and advertising material to consumers are subject to the retailing B&O tax on such sales.

(6) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(7) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Timber purchases log tags which are attached to logs as they are received in ABC's yard. These tags are used by ABC to keep track of the logs for inventory purposes. These tags remain on the logs after sale, and are also used by ABC's customers to verify receipt of the logs. ABC must remit retail sales or use tax upon the purchase of the log tags, notwithstanding they remain attached to the logs after sale to ABC's customers. The use of these tags for inventory purposes by ABC prior to actual sale is intervening use as a consumer.

(b) MT Gas, a gasoline and service station, offers customers a free set of stemware with any gasoline purchase of ten gallons or more. Customer purchasing seven to nine gallons of gasoline may purchase the same set of stemware for a nominal amount. MT Gas may purchase the stemware without paying retail sales tax. The stemware is offered as a premium, and is considered to be resold along with the gasoline. It is immaterial that the sale of gasoline is exempt from the retail sales tax. MT Gas must report the retailing B&O tax and collect and remit retail sales tax on the price charged for the stemware sold to those customers purchasing seven to nine gallons of gasoline.

(c) KMP Company is a camping club which purchases gift items which are used as premiums. These gift items are offered free of charge to potential customers on condition

that the potential customer attend a sales presentation. No purchase of a membership or anything else is required to receive the premium. KMP must remit retail sales or use tax upon the purchase of the premiums. KMP is the consumer of premiums given away free of charge where the recipient has no requirement to purchase any service or article as a condition of receiving the premium.

(d) BC Bank offers a choice of various premiums to customers opening new savings accounts. In some cases, a charge may be made to the customer for the premium, with the amount of the charge based on the amount of deposit the customer makes in the new savings account. BC Bank may give a resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a reseller permit (WAC 458-20-102) for purchases made on or after January 1, 2010, to its suppliers for those premiums which will be resold to its new customers. For those premiums which will be given to customers without charge, BC Bank must pay either the retail sales tax to its suppliers or use tax to the department on the cost of the premiums. (((~~(Refer to WAC 458-20-102.)~~))) It also must report the retailing B&O tax and collect and remit retail sales tax on any amounts charged to its customers.

AMENDATORY SECTION (Amending WSR 99-11-107, filed 5/19/99, effective 6/19/99)

WAC 458-20-119 Sales of meals. (1) **Introduction.** This ((~~rule~~)) section explains Washington's B&O and retail sales tax applications to the sales of meals. This ((~~rule~~)) section also gives tax reporting information to persons who provide meals without a specific charge. It explains how meals furnished to employees are taxed. Persons in the business of operating restaurants should also refer to WAC 458-20-124 and persons operating hotels, motels, or similar businesses should refer to WAC 458-20-166.

((~~Retail sellers who are required by law to have a food and beverage service worker's permit under RCW 69.06.010 are subject to the retailing B&O tax and must collect and remit retail sales tax on sales of prepared food products, unless a specific exemption applies. For additional information regarding sales by persons required to have a food and beverage worker's permit, refer to WAC 458-20-244 (Food products).~~))

(2) **Business and occupation tax.** The sales of meals and the providing of meals as a part of services rendered are subject to tax as follows:

(a) **Retailing.** The retailing B&O tax applies as follows.

(i) **Restaurants, cafeterias and other eating places.** Sales of meals to consumers by restaurants, cafeterias, clubs, and other eating places are subject to the retailing tax. (See WAC 458-20-124((-)) restaurants, etc.)

(ii) **Caterers.** Sales of meals and prepared food by caterers are subject to the retailing tax when sold to consumers. "Caterer" means a person who provides, prepares and serves meals for immediate consumption at a location selected by the customer. The tax liability is the same whether the meals are prepared at the customer's site or the caterer's site. The retailing tax also applies when caterers prepare and serve meals using ingredients provided by the customer. Persons providing a food service for others should refer to the subsection below entitled "Food service contractors."

(iii) **Hotels, motels, bed and breakfast facilities, resort lodges and other establishments offering meals and transient lodging.** Sales of meals by hotels, motels, and other persons who provide transient lodging are subject to the retailing tax.

(iv) **Boarding houses, American plan hotels, and other establishments offering meals and nontransient lodging.** Sales of meals by boarding houses and other such places are subject to retailing tax.

(A) Except for guest ranches and summer camps, when a lump sum is charged to nontransients for providing both lodging and meals, the fair selling price of the meals is subject to the retailing tax. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. This cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other incidental costs, including an appropriate portion of overhead expenses.

(B) It will be presumed that guest ranches and summer camps are not making sales of meals when a lump sum is charged for the furnishing of lodging, and meals are included.

(v) **Railroad, Pullman car, ship, airplane, or other transportation company diners.** Sales of meals by a railroad, Pullman car, ship, airplane, or other transportation company served at fixed locations in this state, or served upon the carrier itself while within this state, are subject to the retailing tax.

Where no specific charge is made for meals separate and apart from the transportation charge, the entire amount charged is deemed a charge for transportation and the retailing tax does not apply to any part of the charge.

(vi) **Hospitals, nursing homes, and other similar institutions.** The serving of meals by hospitals, nursing homes, sanitariums, and similar institutions to patients as a part of the service rendered in the course of business by such institutions is not a sale at retail. However, many hospitals and similar institutions have cafeterias or restaurants through which meals are sold for cash or credit to doctors, visitors, nurses, and other employees. Some of these institutions have agreements where the employees are paid a fixed wage in payment for services rendered and are provided meals at no charge. Under those circumstances, all sales of meals to such persons are subject to the retailing tax, including the value of meals provided at no charge to employees. Refer to the subsection below entitled "Meals furnished to employees."

(vii) **School, college, or university dining rooms.** Public schools, high schools, colleges, universities, or private schools operating lunch rooms, cafeterias, dining rooms, or snack bars for the exclusive purpose of providing students and faculty with meals or prepared foods are not considered to be engaged in the business of making retail sales of meals. However, if guests are permitted to dine with students or faculty in such areas, the sales of meals to the guests are retail sales.

(A) Unless the eating area is situated so that it is available only to students and faculty, the lunch room, cafeteria, dining room, or snack bar must have a posted sign stating that the area is only open to students and faculty. In the absence of

such a sign, there will be a presumption that the facility is not exclusively for the use of students and faculty. The actual policy in practice in these areas must be consistent with the posted policy.

(B) If the cafeteria, lunch room, dining room, or snack bar is generally open to the public, all sales of meals, including meals sold to students, are considered retail sales.

(C) For some educational institutions, the meals provided to students is considered to be part of the charge for tuition and may not be subject to the B&O tax. Public schools, high schools, colleges, universities, and private schools should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies to the sales of meals described above. (See also WAC 458-20-189 for a discussion of B&O tax for schools operated by the state.)

(viii) **Fraternities and sororities.** Fraternities, sororities, and other groups of individuals who reside in one place and jointly share the expenses of the household including expense of meals are not considered to be making sales when meals are furnished to members.

(b) **Wholesaling-other.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling-other tax classification. Sellers must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from their customers to ((~~support the resale nature of any transaction. (See WAC 458-20-102.)~~)) document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(c) **Service and other business activities.** Private schools, which do not meet the definition of "educational institutions," operating lunch rooms, cafeterias, or dining rooms for the exclusive purpose of providing meals to students and faculty are subject to the service and other business activities B&O tax on the charges to students and faculty for meals. (See WAC 458-20-167 for definitions of the terms "private school" and "educational institution.") Persons managing a food service operation for a private school should refer to the subsection below entitled "Food service contractors."

(3) **Retail sales tax.** The sales of meals, upon which the retailing tax applies under the provisions above, are generally subject to tax under the retail sales tax classification. However, a retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040 (6).

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. However, this exemption does not apply to purchases of prepared meals by not-for-profit organizations, such as hospitals, which provide the meals to patients as a part of the services they render.

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) The retail sales or use tax does not apply to purchases of food or beverage products which are ingredients of meals being sold at retail or wholesale.

(d) Purchases of food products and prepared meals by persons who are not in the business of selling meals at retail or wholesale are subject to the retail sales tax. However, certain food products are statutorily exempt of retail sales or use tax. (See WAC 458-20-244 Food and food ingredients.)

(e) Private schools, educational institutions, nursing homes, and similar institutions who are not making sales of meals at retail or wholesale are required to pay retail sales tax on all purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles which are furnished to customers, the first actual use of which renders such articles unfit for further use. However, purchases of such items by restaurants and similar businesses which are making retail or wholesale sales of meals are not subject to the retail sales or use tax.

(f) Transportation companies not segregating their charges for meals, and transporting persons for hire in interstate commerce, generally will be liable to their sellers for retail sales tax upon the purchase of the food supplies or prepared meals to the extent that the meals will be served to passengers in Washington. Certain food items are statutorily exempt of retail sales or use tax. (See WAC 458-20-244 Food and food ingredients.)

(5) **Food service contractors.** The term "food service contractor" means a person who operates a food service at a kitchen, cafeteria, dining room, or similar facility owned by an institution or business. Food service contractors may manage the food service operation on behalf of the institution or business, or may actually make sales of meals or prepared foods.

(a) Sales of meals. Food service contractors who sell meals or prepared foods to consumers are subject to the retailing B&O and retail sales taxes upon their gross proceeds of sales. For example, the operation of a cafeteria which provides meals to employees of a manufacturing or financial business is generally a retail activity. The food service contractor is considered to be making retail sales of meals, whether payment for the meal is made by the employees or the business, unless the business itself is reselling the meals to the employees.

In all cases where the meals are prepared at offsite facilities not owned by the institution or business, the food service contractor is considered to be making sales of meals and the retailing B&O and retail sales taxes apply to the gross proceeds of sale, or gross income for sales to consumers.

(b) Food service management. ((~~Effective July 1, 1998,~~)) The gross proceeds derived from the management of a food service operation are subject to the service and other business activities B&O tax. (((~~(Chapter 7, Laws of 1997.) For the period of July 1, 1993, through June 30, 1998, these proceeds were subject to the selected business services classification of the B&O tax.~~)) These tax reporting provisions apply whether the staff actually preparing the meals or prepared foods are employed by the institution or business hiring the food service contractor, or by the food service contractor itself. If the food service contractor merely manages the food service operation on behalf of an institution or business, that institution or business is considered to be selling meals or providing the meals as a part of the services the institution or business renders to its customers. These institutions and businesses should refer to the subsections (2) and (3) above to determine their B&O and retail sales tax liabilities.

Food service management includes, but is not limited to, the following activities:

(i) Food service contractors operating a cafeteria or similar facility which provides meals and prepared food for employees and/or guests of a business, but only where the business owning the facility is the one actually selling the meals to its employees.

(ii) Food service contractors managing and/or operating a cafeteria, lunch room, or similar facility for the exclusive use of students or faculty at an educational institution or private school. The educational institution or private school provides these meals to the students and faculty as a part of its educational services. The food service contractor is managing a food service operation on behalf of the institution, and is not making retail sales of meals to the students, faculty, or institution. Sales of meals or prepared foods to guests in such areas are, however, subject to the retailing B&O and retail sales taxes. (Refer also to the subsection above entitled "School, college, or university dining rooms.")

(iii) Food service contractors managing and/or operating the dietary facilities of a hospital, nursing home, or similar institution, for the purpose of providing meals or prepared foods to patients or residents thereof. These meals are provided to the patients or residents by the hospital, nursing home, or similar institution as a part of the services rendered by the institution. The food service contractor is managing a food service operation on behalf of the institution, and is not considered to be making retail sales of meals to the patients, residents, or institution. Meals sold to doctors, nurses, visitors, and other employees through a cafeteria or similar facility are, however, subject to the retailing B&O and retail sales taxes. (Refer also to the subsection above entitled "Hospitals, nursing homes, and other similar institutions.")

(c) The following examples explain the application of the B&O and retail sales taxes to typical situations involving food service contractors managing a food service operation. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(i) GC Inc. is a food service contractor managing and operating an on-site cafeteria for B College. This cafeteria is operated for the exclusive use of students and faculty. Guests of students or faculty members, however, are allowed to use the facilities. All moneys collected in the cafeteria are retained by B College. College B pays GC's direct costs for managing and operating the cafeteria, including the costs of the unprepared food products, employee salaries, and overhead expenses. GC also receives a management fee.

GC Inc. is managing a food service operation. The measure of tax is the gross proceeds received from B College. GC Inc. may not claim a deduction on account of cost of materials, salaries, or any other expense. ((~~For periods prior to July 1, 1998, the gross proceeds are subject to the selected business services B&O tax. On and after July 1, 1998, these~~)) GC Inc.'s proceeds are subject to the service and other activities B&O tax classification. B College is considered to be making retail sales of meals to the guests and must collect and remit retail sales taxes on the gross proceeds of these sales. B College should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies.

(ii) DF Food Service contracts with Hospital A to manage and operate Hospital A's dietary and cafeteria facilities. DF is to receive a per meal fee for meals provided to Hospital A's patients. DF Food Service retains all proceeds for sales of meals to physicians, nurses, and visitors in the cafeteria.

The gross proceeds received from Hospital A in regards to the meals provided to the patients is derived from the management of a food service operation. ((~~For periods prior to July 1, 1998, these proceeds are subject to the selected business services B&O tax. On and after July 1, 1998,~~)) These proceeds are subject to the service and other activities B&O tax classification. DF, however, is making retail sales of meals to physicians, nurses, and visitors in the cafeteria. DF Food Service must pay retailing B&O, and collect and remit retail sales tax, on the gross proceeds derived from the cafeteria sales.

(6) **Meals furnished to employees.** Sales of meals to employees are sales at retail and subject to the retailing B&O and retail sales taxes. This is true whether individual meals are sold, whether a flat charge is made, or whether meals are furnished as a part of the compensation for services rendered.

(a) Where a specific and reasonable charge is made to the employee, the measure of the tax is the selling price.

(b) Where no specific charge is made, the measure of the tax will be the average cost per meal served to each employee, based upon the actual cost of the food.

(c) It is often impracticable to collect the retail sales tax from employees on such sales. The employer may, in lieu of collecting such tax from employees, pay the tax directly to the department of revenue.

(d) Where meals furnished to employees are not recorded as sales, the tax due shall be presumed to apply according to the following formula for determining meal count:

(i) Those employees working shifts up to five hours, one meal; and

(ii) Employees working shifts of more than five hours, two meals.

(7) **Sales of meals, beverages, and food at prices including sales tax.** Persons who advertise and/or sell meals, alcoholic or other beverages, or any kind of food products upon which retail sales tax is due should refer to WAC 458-20-244 (Food ((~~products~~)) and food ingredients), WAC 458-

20-124 (restaurants, etc.), and WAC 458-20-107 (Advertised prices including sales tax). The taxability of persons operating class H licensed restaurants is specifically addressed in WAC 458-20-124.

(8) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities, or otherwise must be included in the selling price and are subject to both the retailing classification of the B&O tax and the retail sales tax.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(a) ABC Hospital operates a cafeteria and sells meals to physicians and to persons who are visiting patients in the hospital. Meals are also provided to its employees at no charge. However, there is no accounting for the number of meals consumed by the employees. Payroll records do record the number of hours worked. On average, employees working shifts of up to five hours consume one meal while those working shifts of more than five hours consume two meals.

ABC Hospital is subject to retailing and retail sales taxes on the gross proceeds derived from the sales of meals to physicians and visitors. The retailing and retail sales taxes also apply to the value of meals consumed by ABC's employees. The value subject to tax is determined by the average cost of meals consumed by the employees, based upon the actual cost of the food items, multiplied by the number of meals as determined through a review of the payroll records. While the presumption is that employees working shifts of up to five hours consume one meal with those working shifts of five to eight hours consuming two, this presumption may be rebutted under particular circumstances.

(b) X operates a boarding house and provides lodging and meals to ten nontransient residents. Each resident is charged a lump sum to cover both lodging and meals with no accounting for a fair selling price for the meals. X is making retail sales of meals to its residents. Retailing and retail sales taxes are due on the value of the meals served. This value must be computed as double the cost of the meal, including the cost of the food and drink ingredients, costs of meal preparation, and other costs associated with the meal preparation such as overhead expenses.

(c) Y Motor Inn contracts with Z Company to provide catering services for a function to be held at the motor inn. During discussions concerning the services to be provided, Z Company is informed that a 15% gratuity is generally recommended. Z Company negotiates the gratuity percentage to 10% and signs a catering contract stating that the agreed gratuity will be added. The gratuity charged to Z Company is subject to both the retailing B&O and retail sales taxes. This is not a voluntary gratuity since it is required to be paid as a condition of the contract. Gratuities are not part of the selling price only when they are strictly voluntary.

AMENDATORY SECTION (Amending WSR 93-23-018, filed 11/8/93, effective 12/9/93)

WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses. (1) **Introduction.** This section explains Washington's B&O and retail sales tax applications to sales by restaurants and similar businesses. It discusses the sales of meals, beverages and foods at prices inclusive of the retail sales tax. This section also explains how discounted and promotional meals are taxed. Persons operating restaurants and similar businesses should also refer to WAC 458-20-119 and 458-20-244. Persons who merely manage the operations of a restaurant or similar business should refer to WAC 458-20-119 to determine their tax liability. The term "restaurants, cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

(2) **Business and occupation tax.** The tax liability of restaurants, cocktail bars, taverns and similar businesses is as follows:

(a) **Retailing.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are subject to the retailing tax classification. Meals provided to employees are presumed to be in exchange for services received from the employee and are retail sales and also subject to the retailing tax. (See WAC 458-20-119, Sales of meals.)

(b) **Wholesaling.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling-other tax classification. Sellers must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from their customers to ((~~support the resale nature of any transaction. (See WAC 458-20-102.)~~)) document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(c) **Service.** Compensation received from owners of coin-operated machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other business activities tax. Persons operating games of chance should refer to WAC 458-20-131.

(3) **Retail sales tax.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are generally subject to retail sales tax. This includes the meals sold or furnished to the employees of the business. A retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040 (6);

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW;

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) The retail sales or use tax does not apply to purchases of food or beverage products which are ingredients of the meals being sold.

(d) Purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles which are furnished to customers, the first actual use of which renders such articles unfit for further use, are not subject to retail sales tax when purchased by restaurants and similar businesses making actual sales of meals.

(5) **Combination businesses.** Persons operating a combination of two kinds of food sales businesses, of which one is the sale of food for immediate consumption (i.e., a bakery selling food products ready for consumption and in bulk quantities), are required to keep their accounting records and sales receipts segregated between taxable and tax exempt sales. Persons operating a combination business should refer to WAC 458-20-244.

(6) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. Both the retailing B&O and retail sales taxes should be calculated on the reduced price actually received by the seller.

(a) Persons who provide meals free of charge to persons other than employees are consumers of those meals. ((~~However, certain food products are statutorily exempt of retail sales or use tax unless sold by a retail vendor where the food product must be handled by a person required to have a food handler's permit. For tax reporting periods beginning with December 1, 1993,~~)) Persons operating restaurants or similar businesses((~~, where a food handler's permit is required, will~~)) are not ((~~be~~)) required to report use tax on food ((~~products~~)) and food ingredients given away, even if the food ((~~products~~)) or food ingredients are part of prepared meals. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a retail sales or use tax liability with respect to these items given away. A sale has not occurred, and the food ((~~products~~)) and food ingredients exemption applies. Should the restaurant provide the little league team with ((~~carbonated beverages~~)) soft drinks free of charge, the restaurant will incur a deferred retail sales or use tax liability with respect to those ((~~carbonated beverages. Carbonated beverages are not considered food products for the purposes of the food products exemption.~~)) soft drinks. Soft drinks are excluded from the exemption for food and food ingredients. (See ((~~also~~)) WAC 458-20-244 ((~~for a list of exempt food products~~)) Food and food ingredients.)

(b) Meals provided to employees are presumed to be in exchange for services received from the employee and are not considered to be given away. These meals are retail sales. (See WAC 458-20-119 on employee meals.)

(7) **Sales of meals, beverages and food at prices including sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including sales tax. Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menus and other price information.

If sales slips, sales invoices, or dinner checks are given to the customer, the sales tax must be separately stated on all such sales slips, sales invoices, or dinner checks. If not separately stated on the sales slips, sales invoices, or dinner checks, it will be presumed that retail sales tax was not collected. In such cases the measure of tax will be gross receipts. (Refer also to WAC 458-20-107.)

(8) **Class H restaurants.** Restaurants operating under the authority of a class H liquor license generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas are generally not given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.

(a) Many class H restaurants elect to sell beverages or food at prices inclusive of the sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so that customers can see the notice without entering employee work areas. It will be presumed that no retail sales tax has been collected or is included in the gross receipts when a notice is not posted and the customer does not receive a sales slip or sales invoice separately stating the retail sales tax.

(b) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of sales tax in another. For example, an operator of a class H restaurant may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the sales tax.

(c) Class H restaurants are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in WAC 458-20-107 must be met.

(9) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise must be included in the selling price and are subject to both the retailing B&O and retail sales taxes. (Refer also to WAC 458-20-119.)

(10) **Vending machines and amusement devices.** Persons owning and operating vending machines and amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(11) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each

situation must be determined after a review of all of the facts and circumstances.

(a) ABC Coffee Shop has its own bakery and also a counter and tables where it sells pastries and coffee for immediate consumption. ABC also sells donuts and other bakery items for consumption off the premises. No beverages are sold in unsealed containers except for consumption on the premises. ABC accounts separately for its sales of products which are not intended for immediate consumption through a coding maintained by the cash register. ABC is operating a combination business. It is required to collect retail sales tax on items sold for consumption on the premises, but is not required to collect retail sales tax on baked goods intended for consumption off the premises.

(b) XYZ Restaurant operates both a cocktail bar and a dining area. XYZ has elected to sell drinks and appetizers in the bar at prices including the retail sales tax while selling drinks and meals served in the dining area at prices exclusive of the sales tax. There is a sign posted in the bar area advising customers that all prices include retail sales tax. Customers in the dining area are given sales invoices which separately state the retail sales tax. As an example, a typical well drink purchased in the bar for $2.50 inclusive of the sales tax, is sold for $2.50 plus sales tax in the dining area. The pricing requirements have been satisfied and the drink and food totals are correctly reflected on the customers' dinner checks. XYZ may factor the retail sales tax out of the cocktail bar gross receipts when determining its retailing and retail sales tax liability.

(c) RBS Restaurant operates both a cocktail bar and a dining area. RBS has elected to sell drinks at prices inclusive of retail sales tax for all areas where drinks are served. It has a sign posted to inform customers in the bar area of this fact and a statement is also on the dinner menu indicating that any charges for drinks includes retail sales tax. Dinner checks are given to customers served in the dining area which state the price of the meal exclusive of sales tax, sales tax on the meal, and the drink price including retail sales tax. Because the business has met the sign posting requirement in the bar area and has indicated on the menu that sales tax is included in the price of the drinks, RBS may factor the sales tax out of the gross receipts received from its drink sales when determining its taxable retail sales.

(d) Z Tavern sells all foods and drinks at a price inclusive of the retail sales tax. However, there is no mention of this pricing structure on its menus or reader boards. The gross receipts from Z Tavern's food and drink sales are subject to the retailing and retail sales taxes. Z Tavern has failed to meet the conditions for selling foods and drinks at prices including tax. Z Tavern may not assume that the gross receipts include any sales tax and may not factor the retail sales tax out of the gross receipts.

AMENDATORY SECTION (Amending WSR 04-01-126, filed 12/18/03, effective 1/18/04)

WAC 458-20-135 Extracting natural products. (1) **Introduction.** This ((~~rule~~)) section explains the application of the business and occupation (B&O), retail sales, and use taxes to persons extracting natural products. Persons extracting natural products often use the same extracted products in a manufacturing process. The ((~~rule~~)) section provides guidance for determining when an extracting activity ends and the manufacturing activity begins. In addition to all other taxes, commercial fishermen may be subject to the enhanced food fish excise tax levied by chapter 82.27 RCW (Tax on enhanced food fish).

Persons engaging in activities associated with timber harvest operations should refer to WAC 458-20-13501 (Timber harvest operations). Persons engaged in a manufacturing activity should also refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment).

(2) **Who is an "extractor"?** RCW 82.04.100 defines the term "extractor" to mean 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, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral, or other natural resource product. The term includes a person who fells, cuts, or takes timber, Christmas trees other than plantation Christmas trees, or other natural products. It also includes any person who takes fish, shellfish, or other sea or inland water foods or products.

(a) **Persons excluded from the definition of "extractor."** The term "extractor" does not include:

(i) Persons performing under contract the necessary labor or mechanical services for others (these persons are extractors for hire, see subsection (4) ((~~below~~)) of this section); or

(ii) Persons who are farmers as defined in RCW 82.04.213. Refer to WAC 458-20-209 and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers.

(b) **When an extractor is also a manufacturer.** An extractor may subsequently take an extracted product and use it as a raw material in a manufacturing process. The following examples explain when an extracting process ends and a manufacturing process begins for various situations. These examples should be used only as a general guide. A determination of when extracting ends and manufacturing begins for other situations can be made only after a review of all of the facts and circumstances.

(i) **Mining and quarrying.** Mining and quarrying operations are extracting activities, and generally include the screening, sorting, and piling of rock, sand, stone, gravel, or ore. For example, an operation that extracts rock, then screens, sorts, and with no further processing places the rock into piles for sale, is an extracting operation.

(A) The crushing and/or blending of rock, sand, stone, gravel, or ore are manufacturing activities. These are manufacturing activities whether or not the materials were previously screened or sorted.

(B) Screening, sorting, piling, or washing of the material, when the activity takes place in conjunction with crushing or blending at the site where the materials are taken or produced, is considered a part of the manufacturing operation if it takes place after the first screen. If there is no separate first

screen, only those activities subsequent to the materials being deposited into the screen are considered a part of the manufacturing operation.

(ii) **Commercial fishing.** Commercial fishing operations, including the taking of any fish in Washington waters (within the statutory limits of the state of Washington) and the taking of shellfish or other sea or inland water foods or products, are extracting activities. These activities often include the removal of meat from the shell and the icing of fish or sea products.

(A) A person growing, raising, or producing a product of aquaculture as defined in RCW 15.85.020 on the person's own land or on land in which the person has a present right of possession is considered a farmer. RCW 82.04.213.

(B) Cleaning (removal of the head, fins, or viscera), filleting, and/or steaking fish are manufacturing activities. The cooking of fish or seafood is also a manufacturing activity. Refer to RCW 82.04.260 and WAC 458-20-136 for information regarding the special B&O tax rate/classification that applies to the manufacturing of seafood products that remain in a raw, raw frozen, or raw salted state.

(C) The removal of meat from the shell or the icing of fish or sea products, when the activity is performed in conjunction with and at the site where manufacturing takes place (e.g., cooking the fish or seafood), is considered a part of the manufacturing operation.

(3) **Tax-reporting responsibilities for income received by extractors.** Extractors are subject to the extracting B&O tax upon the value of the extracted products. (See WAC 458-20-112 regarding "value of products.") Extractors who sell the products at retail or wholesale in this state are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the extractor must report under both the "production" (extracting) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit (MATC). See also WAC 458-20-19301 (Multiple activities tax credits) for a more detailed explanation of the MATC reporting requirements.

For example, Corporation quarries rock without further processing. Corporation sells and delivers the rock to Landscaper, who is located in Washington. Landscaper provides Corporation with a resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a reseller permit (WAC 458-20-102) for purchases made on or after January 1, 2010. Corporation should report under both the extracting and wholesaling B&O tax classifications, and claim a MATC per WAC 458-20-19301. Had Corporation delivered the quarried rock to an out-of-state location, Corporation would have incurred only an extracting B&O tax liability.

(a) **When extractors use their products in a manufacturing process.** Persons who extract products, use these extracted products in a manufacturing process, and then sell the products all within Washington are subject to both "production" taxes (extracting and manufacturing) and the "selling" tax (wholesaling or retailing), and may claim the appropriate credits under the MATC. (See also WAC 458-20-136 on manufacturing.)

For example, Company quarries rock (an extracting activity), crushes and blends the rock (a manufacturing activity), and sells the resulting product at retail. The taxable value of the extracted rock is $50,000 (the amount subject to the extracting B&O tax). The taxable value of the crushed and blended rock is $140,000 (the amount subject to the manufacturing B&O tax). The crushed and blended rock is sold for $140,000 (the amount subject to the retailing B&O tax). Assume the tax rates for the extracting and manufacturing B&O taxes are .00484, and the tax rate for the retailing B&O tax is .00471. Company should compute its tax liability as follows:

(i) **Reporting B&O tax on the combined excise tax return:**

(A) Extracting B&O tax liability of $242 ($50,000 x .00484);

(B) Manufacturing B&O tax liability of $678 ($140,000 x .00484); and

(C) Retailing B&O tax liability of $659 ($140,000 x .00471).

(ii) **Completing the multiple activities tax credit (Part II of Schedule C):**

Activity which results in a tax credit	Taxable Amount	Business and Occupation Tax Reported				
		Extracting	Manufacturing	Wholesaling	Retailing	Total Credit
Washington extracted products manufactured in Washington	50,000	242	242			242
Washington extracted products sold in Washington						
Washington manufactured products sold in Washington	140,000		678		659	659
			Multiple Activities Tax Credit Subtotal of taxes paid to Washington state			901
					Credit ID 800	901

Schedule C helps taxpayers calculate and claim the multiple activities tax credit provided by RCW 82.04.440. In the Schedule C example above, materials that a person extracts and then uses in a manufacturing process in Washington are

entered at their value when extracting ceases and manufacturing begins ($50,000 shown on the "Washington extracted products manufactured in Washington" line of the Schedule C). The taxable amount reported on the "Washington manufactured products sold in Washington" line of the Schedule C is the value of products at the point that manufacturing ceases ($140,000), not simply the value added by the manufacturing activity. For more information and examples that are helpful in determining the value of products, refer to WAC 458-20-112 (Value of products).

(b) **When extractors sell their products at retail or wholesale.** An extractor making retail sales must collect and remit retail sales tax on all sales to consumers, unless the sale is exempt by law (e.g., see WAC 458-20-244 regarding sales of certain food products). Extractors making wholesale sales must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from their customers to document the wholesale nature of any transaction((~~. (Refer to WAC 458-20-102 on resale certificates.)~~)) as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(4) **Tax-reporting responsibilities for income received by extractors for hire.** Persons performing extracting activities for extractors are subject to the extracting for hire B&O tax upon their gross income from those services.

For example, a person removing ore, waste, or overburden at a mining pit for the operator of the mining operation is an extractor for hire. Likewise, a person drilling to locate or provide access to a satisfactory grade of ore at the mining pit for the operator is also an extractor for hire. The gross income derived from these activities is subject to the extracting for hire B&O tax classification.

(5) **Mining or mineral rights.** Royalties or charges in the nature of royalties for granting another the privilege or right to remove minerals, rock, sand, or other natural resource product are subject to the service and other activities B&O tax. The special B&O tax rate provided by RCW 82.04.2907 does not apply because this statute specifically excludes compensation received for any natural resource. Refer also to RCW 82.45.035 and WAC 458-61-520 (Mineral rights and mining claims) for more information regarding the sale of mineral rights and the real estate excise tax.

Income derived from the sale or rental of real property, whether designated as royalties or another term, is exempt of the B&O tax.

(6) **Tax liability with respect to purchases of equipment or supplies and property extracted and/or manufactured for commercial or industrial use.** The retail sales tax applies to all purchases of equipment, component parts of equipment, and supplies by persons engaging in extracting or extracting for hire activities unless a specific exemption applies. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department.

(a) **Exemption available for certain manufacturing equipment.** RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for certain machinery and equipment used by manufacturers and processors for hire. While this exemption does not extend to extractors or extractors for hire, persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

(b) **Property manufactured for commercial or industrial use.** Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O and use taxes upon the value of the property manufactured, unless a specific exemption applies. (See also WAC 458-20-134 on commercial or industrial use.)

If the person also extracts materials used in the manufacturing process, the extracting B&O tax is due on the value of the extracted materials and a MATC may be taken. For example, Quarry extracts rock, crushes the rock into desired size, and then uses the crushed rock in its parking lot. The use of the crushed rock by Quarry in its parking lot is a commercial or industrial use. Quarry is subject to the extracting and manufacturing B&O taxes and may claim a MATC. Quarry is also responsible for remitting use tax on the value of the crushed rock applied to the parking lot.

AMENDATORY SECTION (Amending WSR 00-11-096, filed 5/17/00, effective 6/17/00)

WAC 458-20-136 Manufacturing, processing for hire, fabricating. (1) **Introduction.** This ((~~rule~~)) section explains the application of the business and occupation (B&O), retail sales, and use taxes to manufacturers. It identifies the special tax classifications and rates that apply to specific manufacturing activities. The law provides a retail sales and use tax exemption for certain machinery and equipment used by manufacturers. Refer to RCW 82.08.02565, 82.12.02565, and WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for more information regarding this exemption. Persons engaging in both extracting and manufacturing activities should also refer to WAC 458-20-135 (Extracting natural products) and 458-20-13501 (Timber harvest operations).

(2) **Manufacturing activities.** RCW 82.04.120 explains that the phrase "to manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or articles of tangible personal property is produced for sale or commercial or industrial use. The phrase includes the production or fabrication of special-made or custom-made articles.

(a) "To manufacture" includes, but is not limited to:

(i) The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician((~~, effective October 1, 1998 (chapter 168, Laws of 1998)~~));

(ii) The cutting, delimbing, and measuring of felled, cut, or taken trees;

(iii) The crushing and/or blending of rock, sand, stone, gravel, or ore; and

(iv) The cleaning (removal of the head, fins, or viscera) of fish.

(b) "To manufacture" does not include:

(i) The conditioning of seed for use in planting;

(ii) The cubing of hay or alfalfa;

(iii) The growing, harvesting, or producing of agricultural products;

(iv) The cutting, grading, or ice glazing of seafood which has been cooked, frozen, or canned outside this state;

(v) The packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; and

(vi) The repairing and reconditioning of tangible personal property for others.

(3) **Manufacturers and processors for hire.** RCW 82.04.110 defines "manufacturer" to mean every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances, or commodities. However, a nonresident of the state of Washington who is the owner of materials processed for it in this state by a processor for hire is not deemed to be a manufacturer in this state because of that processing. Additionally, any owner of materials from which a nuclear fuel assembly is fabricated in this state by a processor for hire is also not deemed to be a manufacturer because of such processing.

(a) The term "processor for hire" means a person who performs labor and mechanical services upon property belonging to others so that as a result a new, different, or useful article of tangible personal property is produced for sale or commercial or industrial use. Thus, a processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon his or her own materials.

(b) If a particular activity is excluded from the definition of "to manufacture," a person performing the labor and mechanical services upon materials owned by another is not a processor for hire. For example, the cutting, grading, or ice glazing of seafood that has been cooked, frozen, or canned outside this state is excluded from the definition of "to manufacture." Because of this exclusion, a person who performs these activities on seafood belonging to others is not a "processor for hire."

(c) A person who produces aluminum master alloys, regardless of the portion of the aluminum provided by that person's customer, is considered a "processor for hire." RCW 82.04.110. For the purpose of this specific provision, the term "aluminum master alloy" means an alloy registered with the Aluminum Association as a grain refiner or a hardener alloy using the American National Standards Institute designating system H35.3.

(d) In some instances, a person furnishing the labor and mechanical services undertakes to produce an article, substance, or commodity from materials or ingredients furnished in part by the person and in part by the customer. Depending on the circumstances, this person will either be considered a manufacturer or a processor for hire.

(i) If the person furnishing the labor and mechanical services furnishes materials constituting less than twenty percent of the value of all of the materials or ingredients which become a part of the produced product, that person will be presumed to be processing for hire.

(ii) The person furnishing the labor and mechanical services will be presumed to be a manufacturer if the value of the materials or ingredients furnished by the person is equal to or greater than twenty percent of the total value of all materials or ingredients which become a part of the produced product.

(iii) If the person furnishing the labor and mechanical services supplies, sells, or furnishes to the customer, before processing, twenty percent or more in value of the materials or ingredients from which the product is produced, the person furnishing the labor and mechanical services will be deemed to be the owner of the materials and considered a manufacturer.

(e) There are occasions where a manufacturing facility and ingredients used in the manufacturing process are owned by one person, while another person performs the actual manufacturing activity. The person operating the facility and performing the manufacturing activity is a processor for hire. The owner of the facility and ingredients is the manufacturer.

(4) **Tax-reporting responsibilities for income received by manufacturers and processors for hire.** Persons who manufacture products in this state are subject to the manufacturing B&O tax upon the value of the products, including by-products (see also WAC 458-20-112 regarding "value of products"), unless the activity qualifies for one of the special tax rates discussed in subsection (5)((~~, below~~)) of this section. See also WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

For example, Corporation A stains door panels that it purchases. Corporation A also affixes hinges, guide wheels, and pivots to unstained door panels. Corporation B shears steel sheets to dimension, and slits steel coils to customer's requirements. The resulting products are sold and delivered to out-of-state customers. Corporation A and Corporation B are subject to the manufacturing B&O tax upon the value of these manufactured products. These manufacturing activities take place in Washington, even though the manufactured product is delivered out-of-state. A credit may be available if a gross receipts tax is paid on the selling activity to another state. (See also WAC 458-20-19301 on multiple activities tax credits.)

(a) Manufacturers who sell their products at retail or wholesale in this state are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a multiple activities tax credit (MATC). See also WAC 458-20-19301 for a more detailed explanation of the MATC reporting requirements.

For example, Incorporated purchases raw fish that it fillets and/or steaks. The resulting product is then sold at wholesale in its raw form to customers located in Washington. Incorporated is subject to both the manufacturing raw seafood B&O tax upon the value of the manufactured product, and the wholesaling B&O tax upon the gross proceeds of sale. Incorporated is entitled to claim a MATC.

(b) Processors for hire are subject to the processing for hire B&O tax upon the total charge made to those services,

including any charge for materials furnished by the processor. The B&O tax applies whether the resulting product is delivered to the customer within or outside this state.

(c) The measure of tax for manufacturers and processors for hire with respect to "cost-plus" or "time and material" contracts includes the amount of profit or fee above cost received, plus the reimbursements or prepayments received on account of materials and supplies, labor costs, taxes paid, payments made to subcontractors, and all other costs and expenses incurred by the manufacturer or processor for hire.

(d) A manufacturing B&O tax exemption is available for the cleaning of fish, if the cleaning activities are limited to the removal of the head, fins, or viscera from fresh fish without further processing other than freezing. RCW 82.04.2403. Processors for hire performing these cleaning activities remain subject to the processing for hire B&O tax.

(e) Amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, even though the hops have been processed into extract, pellets, or powder in this state are exempt from the B&O tax. RCW 82.04.337. However, a processor for hire with respect to hops is not exempt on amounts charged for processing these products.

(f) Manufacturers and processors for hire making retail sales must collect and remit retail sales tax on all sales to consumers, unless the sale is exempt by law (e.g., see WAC 458-20-244 regarding sales of certain food products). A manufacturer or processor for hire making wholesale sales must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from the customers to document the wholesale nature of any ((~~transaction. (Refer to WAC 458-20-102 on resale certificates.)~~)) sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(5) **Manufacturing—Special tax rates/classifications.** RCW 82.04.260 provides several special B&O tax rates/classifications for manufacturers engaging in certain manufacturing activities. In all such cases the principles set forth in subsection (4) of this ((~~rule~~)) section concerning multiple activities and the resulting credit provisions are also applicable.

((~~(a)~~)) Special tax classifications/rates are provided for the activities of:

((~~(i)~~)) (a) Manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, meal, or canola by-products, or sunflower seeds into sunflower oil;

((~~(ii)~~)) (b) Splitting or processing dried peas;

((~~(iii)~~)) (c) Manufacturing seafood products, which remain in a raw, raw frozen, or raw salted state;

((~~(iv)~~)) (d) Manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables;

((~~(v)~~)) (e) Slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale and not at retail; and

((~~(vi)~~)) (f) Manufacturing nuclear fuel assemblies.

(6) **Repairing and/or refurbishing distinguished from manufacturing.** The term "to manufacture" does not include the repair or refurbishing of tangible personal property. To be considered "manufacturing," the application of labor or skill to materials must result in a "new, different, or useful article." If the activity merely restores an existing article of tangible personal property to its original utility, the activity is considered a repair or refurbishing of that property. (See WAC 458-20-173 for tax-reporting information on repairs.)

(a) In making a determination whether an activity is manufacturing as opposed to a repair or reconditioning activity, consideration is given to a variety of factors including, but not limited to:

(i) Whether the activity merely restores or prolongs the useful life of the article;

(ii) Whether the activity significantly enhances the article's basic qualities, properties, or functional nature; and

(iii) Whether the activity is so extensive that a new, different, or useful article results.

(b) The following example illustrates the distinction between a manufacturing activity resulting in a new, different, or useful article, and the mere repair or refurbishment of an existing article. This example should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances. In cases of uncertainty, persons should contact the department for a ruling.

(i) Corporation rebuilds engine cores. When received, each core is assigned an individual identification number and disassembled. The cylinder head, connecting rods, crankshaft, valves, springs, nuts, and bolts are all removed and retained for reassembly into the same engine core. Unusable components are discarded. The block is then baked to burn off dirt and impurities, then blasted to remove any residue. The cylinder walls are rebored because of wear and tear. The retained components are cleaned, and if needed straightened and/or reground. Corporation then reassembles the cores, replacing the pistons, gaskets, timing gears, crankshaft bearings, and oil pumps with new parts. The components retained from the original engine core are incorporated only into that same core.

(ii) Corporation is under these circumstances not engaging in a manufacturing activity. The engine cores are restored to their original condition, albeit with a slightly larger displacement because of wear and tear. The cores have retained their original functional nature as they run with approximately the same efficiency and horsepower. The rebuilding of these cores is not so extensive as to result in a new, different, or useful article. Each engine core has retained its identity because all reusable components of the original core are reassembled in the same core. Corporation has taken an existing article and extended its useful life.

(7) **Combining and/or assembly of products to achieve a special purpose as manufacturing.** The physical assembly of products from various components is manufacturing because it results in a "new, different, or useful" product, even if the cost of the assembly activity is minimal when compared with the cost of the components. For example, the bolting of a motor to a pump, whether bolted directly or by using a coupling, is a manufacturing activity. Once physi-

cally joined, the resulting product is capable of performing a pumping function that the separate components cannot.

(a) In some cases the assembly may consist solely of combining parts from various suppliers to create an entirely different product that is sold as a kit for assembly by the purchaser. In these situations, the manufacturing B&O tax applies even if the person combining the parts does not completely assemble the components, but sells them as a package. For example, a person who purchases component parts from various suppliers to create a wheelbarrow, which will be sold in a "kit" or "knock-down" condition with some assembly required by purchaser, is a manufacturer. The purchaser of the wheelbarrow kit is not a manufacturer, however, even though the purchaser must attach the handles and wheel.

(b) The department considers various factors in determining if a person combining various items into a single package is engaged in a manufacturing activity. Any single one of the following factors is not considered conclusive evidence of a manufacturing activity, though the presence of one or more of these factors raises a presumption that a manufacturing activity is being performed:

(i) The ingredients are purchased from various suppliers;

(ii) The person combining the ingredients attaches his or her own label to the resulting product;

(iii) The ingredients are purchased in bulk and broken down to smaller sizes;

(iv) The combined product is marketed at a substantially different value from the selling price of the individual components; and

(v) The person combining the items does not sell the individual items except within the package.

(c) The following examples should be used only as a general guide. The specific facts and circumstances of each situation must be carefully examined to determine if the combining of ingredients is a manufacturing activity or merely a packaging or marketing activity. In cases of uncertainty, persons combining items into special purpose packages should contact the department for a ruling.

(i) Combining prepackaged food products and gift items into a wicker basket for sale as a gift basket is not a manufacturing activity when:

(A) The products combined in the basket retain their original packaging;

(B) The person does not attach his or her own labels to the components or the combined basket;

(C) The person maintains an inventory for sale of the individual components and does sell these items in this manner as well as the combined baskets.

(ii) Combining bulk food products and gift items into a wicker basket for sale as a gift basket is a manufacturing activity when:

(A) The bulk food products purchased by the taxpayer are broken into smaller quantities; and

(B) The taxpayer attaches its own labels to the combined basket.

(iii) Combining components into a kit for sale is not a manufacturing activity when:

(A) All components are conceived, designed, and specifically manufactured by and at the person's direction to be used with each other;

(B) The person's label is attached to or imprinted upon the components by supplier;

(C) The person packages the components with no further assembly, connection, reconfiguration, change, or processing.

(8) **Tax liability with respect to purchases of equipment or supplies and property manufactured for commercial or industrial use.** The retail sales tax applies to purchases of tangible personal property by manufacturers and processors for hire unless the property becomes an ingredient or component part of a new article produced for sale, or is a chemical used in the processing of an article for sale. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department. Refer to WAC 458-20-113 for additional information about what qualifies as an ingredient or component or a chemical used in processing.

(a) RCW 82.08.02565 and 82.12.02565 provide a retail sales and use tax exemption for certain machinery and equipment used by manufacturers and/or processors for hire. Refer to WAC 458-20-13601 for additional information regarding how these exemptions apply.

(b) Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O and use taxes upon the value of the property manufactured, unless a specific exemption applies. (See also WAC 458-20-134 on commercial or industrial use.) Persons who also extract the product used as an ingredient in a manufacturing process should refer to WAC 458-20-135 for additional information regarding their tax-reporting responsibilities.

AMENDATORY SECTION (Amending Order ET 70-3, filed 5/29/70, effective 7/1/70)

WAC 458-20-139 Trade shops—Printing plate makers, typesetters, and trade binderies. ((~~(Note: This rule covers all the material previously included in WAC 458-20-139 and 458-20-146.)~~))

The term "printing plate makers" includes, among others, photoengravers, electrotypers, stereotypers, and lithographic plate makers.

Business and Occupation Tax

Printing plate makers, typesetters and trade binderies (referred to in the trade as "trade shops") are primarily engaged in the business of altering or improving tangible personal property owned by them for sale or altering or improving tangible personal property owned by their customers. In either case the gross proceeds (including the value of any property exchanged by the customer in kind) from sales of, or services rendered to, plates, mats, engravings, type, etc., which are delivered in this state are taxable under retailing if the sale is to a "consumer" or wholesaling-all others if the sale is to one who will resell the property in the regular course of business without intervening "use." (See WAC ((~~458-20-102~~)) 458-20-102A Resale certificates and WAC 458-20-102 Reseller permits.) Neither of these classifications is applicable however, if the article sold is delivered to an out-of-state

customer at an out-of-state point or if an article is produced for commercial or industrial use (see WAC 458-20-134). In these cases tax is due under the manufacturing classification on the "value of products."

Retail Sales Tax

Sales to the printing industry and others of tangible personal property, or of services of altering or improving tangible personal property, by printing plate makers, typesetters, and trade binderies are sales at retail and subject to the retail sales tax unless the purchaser resells the article in the regular course of business without any intervening "use." For example, a trade shop must collect and account for the retail sales tax where a printing plate is sold to a printer who uses the plate to produce copy for a customer, even though he subsequently sells and delivers both the plate and the copy to the customer. In this situation the printer has made "intervening use" of the plate as a printing tool and is a "consumer" liable for payment of the retail sales tax to the trade shop.

Sales of plates, engravings, etc., to advertising agencies are retail sales and subject to the retail sales tax.

Sales by supply houses to trade shops of metal or other materials becoming a component part of an article produced for sale are not subject to the retail sales tax. As evidence of this, trade shops are required to furnish their vendors resale certificates ((~~in the usual form~~)) for purchases made before January 1, 2010, or reseller permits for purchases made on or after January 1, 2010, to document the wholesale nature of any purchase as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). On the other hand, sales to trade shops of items for use such as machinery, equipment, tools, and other articles or materials, including chemicals which are used in the production of plates, mats, engravings, type, etc., are retail sales subject to the retail sales tax.

((~~Revised June 1, 1970.~~))

AMENDATORY SECTION (Amending Order ET 83-15, filed 3/15/83)

WAC 458-20-146 National and state banks, mutual savings banks, savings and loan associations and other financial institutions.

Business and Occupation Tax

((~~Effective March 1, 1970, the legislature repealed RCW 82.04.400 which exempted from the business and occupation tax~~)) The gross income of national banks, states banks, mutual savings banks, savings and loan associations, and certain other financial institutions((~~. Accordingly, the gross income or gross sales of such institutions will become~~)) is subject to the business and occupation tax according to the following general principles.

Services and other activities. Generally, the gross income from engaging in financial businesses is subject to the business and occupation tax under the classification service and other activities. Following are examples of the types of income taxable under this classification: Interest earned (including interest on loans made to nonresidents unless the financial institution has a business location in the state of the borrower's residence which rendered the banking service), commissions earned, dividends earned, fees and carrying charges, charges for bookkeeping or data processing, safety deposit box rentals. See WAC 458-20-14601 Financial institutions—Income apportionment.

The term "gross income" is defined in the law as follows:

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

The law allows certain deductions from gross income to arrive at the taxable amount (the amount upon which the business and occupation tax is computed). Deductible gross income should be included in the gross amount reported on the excise tax return and should then be shown as a deduction and explained on the deduction schedules ((~~provided on the reverse side of the reporting form~~)). The deductions generally applicable to financial businesses include the following:

(1) Dividends received by a parent from its subsidiary corporations (RCW 82.04.4281).

(2) Interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties. (See WAC 458-20-166 for definition of "transient.") (RCW ((~~82.04.4291~~)) 82.04.4292.)

(3) Interest received on obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof. (RCW ((~~82.04.4292~~)) 82.04.4291). A deduction may also be taken for interest received on direct obligations of the federal government, but not for interest attributable to loans or other financial obligations on which the federal government is merely a guarantor or insurer.

(4) Gross proceeds from sales or rentals of real estate (RCW 82.04.390). These amounts may be entirely excluded from the gross income reported and need not be shown on the return as a deduction.

Retailing. Sales of tangible personal property and certain services are defined as "retail sales" and are subject to the business and occupation tax under the classification retailing. Such sales are also subject to the retail sales tax which the seller must collect and remit to the department of revenue (department). Transactions taxable as sales at retail are not subject to tax under service and other activities.

Following are examples of transactions subject to the retailing classification of the business and occupation tax and to the retail sales tax: Sales of meals or confections, sales of repossessed merchandise, sales of promotional material, leases of tangible personal property, sales of check registers, coin banks, personalized checks((~~.~~)) (note: When the financial institution is not the seller of these items but simply takes orders as agent for the supplier, the supplier is responsible for reporting as the retail seller. The financial institution has liability for reporting the retail sales tax on sales made as an

agent only if the supplier is an out-of-state firm not registered with the department ((~~of revenue~~))), escrow fees, casual sales (occasional sales of depreciated assets such as used furniture and office equipment—subject to retail sales tax but deductible from the business and occupation tax; see WAC 458-20-106 Casual or isolated sales—Business reorganizations).

Sales for resale ((~~certificates~~)). When a financial institution buys tangible personal property for resale to its customers without intervening use, the sales tax is not applicable. In this case the financial institution should give the vendor a resale certificate ((~~containing the number of its certificate of registration and its statement that the articles purchased are for resale in the course of its business activities. Resale certificates can be given in blanket form covering all future purchases. (See also WAC 458-20-102.)~~)) for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

Use Tax

The use tax complements the retail sales tax by imposing a tax of like amount on the use of tangible personal property purchased or acquired without payment of the retail sales tax. Thus, when office equipment or supplies are purchased or leased from an unregistered out-of-state vendor who does not collect the Washington state retail sales tax, the use tax must be paid directly to the department ((~~of revenue~~)). Space for the reporting of this tax will be found on the ((~~regular~~)) excise tax return. (For more information, see WAC 458-20-178 Use tax.)

When tax liability arises. Tax should be reported during the reporting period in which the financial institution receives, becomes legally entitled to receive, or in accord with the system of accounting regularly employed enters the consideration as a charge against the client, purchaser or borrower. Financial institutions may prepare excise tax returns to the department ((~~of revenue~~)) reporting income in periods which correspond to accounting methods employed by each institution for its normal accounting purposes in reporting to its supervisory authority.

((~~**Reporting procedures.** Financial institutions subject to the business and occupation tax, retail sales tax, or use tax must secure a certificate of registration from the department of revenue and pay a registration fee of $15.00. Form 2401, application for certificate of registration, is available at all district offices of the department of revenue or may be obtained by writing directly to the Department of Revenue, Olympia, Washington, 98504.~~

~~Reporting periods will be assigned by the department on the basis of total tax liability incurred. Most financial institutions will be required to report on a monthly basis, although some smaller institutions may qualify for quarterly reporting. Forms for reporting will be mailed shortly before the close of each reporting period and will be due and payable on or before the 15th day of the month following. No penalties will be charged if the return is postmarked on or before the last day of the month in which the due date falls.~~))

AMENDATORY SECTION (Amending WSR 08-16-055, filed 7/30/08, effective 8/30/08)

WAC 458-20-150 Optometrists, ophthalmologists, and opticians. (1) **Introduction.** This section explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to the business activities of optometrists, ophthalmologists, and opticians. It explains the tax liability resulting from the rendering of professional services and the sale of prescription lenses, frames, and other optical merchandise. It also discusses the retail sales tax exemption for the sale of prescription lenses and the B&O tax deduction for prescription drugs administered by a medical service provider. The department of revenue (department) has adopted other ((~~rules~~)) sections dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following ((~~rules~~)) sections for additional information.

(a) WAC 458-20-151 (Dentists and other health care providers, dental laboratories, and dental technicians);

(b) WAC 458-20-168 (Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities);

(c) WAC 458-20-18801 (Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations).

(2) **Taxability of professional services.** Optometrists and ophthalmologists are subject to the service and other activities B&O tax on their gross income from providing professional services. For the purposes of this section, "professional services" include the examination of the human eye, the examination, identification, and treatment of any defects of the human vision system, and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its functions. It does not include the preparation or dispensing of lenses or eyeglasses.

(3) **Purchases and sales of optical merchandise by optometrists, ophthalmologists, and opticians.** Purchases of optical merchandise by optometrists, ophthalmologists, and opticians for resale without intervening use as a consumer are not subject to the retail sales tax. Thus, optometrists, ophthalmologists, and opticians are not required to pay retail sales or use tax on items which will be given to customers as part of a sale of eyeglasses or contact lenses, such as cleaning supplies, carrying cases, and the like. The department considers these items to be sold along with the eyeglasses or contact lenses. An optometrist, ophthalmologist, or optician purchasing tangible personal property for resale must furnish a ((~~properly completed~~)) resale certificate for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to the seller to document the wholesale nature of the sale((~~. Resale certif-~~

~~icates can be obtained from the department's web site at http://dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).~~)) as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

Sales of optical merchandise to consumers are subject to retailing B&O tax. In addition, the seller must collect retail sales tax unless the sale is specifically exempt by law. For the purposes of this section, "optical merchandise" includes prescription lenses, frames, springs, temples, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses.

For purposes of this section, "prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints.

(a) **Are sales of prescription lenses and frames exempt from retail sales tax?** As a result of legislation to implement the national Streamlined Sales and Use Tax Agreement, effective July 1, 2004, sales of prescription lenses and frames for prescription lenses are exempt from retail sales tax as prosthetic devices under RCW 82.08.0283.

Before July 1, 2004, sales of prescription lenses were exempt from retail sales tax under RCW 82.08.0281 if the lenses were dispensed by an optician licensed under chapter 18.34 RCW or by a physician or optometrist under a prescription written by a physician or optometrist. Sales of frames for prescription lenses did not qualify for a sales tax exemption. Thus, before July 1, 2004, when prescription lenses were sold with frames, only the prescription lenses were exempt from sales tax.

(b) **Are repairs of prescription lenses and frames subject to retail sales tax?** Beginning July 1, 2004, charges for the repair of prescription lenses or to prescription eyeglass frames, whether the frames are the original frames or replacement frames, are exempt from retail sales tax under RCW 82.08.0283. Before July 1, 2004, charges for the repair of prescription lenses were exempt from retail sales tax. Charges for the repair of frames, however, were subject to retail sales tax.

(c) **Segregation of income from different sources.** To claim a retail sales tax exemption under RCW 82.08.0281 or 82.08.0283, persons providing or selling any combination of professional services, prescription lenses, prescription eyeglass frames, or other optical merchandise must segregate and separately account for the income derived from each source.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. All sales of prescription lenses are made under written prescription. Income attributable to the eye examinations, the sale of prescription lenses, and the sale of other optical merchandise is segregated in Taxpayer's books of account.

The income derived from the eye examinations is subject to service and other activities B&O tax. The gross proceeds of sales of the prescription lenses and other optical merchandise are subject to retailing B&O tax. The sales of prescription lenses, including contact lenses, are exempt from retail sales tax. Beginning July 1, 2004, sales of eyeglass frames with prescription lenses are exempt from retail sales tax. Taxpayer, however, must collect retail sales tax on sales of other optical merchandise, including eyeglass frames sold with prescription lenses before July 1, 2004, and remit the tax to the department.

(ii) Taxpayer is a retail drugstore that sells preassembled "off-the-shelf" reading glasses. These eyeglasses have lenses with power or prism correction and are sold without a prescription. In addition, Taxpayer sells magnifiers, binoculars, monoculars, and sunglasses. These items are also sold without a prescription.

The gross proceeds of sales of these items are subject to retailing B&O tax. In addition, Taxpayer must collect retail sales tax on sales of these items and remit the tax to the department. Because these items are not sold under a prescription, nor are they prescribed, fitted, or furnished for the buyer by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, they are not exempt from retail sales tax under either RCW 82.08.0281 or 82.08.-0283.

(4) **Equipment and supplies used by optometrists, ophthalmologists, and opticians.** Purchases of equipment and supplies used by optometrists, ophthalmologists, and opticians are purchases at retail and are subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the optometrist, ophthalmologist, or optician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(a) **Prescription drugs.** "Prescription drugs," as defined in RCW 82.08.0281, may be purchased without payment of retail sales or use tax by optometrists and ophthalmologists if all requirements for the exemption are met. For additional information regarding prescription drugs, refer to WAC 458-20-18801.

(b) Prescription drugs administered by the medical service provider. Effective October 1, 2007, RCW 82.04.620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use

pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purposes of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug charge. If the total amount received by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(c) **Samples.** Optometrists, ophthalmologists, and opticians are required to pay use tax on any samples, with the exception of prescription drug samples that they acquire unless retail sales or use tax has been previously paid on these samples.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) Taxpayer is an ophthalmologist who performs eye examinations, laser surgery, and cataract surgery. Taxpayer purchases equipment and supplies that are used in performing these services such as surgical instruments, eye shields, cotton swabs, sterile dressings, bandages, and gauze. Taxpayer also purchased a computer, technical publications, and magazines by mail order and over the internet.

Taxpayer is subject to retail sales tax on these purchases. If the seller does not collect sales tax, Taxpayer is liable for deferred sales tax or use tax and must remit the tax directly to the department.

(ii) Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. Taxpayer purchases nonprescription saline and cleaning solutions for contact lenses and carrying cases for eyeglasses and contact lenses. The saline and cleaning solutions are consumed when Taxpayer performs eye examinations. The eyeglass and contact lens carrying cases are provided to customers at the time they purchase eyeglasses or contact lenses.

The purchases of the eyeglass and contact lens carrying cases are purchases for resale and are, therefore, not subject to sales tax if Taxpayer provides the seller with a ((~~properly completed~~)) resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010. The purchases of the saline and cleaning solutions are, however, subject to the retail sales tax. These solutions are consumed while providing professional services and cannot be considered to be purchased for resale. They also do not qualify for a sales tax exemption under RCW 82.08.0281 as prescription drugs. If retail sales tax was not paid on the saline and cleaning solutions at the time of purchase, Taxpayer must remit deferred sales tax or use tax directly to the department.

AMENDATORY SECTION (Amending WSR 04-17-022, filed 8/9/04, effective 9/9/04)

WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians. (1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of dentists and other health care providers, dental laboratories, and dental technicians. For purposes of this rule, a "health care provider" is a person who is licensed under the provisions of Title 18 RCW to provide health care services to humans in the ordinary course of business or practice of a profession. The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:

(a) WAC 458-20-150 (Optometrists, ophthalmologists, and opticians);

(b) WAC 458-20-168 (Hospitals, ((~~medical~~)) nursing homes, boarding homes, adult family homes and similar health care facilities((~~, and adult family homes~~)));

(c) WAC 458-20-18801 (Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations).

(2) **Tax-reporting information for dentists and other health care providers.** This subsection provides specific tax-reporting information for dentists and more generalized tax-reporting information for other health care providers. Dentists who employ dental technicians to produce or fabricate dental appliances, devices, restorations, substitutes, or other dental laboratory products should refer to subsection (3)(b) and (d) of this rule for additional information. Dental appliances, devices, restorations, substitutes, or other dental laboratory products are also referred to as "dental prostheses" throughout this rule.

(a) **Taxability of dental and other health care services.** Dentists and other health care providers are subject to the service and other activities B&O tax on their gross income from performing dental and other health care services. The term "gross income" includes any separate charge for drugs, medicines, and other substances administered or provided to a patient as part of the dental or other health care services delivered to the patient. "Gross income" also includes any separate charges for prosthetic devices, includ-

ing dental prostheses, that are provided as part of the dental or other health care services delivered to patients.

For purposes of this rule, "prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body.

(b) **Sales of tangible personal property apart from dental and other health care services.** A dentist or other health care provider may make sales of tangible personal property such as drugs, medicines, and bandages as a convenience to a buyer apart from any health care services provided to the buyer. These are sales of tangible personal property only when the dentist or other health care provider does not supply or administer the drug, medicine, or other item in the course of delivering health care services to the buyer. The gross proceeds of these retail sales of tangible personal property are subject to the retailing B&O tax. In addition, the dentist or other health care provider must collect and remit retail sales tax, unless the sale is specifically exempt by law. See WAC 458-20-18801 for detailed information regarding retail sales tax exemptions available for sales of items commonly associated with health care services. Adequate records must be kept by the dentist or other health care provider to distinguish items of tangible personal property that are supplied or administered to patients as part of health care services from those that are sold apart from health care services delivered to the buyer.

Purchases of tangible personal property for resale without intervening use are not subject to the retail sales tax. A dentist or other health care provider purchasing tangible personal property for resale must furnish a resale certificate ((~~in the usual form~~)) for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to the seller to document the wholesale nature of the sale((~~. Resale certificates can be obtained from the department's web site at http://dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates)~~)) as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(c) **Equipment and supplies used by dentists and other health care providers.** Purchases of equipment and supplies used by dentists and other health care providers in performing dental or other health care services are purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dentist or other health care provider must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

Dental prostheses are exempt from retail sales and use taxes if the dental prosthesis meets the definition of "prosthetic device" in subsection (2)(a) of this rule. RCW 82.08.0283 and 82.12.0277. Exempt items include, but are not limited to, full and partial dentures, crowns, inlays, fillings, braces, retainers, collars, wire, screws, bands, splints, night guards, gold, silver, alloys, acrylic materials, filling material, reline material, cement, cavity liner, pins, and endo post.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) Dr. A is a physician who specializes in the treatment of allergies. Dr. A treats many patients with injections of allergy extracts (antigens). Dr. A separately itemizes the charges for the antigen, the administration of the injection, and the office call in patients' billings. Dr. A is subject to service and other activities B&O tax on the entire charge for the antigen, administration of the injection, and office call. Even though Dr. A separately itemizes the charges for antigens, these are not retail sales because Dr. A administers the antigens to the patients.

(ii) Dr. B made mail-order purchases of a computer, books, and magazines for use in Dr. B's dental practice. Dr. B did not pay retail sales tax to the sellers on these purchases. Therefore, Dr. B must remit to the department deferred retail sales or use tax on the computer, books, and magazines.

(3) **Tax-reporting information for dental laboratories and dental technicians.** This subsection provides tax-reporting information for dental laboratories and dental technicians.

(a) **Producing or fabricating dental prostheses for sale.** The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by dental laboratories and dental technicians is a manufacturing activity. RCW 82.04.120. Thus, dental laboratories and dental technicians are subject to manufacturing B&O tax on the value of the dental prostheses they manufacture. The value of products manufactured is generally the gross proceeds of sales of such manufactured products. For additional information about the manufacturing B&O tax, refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

(i) **Sales of dental prostheses manufactured by dental laboratories and dental technicians.** Dental laboratories and dental technicians who make sales within this state of dental prostheses they have manufactured are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the dental laboratory or dental technician must report under the manufacturing B&O tax classification as well as the wholesaling and/or retailing B&O tax classifications. However, a multiple activities tax credit (MATC) may be claimed. For detailed information about the MATC, refer to WAC 458-20-19301 (Multiple activities tax credits). Dental laboratories or dental technicians making wholesale sales must obtain a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC

458-20-102) for sales made on or after January 1, 2010, from the buyer to document the wholesale nature of the sale. ((~~For additional information regarding resale certificates, refer to WAC 458-20-102.~~))

As noted above in subsection (2)(c) of this rule, sales of dental prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers are exempt from retail sales tax if the dental prosthesis meets the definition of "prosthetic device" in subsection (2)(a) of this rule. RCW 82.08.0283.

(ii) **Dental casts, models, and other articles of tangible personal property manufactured by dental laboratories and dental technicians for commercial or industrial use.** Dental laboratories and dental technicians may manufacture dental casts, models, or other articles of tangible personal property that they use in producing or fabricating dental prostheses. In such cases, the dental laboratory or dental technician is manufacturing a product for commercial or industrial use and is subject to the manufacturing B&O tax on the value of the dental cast, model, or other article of tangible personal property. (See WAC 458-20-112 (Value of products) for information regarding the value of products.) As the consumer of the dental cast, model, or other article of tangible personal property manufactured for commercial or industrial use, the dental laboratory or dental technician is also liable for use tax on the value of the dental cast, model, or other article of tangible personal property, unless the use is specifically exempt by law.

(b) **In-house manufacturing of dental prostheses by dentists.** As noted in this rule, the production or fabrication of dental prostheses by dental laboratories and dental technicians is a manufacturing activity. However, the production or fabrication of dental prostheses by dentists in the course of providing dental care services to their patients is not a manufacturing activity under the law and, therefore, manufacturing B&O tax does not apply to this activity. A dentist may personally produce or fabricate dental prostheses, or the dentist may have an employee who is a dental technician produce or fabricate the dental prostheses. These dental prostheses are considered a tangible representation of professional services provided to the dentist's patients. Dentists who manufacture impressions, dental casts, models, or other articles of tangible personal property that they use in producing or fabricating dental prostheses should refer to subsection (3)(a)(ii) of this rule for tax reporting instructions applicable to this activity.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) **Example.** Jane Doe, an employee of Dentist A, fabricates dental prostheses. Dentist A provides these products to patients in the course of rendering dental care services. Dentist A is subject to service and other activities B&O tax on the gross income received for providing dental care services, including any charge for the dental prostheses even if Dentist A separately charges patients for the dental prostheses. (See subsection (2)(a) of this rule.)

(ii) **Example.** The facts are the same as in the previous example except that Dentist A also sells to Dentist B dental prostheses produced by Jane Doe in the course of Jane's employment with Dentist A. For these sales of dental prostheses to Dentist B, Dentist A is acting as a dental laboratory and, therefore, is liable for both manufacturing B&O tax and retailing B&O tax with respect to the manufacture and sale of dental prostheses to Dentist B. Dentist A may also claim a MATC (see subsection (3)(a) and (a)(i) of this rule.) The sales to Dentist B are exempt from retail sales tax under RCW 82.08.0283 if the items qualify as a prosthetic device as defined above in subsection (2)(a) of this rule.

(c) **Equipment and supplies used by dental laboratories and dental technicians.** Purchases of equipment and supplies by dental laboratories and dental technicians for use in manufacturing dental prostheses are generally purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dental laboratory or dental technician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding use tax, refer to WAC 458-20-178.

(i) **Components of dental prostheses produced for sale.** Purchases of supplies that become components of dental prostheses that are produced for sale are purchases at wholesale and are not subject to retail sales tax if the buyer provides the seller with a properly completed resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a reseller permit (WAC 458-20-102) for purchases made on or after January 1, 2010, to document the wholesale nature of the transaction. ((~~WAC 458-20-102.~~))

(ii) **Example.** The following example identifies a number of facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. A dental lab purchases equipment and supplies including gold, silver, alloys, artificial teeth, cement, and tools. The purchases of gold, silver, alloys, artificial teeth, and cement that become components of dental prostheses are wholesale purchases and are not subject to retail sales tax if the buyer provides the seller with a ((~~properly completed~~)) resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a reseller permit (WAC 458-20-102) for purchases made on or after January 1, 2010. The tools are subject to retail sales or use tax unless they qualify for the manufacturing machinery and equipment sales and use tax exemption. Additional information about this exemption is provided below in subsection (3)(d) of this rule.

(d) **Sales and use tax exemptions for manufacturing machinery and equipment.** A retail sales and use tax exemption is provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers of certain machinery and equipment used directly in a manufacturing operation. This exemption is limited to machinery and equipment used to manufacture products for sale as tangible personal property. Thus, dental laboratories and dental technicians

manufacturing dental prostheses for sale may be eligible for this exemption. The exemption is not available if these products are produced or fabricated by a dentist or an employee of a dentist and are provided to patients in the course of delivering dental care services to the patients (as is the case in the example provided in subsection (3)(b)(i) of this rule). Refer to WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for detailed information regarding this exemption.

AMENDATORY SECTION (Amending WSR 07-17-109, filed 8/17/07, effective 9/17/07)

WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool. (1) **Introduction.** Income earned by insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies, and the Washington state health insurance pool is generally subject to the service and other activities business and occupation (B&O) tax, unless the law provides an exemption or deduction. This section identifies exemptions and deductions available to these businesses. It also explains the reporting responsibilities for retail sales and use taxes for retail purchases and retail services.

(2) **Exemptions.** The law provides the following B&O tax exemptions. These amounts do not need to be reported on the excise tax returns filed with the department of revenue.

(a) RCW 82.04.320 provides an exemption to any person with respect to insurance business upon which a tax based on gross premiums is paid to the state of Washington. It should be noted, however, that the law provides expressly that this exemption does not extend to "any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies" or to "any bonding company … with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor." The exemption also does not apply to any business engaged in by an insurance company other than its insurance business. Thus an insurance company is subject to the retailing or wholesaling B&O tax on sales of salvaged property unless the sales are casual or isolated sales as described in WAC 458-20-106 (Casual or isolated sales—Business reorganizations). Also see WAC ((~~458-20-102~~)) 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits) for ((~~resale certificate~~)) documentation requirements for wholesale sales.

(b) RCW 82.04.322 provides an exemption to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201.

(c) RCW 82.04.370 provides an exemption to fraternal benefit societies or fraternal fire insurance associations organized or licensed pursuant to Title 48 RCW and as defined in RCW 48.36A.010.

The statute also exempts beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits.

The exemption provided by RCW 82.04.370, however, is limited to gross income from premiums, fees, assessments, dues, or other charges directly attributable to the insurance or death benefits provided by such persons. It is not intended that all the varied, regular business activities (e.g., sales of food, liquor, admissions, and amusement devices receipts) of these societies or organizations be exempt from B&O tax. Only that portion of income which can be demonstrated as directly attributable to charges made for insurance or providing death benefits is exempt.

(3) **Deductions.** For periods prior to July 1, 2006, a B&O tax deduction was provided by RCW 82.04.4329 to a member of the Washington state health insurance pool for assessments paid by that member to the pool. This deduction did not apply to a member who had deducted such assessments from the insurance premiums tax, RCW 48.14.020.

(4) **Retail sales and use tax responsibilities.** Insurance companies are subject to the retail sales tax or use tax upon retail purchases, certain retail services, or articles acquired for their own use.

When insurance companies make sales to consumers of salvaged property (e.g., from automobile collisions, fire loss, burglary, or theft recoveries) or any other tangible personal property, they must collect and report retail sales tax on those sales.

AMENDATORY SECTION (Amending WSR 08-16-057, filed 7/30/08, effective 8/30/08)

WAC 458-20-168 Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities. (1) **Introduction.** This section explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating hospitals as defined in RCW 70.41.020, nursing homes as defined in RCW 18.51.010, boarding homes as defined in RCW 18.20.020, adult family homes as defined in RCW 70.128.010, and similar health care facilities.

The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:

(a) WAC 458-20-150 Optometrists, ophthalmologists, and opticians;

(b) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians;

(c) WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen; and

(d) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities.** This subsection provides information about the application of B&O tax to the personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities. For information regarding B&O tax

deductions and exemptions for persons operating health care facilities, readers should refer to subsection (3) of this section.

(a) **Public or nonprofit hospitals.** The gross income of public or nonprofit hospitals derived from providing personal or professional services to inpatients, is subject to B&O tax under the public or nonprofit hospitals classification. RCW 82.04.260. For the purpose of this section, "public or nonprofit hospitals" are hospitals, as defined in RCW 70.41.020, operated as nonprofit corporations, operated by political subdivisions of the state (e.g., a hospital district operated by a county government), or operated by but not owned by the state.

Gross income of public or nonprofit hospitals derived from providing personal or professional services for persons other than inpatients is generally subject to B&O tax under the service and other activities classification. RCW 82.04.290. Thus, for example, amounts received for services provided to outpatients, income received for providing nonmedical services, interest received on patient accounts receivable, and amounts received for providing transcribing services to physicians are subject to service and other activities B&O tax.

(i) **Clinics and departments operated by public or nonprofit hospitals.** Gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the public or nonprofit hospitals classification where the clinic or department is an integral, interrelated, and essential part of the hospital. Otherwise, the gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the service and other activities classification.

Relevant factors for determining whether a medical clinic or department operated by a public or nonprofit hospital is an integral, interrelated, and essential part of the hospital include whether the clinic or department is located at the hospital facility and whether the clinic or department furnishes the type of services normally provided by hospitals, such as twenty-four hour intake and emergency services.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(A) Acme Hospital is a nonprofit hospital. Acme has a medical clinic that is separate but physically located within the hospital. However, the clinic is open only during regular business hours and provides no domiciliary care or overnight facilities to its patients. The clinic is staffed, equipped, administered, and provides the type of medical services that one would expect to receive in the average physician's office. Acme's medical clinic is not an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the medical clinic are subject to service and other activities B&O tax.

(B) Acme Hospital is a nonprofit hospital. Acme has a cancer treatment facility that is physically located within the hospital. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients. Acme's cancer treatment facility is an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the cancer treatment facility are subject to public or nonprofit hospitals B&O tax.

(ii) **Educational programs and services.** Amounts received by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if they are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services (i.e., services that will be, have been, or are currently being provided to the participants). Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts derived from educational programs and services are subject to service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(b) **Other hospitals, nursing homes, and similar health care facilities.** The gross income derived from personal and professional services of hospitals, clinics, nursing homes, and similar health care facilities, other than public or nonprofit hospitals described above in (a) of this subsection and hospitals owned by the state, is subject to service and other activities B&O tax. The gross income received by the state of Washington from operating a hospital or other health care facility, whether or not the hospital or other facility is owned by the state, is not subject to B&O tax. Nursing homes should refer to subsection (6) of this section for information regarding the quality maintenance fee imposed under chapter 82.71 RCW.

The following definitions apply for purposes of this section:

(i) "Hospital" has the same meaning as in RCW 70.41.020; and

(ii) "Nursing home" has the same meaning as in RCW 18.51.010.

(c) **Boarding homes.** Effective July 1, 2004, persons operating boarding homes licensed under chapter 18.20 RCW are entitled to a preferential B&O tax rate. See RCW 82.04.2908. Persons operating licensed boarding homes should report their gross income derived from providing room and domiciliary care to residents under the licensed boarding homes B&O tax classification. For the purpose of this section, "boarding home" and "domiciliary care" have the same meaning as in RCW 18.20.020. Refer to subsection (3)(h) of the section for B&O tax deductions and exemptions available to boarding homes.

(d) **Nonprofit corporations and associations performing research and development.** There is a separate B&O tax rate that applies to nonprofit corporations and nonprofit associations for income received in performing research and

development within this state, including medical research. See RCW 82.04.260.

(e) **Can a nursing home or boarding home claim a B&O tax exemption for the rental of real estate?** The primary purpose of a nursing home is to provide medical care to its residents. The primary purpose of boarding homes is to assume general responsibility for the safety and well-being of its residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Boarding homes may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the primary purpose of nursing homes and boarding homes is to provide services and not to lease or rent real property, no part of the gross income of a nursing home or boarding home may be exempted from B&O tax as the rental of real estate.

(f) **Adjustments to revenues.** Many hospitals will provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(g) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income amounts paid to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount received from the hospital for providing these services for the hospital. If the service provider subcontracts with third parties, such as physicians or nurses, to help provide medical services as independent contractors, the service provider may not deduct from its gross income amounts paid to the subcontractors where the service provider is personally liable, either primarily or secondarily, for paying the subcontractors. If, however, the hospital is alone liable for paying the subcontractors, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income amounts paid to the subcontractors. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111 (Advances and reimbursements).

(3) **B&O tax deductions, credits, and exemptions.** This subsection provides information about several B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

(a) **Organ procurement organizations.** Amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax, are exempt from B&O tax. RCW 82.04.326. This exemption is effective March 22, 2002.

(b) **Contributions, donations, and endowment funds.** A B&O tax deduction is provided by RCW 82.04.4282 for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital is not allowed to take a B&O tax deduction on amounts received from a state university for work-study programs or training seminars for doctors, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.

The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

(c) **Adult family homes.** The gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS, is exempt from B&O tax under RCW 82.04.327. The exemption under RCW 82.04.327 does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this section, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and certain nursing homes and homes for unwed mothers.** B&O tax does not apply to amounts received as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.4289. This exemption applies only if no part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nursing homes and homes for unwed mothers operated as religious or charitable organizations include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** A B&O tax deduction is provided by RCW 82.04.4297 to a health or social welfare organization, as defined in RCW 82.04.431, for amounts received directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services. A deduction is not allowed, however, for amounts that are received under an employee benefit plan. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the tax return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return. Readers should refer to WAC 458-20-169 (Nonprofit organizations) for additional information regarding this deduction.

For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts received under a health service program subsidized by federal or state government.** A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of B&O tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. RCW 82.04.4311. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, this deduction does not apply to amounts received from patient copayments or patient deductibles. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

(i) **Effective date of deduction.** The deduction for a public hospital owned by a municipal corporation or political subdivision and for a nonprofit hospital is effective April 2, 2002. Taxpayers who have paid B&O taxes between January 1, 1998, and April 2, 2002, on amounts that would qualify for this deduction are entitled to a refund. In addition, tax liability for accrued but unpaid taxes that would be deductible under this subsection (3)(f) are waived. For information regarding refunds, refer to WAC 458-20-229 (Refunds).

The deduction for a nonprofit community health center or a network of nonprofit community health centers is effective August 1, 2005.

(ii) **Example.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives $1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays $20 to Acme as patient copayments. Medicare pays $600 to Acme for the health care services, and the medicare plus plan pays $380. Acme may only deduct the $600 received from medicare.

(g) **Blood and tissue banks.** Amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank are exempt from B&O tax to the extent the amounts are exempt from federal income tax. RCW 82.04.324. For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 607 and Part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue

and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(h) **Boarding homes.** Effective July 1, 2004, licensed boarding home operators are entitled to a B&O tax deduction for amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and heath services authorized by chapter 74.39A RCW to residents who are medicaid recipients. RCW 82.04.4337. For the purpose of this section, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

Effective July 1, 2005, B&O tax does not apply to the amounts received by a nonprofit boarding home licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the boarding home. ((~~Chapter 514, Laws of 2005.~~)) RCW 82.04.4264. For purposes of this section, "nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** Effective July 1, 2006, B&O tax does not apply to the amounts received by a comprehensive cancer center to the extent the amounts are exempt from federal income tax. ((~~Chapter 514, Laws of 2005.~~)) RCW 82.04.4265. For purposes of this section, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) **Hospital safe patient handling credit.**

(i) RCW 82.04.4485 allows a hospital to take a credit against the B&O tax for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers. In order to qualify for credit, the purchases must be made as part of a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.

(ii) No application is necessary for the credit; however, a hospital taking a credit under this section must maintain records, as required by the department, necessary to verify eligibility for the credit under this subsection. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this subsection.

(iii) The maximum credit that may be earned under this section for each hospital is limited to one thousand dollars for each acute care available inpatient bed.

(iv) Credits are available on a first in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this subsection to exceed ten million dollars. If the ten million dollar limitation is reached, the department will notify hospitals that the annual statewide limit has been met. In addition, the department will provide written notice to any hospital that has claimed tax credits after the ten million dollar limitation in this subsection has been met. The notice will indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department will not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(v) Credit may not be claimed under this section for the acquisition of mechanical lifting devices and other equipment if the acquisition occurred before June 7, 2006.

(vi) Credit may not be claimed under this section for any acquisition of mechanical lifting devices and other equipment that occurs after December 30, 2010.

(vii) The department shall issue an annual report on the amount of credits claimed by hospitals under this section, with the first report due on July 1, 2008.

(viii) For the purposes of this subsection, "hospital" has the meaning provided in RCW 70.41.020.

(k) **Prescription drugs administered by the medical service provider.** Effective October 1, 2007, RCW 82.04.620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug charge. If the total amount received by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting their taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross

income from charges may be adjusted, as indicated in subsection (2)(f) of this section. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that is not in excess of the federal rate.

(l) **Temporary medical housing provided by a health or social welfare organization.** ((~~House Bill No. 2544, chapter 137, Laws of 2008,~~)) Effective July 1, 2008, ((~~creates~~)) RCW 82.08.997 created an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under RCW 67.40.090 and 67.40.130;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(4) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, boarding homes, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. In addition, retail sales tax must be collected from the buyer and remitted to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services and are subject to B&O tax under either the public or nonprofit hospital B&O tax classification or the service and other activities classification depending on the person making the charge. For example, charges for drugs physically administered by the seller are subject to B&O tax under either the public or nonprofit hospital classification or the service and other activities classification depending on the person making the charge. On the other hand, charges for drugs sold to patients or their caregivers, either for patient self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, boarding homes, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts received by hospitals, nursing homes, boarding homes, and similar health care facilities for furnishing meals to patients or residents as part of the services provided to those patients or residents are subject to B&O tax under the service and other activities, public or nonprofit hospital, or licensed boarding homes classifications, depending upon the person furnishing the meals.

Prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, boarding homes, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold for cash or credit to doctors, nurses, other employees, and visitors. Some of these facilities may provide meals to their employees at no charge. Under these circumstances, all sales of meals to such persons are subject to retailing B&O and retail sales taxes, including the value of meals provided at no charge to employees. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-119 (Sales of meals). Hospitals, nursing homes, boarding homes, and similar health care facilities that provide free meals to persons other than employees, such as visitors, should refer to WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses) for information about the taxability of meals given away free of charge.

(c) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** Effective July 1, 2006, sales of medical supplies, chemicals, or materials to a comprehensive cancer center are exempt from retail sales and use tax. ((~~Chapter 514, Laws of 2005.~~)) RCW 82.08.808 and 82.12.808. This exemption, however, does not apply to the sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(i) **Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using

blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(5) Equipment and supplies used by health care providers. Hospitals, nursing homes, adult family homes, boarding homes, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding exemptions that are available to these health care providers, as well as persons performing medical research and organ procurement organizations.

(a) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a ((~~properly completed~~)) resale certificate for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to the seller to document the wholesale nature of the sale((~~. Resale certificates may be obtained from the department's web site at http://dor.wa.gov, or by calling the department's taxpayer information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates)~~)) as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(b) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

(i) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a person who is not required to obtain a tax registration endorsement from the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(ii) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's ((~~web~~)) internet site at: http://dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706.

(6) **Quality maintenance fee imposed on nursing homes.** Effective July 1, 2007, the quality maintenance fee imposed on operators of nonexempt nursing facilities in Washington was repealed. Legislation passed in 2006 (section 1, chapter 241, Laws of 2006) repealed chapter 82.71 RCW, which imposed the fee. Originally effective on July 1, 2003, RCW 82.71.020 imposed a quality maintenance fee on every nursing home in this state not exempt from the fee under RCW 74.46.091. The amount of the quality maintenance fee was in addition to any other tax imposed upon nursing homes. Nursing homes were required to report the number of patient days and remit the fee to the department on a monthly basis. Persons with questions about how the quality maintenance fee affected individual nursing home operators or about the exemption provided by RCW 74.46.091 should contact the department of social and health services.

For purposes of this section, "patient day" means a calendar day of care provided to a nursing home resident, excluding a medicare patient day. Patient days include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. "Medicare patient day" means a patient day for medicare beneficiaries on a medicare Part A stay and a patient day for persons who have opted for managed care coverage using their medicare benefit.

WSR 10-06-070
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed February 25, 2010, 1:39 p.m., effective March 28, 2010]

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

Purpose: Effective January 1, 2010, reseller permits replaced resale certificates as the means to substantiate wholesale purchases, chapter 563, Laws of 2009. The department has amended a number of rules to recognize the change by adding language to state that resale certificates are no longer valid after December 31, 2009, and that reseller permits should be used. In addition the department has updated definitions to match statute revisions, and removed tax-reporting information applying to tax periods outside the normal limitation periods for assessments and refunds for the following:

- WAC 458-20-189 (4)(a)(i), eliminated information referencing taxability of physical fitness activities and saunas prior to July 1, 1993.
- WAC 458-20-209(1), eliminated reference to WAC 458-20-122 which has been canceled. Subsection (2), definitions of "farmer" and "agricultural product" are updated to match statute.
- WAC 458-20-211(1), eliminated reference to the 1993 law that specifically added rental of equipment with operator as a retail sale.
- WAC 458-20-226 (4)(c), eliminated reference to when landscape architects reported under the selected business service classification.

Minor editing and correction of citations, not intended to change other provisions of the sections, have been made.

Citation of Existing Rules Affected by this Order: WAC 458-20-169 Nonprofit organizations, explains how the business and occupation (B&O), retail sales, and use taxes apply to activities often performed by nonprofit organizations.

WAC 458-20-173 Installing, cleaning, repairing or otherwise altering or improving personal property of consumers, explains when persons performing these services are taxable under retailing B&O tax, wholesaling B&O tax, and when retail sales tax must be collected.

WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts, explains the B&O, retail sales, use, and public utility taxes applications to sales made to and by them.

WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property, explains the B&O tax and retail sales tax applications to interstate sales of tangible personal property.

WAC 458-20-209 Farming for hire and horticultural services performed for farmers, provides tax reporting information for persons performing horticultural services to farmers.

WAC 458-20-211 Leases or rentals of tangible personal property, bailments, explains how persons are taxable who rent or lease tangible personal property or rent equipment with an operator.

WAC 458-20-218 Advertising agencies, explains when advertising agencies are subject to service, retailing, or wholesaling B&O tax, and when retail sales tax should be collected.

WAC 458-20-222 Veterinarians, explains the B&O tax, retail sales tax, and use tax applications to sales and services provided by veterinarians. It also explains the taxability of persons who provide other services for live animals.

WAC 458-20-226 Landscape and horticultural services, provides reporting instructions for persons who provide landscape and horticultural services.

WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed after March 31, 2004, explains the purpose of the program, and who and what equipment is eligible for deferral.

WAC 458-20-24002 Sales and use tax deferral—New manufacturing and research/development facilities, explains the deferral program for persons not currently engaged in manufacturing or research and development activities in Washington.

WAC 458-20-274 Staffing services, explains the application of B&O tax, public utility tax; and retail sales tax collection responsibilities of staffing businesses providing staffing services.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapters 82.04, 82.08, 82.12 and 82.32 RCW, as they apply to wholesale sales and reseller permits.

Adopted under notice filed as WSR 10-01-194 on December 22, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, Repealed 0.

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

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

Date Adopted: February 24, 2010.

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-09-066, filed 4/16/01, effective 5/17/01)

WAC 458-20-169 Nonprofit organizations. (1) **Introduction.** Unlike most states' and the federal tax systems, Washington's tax system, specifically its business tax, applies to nonprofit organizations. Washington's business tax is imposed upon all entities that generate gross receipts or proceeds, unless there is a specific statutory exemption or deduction. This ((~~rule~~)) section reviews how the business and occupation (B&O), retail sales, and use taxes apply to activities often performed by nonprofit organizations. Although some nonprofit organizations may be subject to other taxes (e.g., public utility or insurance premium taxes on income from utility or insurance activities), these taxes are not discussed in this ((~~rule~~)) section. The ((~~rule~~)) section describes the most common exemptions and deductions for the B&O, retail and use taxes specifically provided to nonprofit organizations by state law. Other exemptions and/or deductions not specific to nonprofit organizations may also apply.

Other ((~~rules~~)) sections that may be relevant to specific activities of nonprofit organizations include the following:

(a) Artistic or cultural organizations, WAC 458-20-249;

(b) Educational institutions, school districts, student organizations, and private schools, WAC 458-20-167;

(c) Hospitals, nursing homes, ((~~and~~)) boarding homes, adult family homes and similar health care facilities, WAC 458-20-168;

(d) Membership organizations, nonprofit groups and clubs providing amusement, recreation, or physical fitness services, WAC 458-20-183; and

(e) Organizations holding trade shows, conventions, or seminars, WAC 458-20-256.

(2) **Registration requirements.** Nonprofit organizations with $12,000 or more per year in gross receipts from sales, and/or gross income from services subject to the B&O tax or who are required to collect or pay to the department of revenue (department) retail sales tax or any other tax or fee which the department administers (regardless of the level of annual gross receipts) must register with the department. Nonprofit organizations that have gross receipts of less than $12,000 per year and who are not required to collect retail sales tax or any other tax or fee administered by the department are not required to register with the department.

For more details on registration requirements see WAC 458-20-101 (Tax registration and tax reporting).

(3) **Filing tax returns.** Nonprofit organizations making retail sales that require the collection of the retail sales tax must file a tax return, regardless of the annual level of gross receipts or gross income and whether or not any B&O tax is due. (See also WAC 458-20-104 (Small business tax relief based on ((~~volume~~)) income of business).) The ((~~combined~~)) excise tax return with payment is generally filed on a monthly basis. However, under certain conditions the department may authorize taxpayers to file and remit payment on either a quarterly or annual basis. Refer to WAC 458-20-22801 for more information regarding how reporting frequencies are assigned.

Nonprofit organizations that do not have retail sales tax to remit, but are required to register, do not have to file a tax return if they meet certain statutory requirements (e.g., annual gross income of less than $28,000) and are placed on an "active nonreporting" status by the department. Refer to WAC 458-20-101 for more information regarding the "active nonreporting" status.

(4) **General tax reporting responsibilities.** While Washington state law provides some tax exemptions and deductions specifically targeted toward nonprofit organizations, these organizations otherwise have the same tax-reporting responsibilities as those of for-profit organizations.

(a) **Business and occupation tax.** Chapter 82.04 RCW imposes a B&O tax upon all persons engaged in business activities within this state, unless the income is specifically exempt or deductible under state law. The B&O tax applies to the value of products, gross proceeds of sales, or gross income of the business, as the case may be. RCW 82.04.220.

(i) **Common B&O tax classifications.** Chapter 82.04 RCW provides a number of classifications that apply to specific activities. The most common B&O tax classifications that apply to income received by nonprofit organizations are the service and other activities, retailing, and wholesaling classifications. If an organization engages in more than one kind of business activity, the gross income from each activity must be reported under the appropriate tax classification.

(ii) **Measure of tax.** The most common measures of the B&O tax are "gross proceeds of sales" and "gross income of the business." RCW 82.04.070 and 82.04.080, respectively. These measures include the value proceeding or accruing from the sale of tangible personal property or services rendered without any deduction for the cost of property sold, cost of materials used, labor costs, discounts paid, delivery costs, taxes, losses or any other expenses.

(b) **Retail sales tax.** A nonprofit organization must collect and remit retail sales tax on all retail sales, unless the sale is specifically exempt by statute. Examples of retail sales tax exemptions that commonly apply to nonprofit organizations are those for sales of certain food products (see WAC 458-20-244 for more information regarding sales of food ((~~products~~)) and food ingredients), construction materials purchased by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home (RCW 82.08.02915), and fund-raising activities (see subsection (5)(e) of this ((~~rule~~)) section). New construction includes renovating an existing structure to provide new housing for youth in crisis.

A nonprofit organization must pay retail sales tax when it purchases goods or retail services for its own use as a consumer, unless the purchase is specifically exempt by statute. Items purchased for resale without intervening use are purchases at wholesale and are not subject to the retail sales tax. The purchaser should provide the seller with a resale certificate((~~. (See WAC 458-20-102 for information regarding resale certificates.) Organizations not required to register should indicate on the resale certificate that the group is a qualifying nonprofit organization and the items will be resold at a tax exempt nonprofit fund-raiser.~~)) for purchases made before January 1, 2010, or a reseller permit for purchased made on or after January 1, 2010, to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(c) **Use tax.** The use tax is imposed on every person, including nonprofit organizations, using tangible personal property within this state as a consumer, unless such use is specifically exempt by statute. The use tax applies only if retail sales tax has not previously been paid on the item. The rate of tax is the same as the sales tax rate that applies at the location where the property is first used.

A common application of the use tax occurs when items are purchased from an out-of-state seller who has no presence in Washington. Because the out-of-state seller is under no obligation to collect Washington's retail sales or use tax, the buyer is statutorily required to remit use tax directly to the department. (See also WAC 458-20-178 for more information regarding the use tax.)

Except for fund-raising, exemptions from use tax generally correspond to the retail sales tax exemptions. For example, a use tax exemption for construction materials acquired by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home, RCW 82.12.02915, corresponds with the retail sales tax exemption described in subsection (4)(b) above for purchasing these construction materials.

(i) **Use tax exemption for donated items.** RCW 82.12.02595 provides a use tax exemption for property donated to a nonprofit charitable organization. This exemp-

tion is available for the nonprofit charitable organization((,)) and the donor, if the donor did not previously use the item as a consumer. It also applies to the use of property by a donor who is incorporating the property into a nonprofit organization's real or personal property for no charge.

The exemption also applies to another person using property originally donated to a charitable nonprofit organization that is subsequently donated or bailed to that person by the charitable nonprofit organization, provided that person uses the property in furtherance of the charitable purpose for which the property was originally donated to the charitable nonprofit organization. For example, a hardware store donates an industrial pressure washer to a nonprofit community center for neighborhood cleanup, the community center bails this washer to people enrolled in its neighborhood improvement group for neighborhood clean-up projects. No use tax is due from any of the participants in these transactions. An example of a gift that would not qualify is when a car is donated to a church for its staff and the church gives that car to its pastor. The pastor must pay use tax on the car because it serves multiple purposes. It serves the church's charitable purpose, but it also acts as compensation to the pastor and is available for the pastor's personal use. The subsequent donation of property from the charity to another person must be solely for a charitable purpose. If the property is donated or bailed to the third party for a charitable purpose in line with the nonprofit organization's charitable activities, generally, no additional proof is required that this was the charitable purpose for which the property was originally donated.

(ii) **Use tax implications with respect to fund-raising activities.** Subsection (5)(e) below explains that a retail sales tax exemption is available for certain fund-raising sales. However, there is no comparable use tax exemption provided to the buyer/user of property purchased at these fund-raising sales. While the nonprofit organization is under no obligation to collect use tax from the buyer, the organization is encouraged to inform the buyer of the buyer's possible use tax obligation.

(5) **Exemptions.** The following sources of income are specifically exempt from tax. As such they should not be included or reported as gross income if the organization is required to file ((~~a combined~~)) an excise tax return.

(a) **Adult family homes.** The B&O tax does not apply to income earned by a licensed adult family home or an adult family home exempt from licensing. RCW 82.04.327.

(b) **Camp or conference centers.** RCW 82.04.363 and 82.08.830 respectively provide B&O and retail sales exemptions to amounts received by a nonprofit organization from the sale or furnishing of certain items or services at a camp or conference center conducted on property exempt from the property tax under RCW 84.36.030 (1), (2), or (3).

Income derived from the sale of the following items and services is exempt:

(i) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(ii) Food and meals;

(iii) Books, tapes, and other products that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large.

The property tax exemptions are further discussed at WAC 458-16-210 (Church camps), WAC 458-16-220 (Nonprofit organizations or associations organized and conducted for nonsectarian purposes), and WAC 458-16-230 (Character building organizations).

(c) **Child care resource and referral services.** The B&O tax does not apply to nonprofit organizations with respect to amounts received for child care resource and referral services. Child care resource and referral services do not include child care services provided directly to children. RCW 82.04.3395.

(d) **Credit and debt services.** RCW 82.04.368 provides a B&O tax exemption for amounts received by nonprofit organizations for providing specialized credit and debt services. These services include:

(i) Presenting individual and community credit education programs including credit and debt counseling;

(ii) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;

(iii) Establishing and administering negotiated repayment programs for debtors; and

(iv) Providing advice or assistance to a debtor with regard to (i), (ii), or (iii) of this subsection.

(e) **Day care provided by churches.** The B&O tax does not apply to income derived by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020. RCW 82.04.339.

(f) **Fund-raising.** RCW 82.04.3651 provides a B&O tax exemption for amounts received from certain fund-raising activities. RCW 82.08.02573 provides a comparable retail sales tax exemption.

It is important to note that these exemptions apply only to the fund-raising income received by the nonprofit organization. For example, the commission income received by a nonprofit organization selling books owned by a for-profit entity on a consignment basis is exempt of tax if the statutory requirements are satisfied. The nonprofit organization is generally responsible for collecting and remitting retail sales tax upon the gross proceeds of sales when selling items for another person (see WAC 458-20-159).

(i) **What nonprofit organizations qualify?** Nonprofit organizations that qualify for this exemption are those that are:

(A) A tax-exempt nonprofit organization described by section 501 (c)(3) (educational and charitable), (4) (social welfare), or (10) (fraternal societies operating as lodges) of the Internal Revenue Code;

(B) A nonprofit organization that would qualify for tax exemption under these codes except that it is not organized as a nonprofit corporation; or

(C) A nonprofit organization that does not pay its members, stockholders, officers, directors, or trustees any amounts from its gross income, except as payment for services rendered, does not pay more than reasonable compensation to any person for services rendered, and does not engage in a substantial amount of political activity. Political activity includes, but is not limited to, influencing legislation and participating in any campaign on behalf of any candidate for political office.

A nonprofit organization may meet (A), (B), or (C) above.

(ii) **Qualifying fund-raising activities.** For the purpose of this exemption, "fund-raising activity" means soliciting or accepting contributions of money or other property, or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization.

(A) Money raised by a nonprofit charitable group from its annual telephone fund drive to fund its homeless shelters where nothing is promised in return for a donor's pledge is exempt as fund-raising contributions of money to further the goals of the nonprofit organization.

(B) A nonprofit group organized as a community playhouse has an annual telephone fund drive. The group gives the caller a mug, jacket, dinner, or vacation trip depending on the amount of pledge made over the phone. The community playhouse does not sell or exchange the mugs, jackets, dinners or trips for cash or property, except during this pledge drive. The money is used to produce the next season's plays. The money earned from the pledges is exempt from both retail sales tax and business and occupation tax to the extent these amounts represent an exchange for goods and services for money to further the goals of the nonprofit group. The money earned from the pledges above the value of the goods and services exchanged is exempt as a fund-raising contribution of money to further the goals of the nonprofit organization.

(C) A nonprofit group sells ice cream bars at booths leased during the two-week runs of three county fairs, for a total of six weeks during the year, to fund youth camps maintained by the nonprofit group. The money earned from the booths is exempt from both retail sales tax and business and occupation tax as a fund-raising exchange of goods for money to further the goals of the nonprofit group.

(iii) **Contributions of money or other property.** The term contributions includes grants, donations, endowments, scholarships, gifts, awards, and any other transfer of money or other property by a donor, provided the donor receives no significant goods, services, or benefits in return for making the gift. For example, an amount received by a nonprofit educational broadcaster from a group that conditions receipt upon the nonprofit broadcaster airing its seminars is not a contribution regardless of how the amount paid was titled by the two organizations.

It is not unusual for the person making a gift to require some accountability for how the gift is used as a condition for receiving the gift or future gifts. Such gifts remain exempt, provided the "accountability" required does not result in a direct benefit to the donor (examples of direct benefits to a donor are: Money given for a report on the soil contamination levels of land owned by the donor, medical services provided to the donor or the donor's family, or market research benefitting the donor directly). This "accountability" can take the form of conditions or restrictions on the use of the gift for specific charitable purposes or can take the form of written reports accounting for the use of the gift. Public acknowledgment of a donor for the gift does not result in a significant service or benefit simply because the gift is publicly acknowledged.

(iv) **Nonqualifying activities.** Fund-raising activity does not include the operation of a regular place of business in which services are provided or sales are made during regular hours such as a bookstore, thrift shop, restaurant, legal or health clinic, or similar business. It also does not include the operation of a regular place of business from which services are provided or performed during regular hours such as the provision of retail, personal, or professional services. A regular place of business and the regular hours of that business depend on the type of business being conducted.

(A) In the example demonstrating that an amount received by a nonprofit broadcaster was not a contribution because services were given in return for the funds, this activity must also be examined to see whether the exchange was for services as part of a fund-raising activity. The broadcaster was in the business of broadcasting programs. It had a regular site for broadcasting programs and ran broadcasts for twenty-four hours every day. Broadcasting was a part of its business activity performed from a regular place of business during regular hours. The money received from the group with the requirement that its seminars be broadcast would not qualify as money received from a fund-raising activity even though the parties viewed the money as a "donation."

(B) A nonprofit organization that makes catalog sales throughout the year with a twenty-four hour telephone line for taking orders has a regular place of business at the location where the sales orders are processed and regular hours of twenty-four hours a day. Catalog sales are not exempt as fund-raising amounts even though the funds are raised for a nonprofit purpose.

(C) A nonprofit group organized as a community playhouse has three plays during the year at a leased theatre. The plays run for a total of six weeks and the group provides concessions at each of the performances. The playhouse has a regular place of business with regular hours for that type of business. The concessions are done at that regular place of business during regular hours. The concessions are not exempt as fund-raising activities even though amounts raised from the concessions may be used to further the nonprofit purpose of that group.

(D) A nonprofit student group, that raises money for scholarships and other educational needs, sets up an espresso stand that is open for two hours every morning during the school year. The espresso stand is a regular place of business with regular hours for that type of business. The money earned from the espresso stand is not exempt, even though the amounts are raised to further the student group's nonprofit purpose.

(v) **Fund-raising sales by libraries.** RCW 82.04.3651 specifically provides that the sale of used books, used videos, used sound recording, or similar used information products in a library is not the operation of a regular place of business, if the proceeds are used to support the library. The library must be a free public library supported in whole or in part with money derived from taxes. RCW 27.12.010.

(g) **Group training homes.** RCW 82.04.385 provides a B&O tax exemption for amounts received from the department of social and health services for operating a nonprofit

group training home. The amounts excluded from gross income must be used for the cost of care, maintenance, support, and training of developmentally disabled individuals. A nonprofit group training home is an approved nonsectarian facility equipped, supervised, managed, and operated on a full-time nonprofit basis for the full-time care, treatment, training, and maintenance of individuals with developmental disabilities.

(h) **Sheltered workshops.** RCW 82.04.385 provides a B&O tax exemption for amounts received by a nonprofit organization for operating a sheltered workshop.

(i) **What is a sheltered workshop?** A sheltered workshop is that part of the nonprofit organization engaged in business activities that are performed primarily to provide evaluation and work adjusted services for a handicapped person or to provide gainful employment or rehabilitation services to a handicapped person. The sheltered workshop can be maintained on or off the premises of the nonprofit organization.

(ii) **What is meant by "gainful employment or rehabilitation services to a handicapped person"?** Gainful employment or rehabilitation services must be an interim step in the rehabilitation process which is provided because the person cannot be readily absorbed into the competitive labor market or because employment opportunities for the person do not exist during that time in the competitive labor market.

"Handicapped," for the purposes of this exemption, means a physical or mental disability that restricts normal achievement, including medically recognized addictions and learning disabilities. However, this term does not include social or economic disadvantages that restrict normal achievement (e.g., prior criminal history or low-income status).

(i) **Student loan services.** RCW 82.04.367 provides a B&O tax exemption for the gross income of nonprofit organizations that are exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code that:

(i) Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or

(ii) Provide guarantees for student loans made through programs other than the federal guaranteed student loan program.

(6) **B&O tax deduction of government payments made to health or social welfare organizations.** RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations for amounts received from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services. A deduction is not allowed, however, for amounts that are received under an employee benefit plan. These deductible amounts should be included in the gross income reported on the return, and then deducted on the return when determining the amount of the organization's taxable income.

(a) **What is a health or social welfare organization?** A health or social welfare organization is a nonprofit organization providing health or social welfare services that is also:

(i) A corporation sole under chapter 24.12 RCW or a not-for-profit corporation under chapter 24.03 RCW. It does not include a corporation providing professional services authorized under chapter 18.100 RCW;

(ii) Governed by a board of not less than eight individuals who are not paid corporate employees when the organization is a not-for-profit corporation;

(iii) Not paying any part of its corporate income directly or indirectly to its members, stockholders, officers, directors, or trustees except as executive or officer compensation or as services rendered by the corporation in accordance with its purposes and bylaws to a member, stockholder, officer, or director or as an individual;

(iv) Only paying compensation to corporate officers and executives for actual services rendered. This compensation must be at a level comparable to like public service positions within Washington;

(v) Irrevocably dedicating its corporate assets to health or social welfare activities. Upon corporate liquidation, dissolution, or abandonment, any distribution or transfer of corporate assets may not inure directly or indirectly to the benefit of any member or individual, except for another health or social welfare organization;

(vi) Duly licensed or certified as required by law or regulation;

(vii) Using government payments to provide health or social welfare services;

(viii) Making its services available regardless of race, color, national origin, or ancestry; and

(ix) Provides access to the corporation's books and records to the department's authorized agents upon request.

(b) **Qualifying health or welfare services.** Health or social welfare services are limited exclusively to the following services:

(i) Mental health, drug, or alcoholism counseling or treatment;

(ii) Family counseling;

(iii) Health care services;

(iv) Therapeutic, diagnostic, rehabilitative or restorative services for the care of the sick, aged, physically-disabled, developmentally-disabled, or emotionally-disabled individuals;

(v) Activities, including recreational activities, intended to prevent or ameliorate juvenile delinquency or child abuse;

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement;

(ix) Legal services to the indigent;

(x) Weatherization assistance or minor home repairs for low-income homeowners or renters;

(xi) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households; and

(xii) Community services to low-income individuals, families and groups that are designed to have a measurable and potentially major impact on the poverty in Washington.

AMENDATORY SECTION (Amending Order ET 83-16, filed 3/15/83)

WAC 458-20-173 Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.

Business and Occupation Tax

Retailing. Persons installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are taxable under the retailing classification upon the gross proceeds received from sales of tangible personal property and the rendition of services.

Wholesaling. Persons who sell tangible personal property to, or render any of the above services for others than consumers, are taxable under the wholesaling classification upon the gross proceeds of sales received ((~~therefrom~~)).

There must be included within gross amounts reported for tax all fees for services rendered and all charges recovered for expenses incurred in connection therewith, such as transportation costs, hotel, restaurant, telephone and telegraph charges, etc.

Retail Sales Tax

Persons engaged in the business of installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are required to collect the retail sales tax upon the total charge made for the rendition of such services, even though no tangible personal property in the form of materials or supplies is sold or used in connection with such services. Where tangible personal property in the form of materials and supplies is sold or used in connection with such services, the retail sales tax applies to the total charges made for the sale of the materials and supplies and the services rendered in connection therewith.

The following are illustrative of services upon which the retail sales tax applies to the total charge made to consumers:

Laundering, dyeing and cleaning;

Automobile repairing, washing and painting;

Boat repairing (see WAC 458-20-175 and 458-20-176 for certain exemptions); shoe repairing and shining;

Altering or repairing wearing apparel.

In general, the repairing of any personal property, such as radios, refrigerators, machines, watches and jewelry and other articles.

The retail sales tax does not apply to sales ((~~to such persons~~)) of materials which are resold as a part of the articles of tangible personal property being repaired, altered or improved. Therefore, ((~~upon~~)) for buyers giving a resale certificate for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to sellers to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits), the retail sales tax will not apply to purchases such as:

(1) Parts or paint by an automotive repairman;

(2) Lumber, chandlery, etc., by a boat repairman;

(3) Shoe findings, thread, nails, polish and dyes by a shoe repairman;

(4) Solder, wire, condensers, etc., by a radio or television repairman.

Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

On the other hand the retail sales tax does apply to the purchase of all other supplies which may be consumed and utilized by such persons in the rendition of such services, such as fuel, lubricant, machines, hand tools, stationery and other supplies and equipment.

REPAIRS FOR OUT-OF-STATE PERSONS. Persons residing outside this state may ship into this state articles of tangible personal property for the purpose of having the ((~~same~~)) articles repaired, cleaned, or otherwise altered, and ((~~thereafter~~)) then returned to them. The retail sales tax is not applicable to the charge made for labor and/or materials, provided the seller, as a requirement of the agreement, delivers the property to the purchaser at a point outside this state or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. Proof of exempt sales will be the same as that required for sales of tangible personal property in interstate commerce. See WAC 458-20-193((~~, Part A~~)). No deduction is allowed, however, under the business and occupation tax.

For taxability of ((~~warranty, service, or~~)) warranties and maintenance ((~~contracts~~)) agreements, see WAC ((~~458-20-107~~)) 458-20-257.

AMENDATORY SECTION (Amending WSR 95-24-104, filed 12/6/95, effective 1/6/96)

WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts. (1) **Introduction.** This section discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington, counties, cities, towns, school districts, and fire districts. Hospitals or similar institutions operated by the state of Washington, or a municipal corporation thereof, should refer to WAC 458-20-168 (Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities). School districts should also refer to WAC 458-20-167 (Educational institutions, school districts, student organizations, and private schools). Persons providing physical fitness activities and amusement and recreation activities should also refer to WAC 458-20-183 (Amusement, recreation, and physical fitness services).

Persons providing public utility services may also want to refer to the following sections ((~~of chapter 458-20 WAC~~)):

(a) WAC 458-20-179 (Public utility tax);

(b) WAC 458-20-180 (Motor transportation, urban transportation);

(c) WAC 458-20-250 (((~~Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires~~)) Solid waste collection tax); and

(d) WAC 458-20-251 (Sewerage collection ((~~business~~)) and other related activities).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Municipal corporations" means counties, cities, towns, school districts, and fire districts of the state of Washington.

(b) "Public service business" means any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others and without limiting the scope hereof, water distribution, light and power, public transportation, and sewer collection.

(c) "Subject to control by the state," as used in (b) of this subsection, means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.

(d) "Enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

(3) **Persons taxable under the business and occupation tax.**

(a) Sellers are subject to the B&O tax upon sales to the state of Washington, its departments and institutions, or to municipal corporations of the state.

(b) The state of Washington, its departments and institutions, as distinct from its corporate agencies or instrumentalities, are not subject to the provisions of the B&O tax. RCW 82.04.030.

(c) Municipal corporations are not subject to the B&O tax upon amounts derived from activities which are exclusively governmental. RCW 82.04.419. Thus, the B&O tax does not apply to license and permit fees, inspection fees, fees for copies of public records, reports, and studies, pet adoption and license fees, processing fees involving fingerprinting and environmental impact statements, and taxes, fines, or penalties, and interest thereon. Also exempt are fees for on-street metered parking and on-street parking permits.

Municipal corporations are also exempt from the B&O tax on grants received from the state of Washington, or the United States government. RCW 82.04.418.

(d) Municipal corporations deriving income, however designated, from any enterprise or public service business activity for which a specific charge is made are subject to the provisions of the B&O or public utility tax. Charges between departments of a particular municipal corporation are interdepartmental charges and not subject to tax. (See also WAC 458-20-201 on interdepartmental charges.)

(i) When determining whether an activity is an enterprise activity, user fees derived from the activity must be measured against total costs attributable to providing the activity, including direct and indirect overhead. This review should be performed on the fiscal or calendar year basis used by the entity in maintaining its books of account.

For example, a city operating an athletic and recreational facility determines that the facility generatedtwo hundred fifty thousand dollars in user fees for the fiscal year. The total costs for operating the facility were four hundred thousand dollars. This figure includes direct operating costs and direct and indirect overhead, including asset depreciation and interest payments for the retirement of bonds issued to fund the facility's construction. The principal payments for the retirement of the bonds are not included because these costs are a part of the asset depreciation costs. The facility's operation is an enterprise activity because it is more than fifty percent funded by user fees.

(ii) An enterprise activity which is operated as a part of a governmental or nonenterprise activity is subject to the B&O tax. For example, City operates Community Center, a large athletic and recreational facility, and three smaller neighborhood centers. Community Center operates with its own budget, and the three neighborhood centers are lumped together and operated under a single separate budget. Community Center and the neighborhood centers are operated as a part of an overall parks and recreation system, which is not more than fifty percent funded by user fees.

Each budget must be independently reviewed to determine whether these facilities are operated as enterprise activities. The operation of Community Center would be an enterprise activity only if the user fees account for more than fifty percent of Community Center's operating budget. The total user fees generated by the three neighborhood centers would be compared to the total costs of operating the three centers to determine whether they, as a whole, were operated as enterprise activity. Had each neighborhood center operated under an individual budget, the user fees generated by each neighborhood center would have been compared to the costs of operating that center.

(4) **Business and occupation tax.**

(a) Municipal corporations engaging in public service business activities should refer to the sections of chapter 458-20 WAC mentioned in subsection (1)(a) through (d) of this section to determine their B&O tax liability. Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other business activities tax.** Amounts derived from, but not limited to, special event admission fees for concerts and exhibits, user fees for lockers and checkrooms, charges for moorage (less than thirty days), and the granting of a license to use real property are subject to the service and other business activities tax if these activities are considered enterprise activities. (See also WAC 458-20-118 on the sale or rental of real estate.) The service tax applies to fees charged for instruction in amusement and recreation activities, such as tennis or swimming lessons.

((~~Prior to July 1, 1993, fees charged for physical fitness activities and saunas were subject to the service tax. These activities are a retail sale beginning July 1, 1993.~~)) Physical fitness activities are retail sales. These activities include weight lifting, exercise facilities, aerobic classes, etc. (See also WAC 458-20-183 on amusement and recreation activities, etc.)

(ii) **Extracting tax.** The extracting of natural products for sale or for commercial use is subject to the extracting B&O tax. The measure of tax is the value of products. (See WAC 458-20-135 on extracting.) Counties and cities are not, however, subject to the extracting tax upon the cost of labor and services performed in the mining, sorting, crushing,

screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned by or leased to the county or city when these products are either stockpiled for placement or are placed on a street, road, place, or highway of the county or city by the county or city itself. Nor does the extracting tax apply to the cost of or charges for such labor and services if the sand, gravel, or rock is sold by the county or city to another county or city at actual cost for placement on a publicly owned street, road, place, or highway. RCW 82.04.415.

(iii) **Manufacturing tax.** The manufacturing of products for sale or for commercial use is subject to the manufacturing B&O tax. The measure of tax is the value of products. (See WAC 458-20-136 on manufacturing.) The manufacturing tax does not apply to the value of materials printed by counties, cities, towns, or school districts solely for their own use. RCW 82.04.397.

(iv) **Wholesaling tax.** The wholesaling tax applies to the gross proceeds derived from sales or rentals of tangible personal property to persons who resell the same without intervening use. The wholesaling tax does not, however, apply to casual sales. (See WAC 458-20-106 on casual sales.) Sellers must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from their customers to ((~~support~~)) document the wholesale nature of any ((~~transaction. (Refer to WAC 458-20-102 on resale certificates.)~~)) sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(v) **Retailing tax.** User fees for off-street parking and garages, and charges for the sale or rental of tangible personal property to consumers are taxable under the retailing B&O tax. The retailing tax does not, however, apply to casual sales. (See WAC 458-20-106.) Fees for amusement and recreation activities, such as golf, swimming, racquetball, and tennis, are retail sales and subject to the retailing tax if the activities are considered enterprise activities. Charges for instruction in amusement and recreation activities are subject to the service tax. (See also WAC 458-20-183 and (a)(i) of this subsection.)

((~~On and after July 1, 1993,~~)) Charges for physical fitness and sauna services are classified as retail sales and subject to the retailing tax. (((~~See chapter 25, Laws of 1993 sp. sess.~~))) While a retail sales tax exemption for physical fitness classes provided by local governments is available ((~~on and after July 1, 1994,~~)) (see subsection (6)(h) of this section), the retailing B&O tax continues to apply.

(b) Persons selling products which they have extracted or manufactured must report, unless exempt by law, under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. (See WAC 458-20-19301 on multiple activities tax credits.)

(5) **Retail sales tax.**

(a) The retail sales tax generally applies to all retail sales made to the state of Washington, its departments and institutions, and to municipal corporations of the state.

(b) The state of Washington, its departments and institutions, and all municipal corporations are required to collect retail sales tax on all retail sales of tangible personal property or services classified as retail services unless specific exemptions apply. Retail sales tax must be collected and remitted even though the sale may be exempt from the retailing B&O tax. For example, a city police department must collect retail sales tax on casual sales of unclaimed property to consumers, even though this activity is not subject to the B&O tax because these sales are considered casual sales. (See also WAC 458-20-106.)

(c) Sales between a department or institution of the state and a municipal corporation, or between municipal corporations are retail sales. For example, State Agency sells office supplies to County. State Agency is making a retail sale. State Agency must collect and remit retail sales tax upon the amount charged, even though the B&O tax does not apply to this sale. The amount of retail sales tax must be separately itemized on the sales invoice. RCW 82.08.050. State Agency may claim a tax paid at source deduction for any retail sales or use tax previously paid on the acquisition of the office supplies. (((~~See WAC 458-20-102 on purchases for dual purposes.~~)))

(d) Departments or institutions of the state of Washington are not considered sellers when making sales to other departments or institutions of the state because the state is considered to be a single entity. RCW 82.08.010(2). Therefore, the "selling" department or institution is not required by statute to collect the retail sales tax on these sales.

All departments or institutions of the state of Washington are, however, considered "consumers." RCW 82.08.010 (3). A department or institution of the state purchasing tangible personal property from another department or institution is required to remit to the department of revenue the retail sales or use tax upon that purchase, unless it can document that the "selling" institution previously paidthe appropriate retail sales or use tax on that item.

(6) **Retail sales tax exemptions.** The retail sales tax does not apply to the following:

(a) Sales to city or county housing authorities which were created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. However, prime contractors and subcontractors for city or county housing authorities should refer to WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property) to determine their tax liability.

(b) Charges to municipal corporations and the state of Washington for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended. RCW 82.08.0271.

(c) Sales of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a municipal corporation thereof for use in conducting any public service business except a tugboat business. RCW 82.08.0256.

(d) Sales of or charges made for labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry

owned or leased to a county or city, when the materials are either stockpiled in the pit or quarry, placed on the public road by the county or city itself, or sold at cost to another county or city for use on public roads. RCW 82.08.0275.

(e) Sales to one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation or incorporation of any part of the territory of one municipal corporation by another. RCW 82.08.0278.

(f) Sales to the state of Washington, or a municipal corporation in the state, of ferry vessels and component parts thereof, and charges for labor and services in respect to construction or improvement of such vessels. RCW 82.08.0285.

(g) Sales to the United States. However, sales to federal employees are subject to the retail sales tax, even if the federal employee will be reimbursed for the cost by the federal government. (See WAC 458-20-190 on sales to the United States.)

(h) (((~~On and after July 1, 1994,~~)) Charges for physical fitness classes, such as aerobics classes, provided by local governments. RCW 82.08.0291. (((~~See also chapter 85, Laws of 1994.~~))) Local governments must collect retail sales tax on charges for other physical fitness activities such as weight lifting, exercise equipment, and running tracks.

This exemption does not apply if a person other than a local government provides the physical fitness class, even if the class is conducted at a local government facility.

(7) **Deferred sales or use tax.**

(a) If the seller fails to collect the appropriate retail sales tax, the state of Washington, its departments and institutions, and all municipal corporations are required to pay the deferred sales or use tax directly to the department.

(b) Purchases of cigarette stamps**,** vehicle license plates, license plate tabs, disability decals, or other items to evidence payment of a license, tax, or fee are purchases for consumption by the state or municipal corporation, and subject to the retail sales or use tax.

(c) Where tangible personal property or taxable services are purchased by the state of Washington, its departments and institutions, for the purpose of resale to any other department or institution of the state of Washington, or for the purpose of consuming the property purchased in manufacturing or producing for use or for resale to any other department or institution of the state of Washington a new article of which such property is an ingredient or component part, the transaction is deemed a purchase at retail and the retail sales tax applies.

(d) Persons producing or manufacturing products for commercial or industrial use are required to remit use tax upon the value of those products, unless a specific use tax exemption applies. RCW 82.12.020. This value must correspond as nearly as possible to the gross proceeds from retail sales of similar products. (See WAC 458-20-112 and 458-20-134 on value of products and commercial or industrial use, respectively.)

For example, a municipal corporation operating a print shop and producing forms or other documents for its own use must remit use tax upon the value of those products, even though a B&O tax exemption is provided by RCW 82.04.-397. The municipal corporation may claim a credit for retail sales tax previously paid on materials, such as paper or ink, which are incorporated into the manufactured product. The process of putting an internal communication, such as a memorandum to employees, on a blank form or document is not considered a manufacturing activity, even when multiple copies of the resulting internal communication are reproduced for wide distribution to employees.

(i) Counties and cities are not subject to use tax upon the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads. RCW 82.12.0269.

(ii) If a department or institution of the state of Washington manufactures or produces tangible personal property for use or resale to any other department or institution of the state, use tax must be remitted upon the value of that article even though the state is not subject to the B&O tax.

For example, State Agency manufactures office furniture for resale to other departments or institutions of the state of Washington. State Agency will also on occasion use office furniture it has manufactured for its own offices. Use tax is due on the office furniture sold to the other departments or institutions of this state, and on the office furniture State Agency puts to its own use. The taxable value of the office furniture sold to the other departments or institutions of this state is the selling price. The taxable value for the office furniture State Agency puts to its own use is the selling price at which State Agency sells comparable furniture to other departments or institutions of the state. When computing and remitting use tax upon the value of manufactured furniture, State Agency may claim a credit for retail sales or use taxes previously remitted on materials incorporated into that furniture. A department or institution of this state purchasing office furniture from State Agency must remit use tax upon the value of that furniture, unless it can document that State Agency paid use tax upon the appropriate value of the furniture. (See also subsection (5)(d) of this section.)

(e) ((~~A donee is generally subject to use tax upon the use of any donated item of tangible personal property, if the appropriate retail sales or use tax was not paid by the donor. Effective May 1, 1995,~~)) A use tax exemption is available to state or local governmental entities using tangible personal property donated to them. (((~~See chapter 201, Laws of 1995.~~))) RCW 82.12.02595. The donor, however, remains liable for the retail sales or use tax on the donated property, even though the state or local governmental entity's use of the property is exempt of tax.

(8) **Persons subject to the public utility tax.**

(a) Persons deriving income subject to the provisions of the public utility tax may not claim a deduction for amounts received as compensation for services rendered to the state of Washington, its departments and institutions, or to municipal corporations thereof.

(b) The public utility tax does not apply to income received by the state of Washington, or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses should refer to WAC 458-20-179 (Public utility tax), WAC 458-20-180 (Motor transportation, urban transportation), WAC 458-20-250 (((~~Refuse-solid~~)) Solid waste collec-

tion ((~~business - Core deposits and credits, battery core charges, and tires~~)) tax) and WAC 458-20-251 (Sewerage collection ((~~business~~)) and other related activities) to determine their public utility tax liability.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(a) City operates a community center which provides a number of activities and services. The center charges fees for court activities including tennis and racquetball, general admission to the swimming pool, swimming lessons, aerobics classes, and the use of weight equipment. The community center also provides programs targeted at youth and senior populations. These programs include arts and craft classes, dance instruction classes, and day camps providing a wide variety of activities such as picnics, nature walks, volleyball, and other games. The center provides banquet and meeting rooms to civic groups for a fee, but does not provide a meal service with the banquet facilities. The community center's operation is an enterprise activity, because it is more than fifty percent funded by user fees.

City's tax liability for the fees charged by the community center are as follows:

(i) Retailing B&O and retail sales taxes apply to all charges for the court activities**,** general admission to the swimming pool, and the use of weight equipment;

(ii) The retailing B&O tax applies to fees charged for aerobics classes. Retail sales tax does not apply because of the sales tax exemption for physical fitness classes provided by local governments;

(iii) Service and other business activities B&O tax applies to all fees for swimming lessons, the arts and crafts classes, dance instruction classes, day camps, and the rental of the banquet and meeting rooms. Retail sales tax does not apply to any part of the charge for the day camp because the portion of the day camp activities considered to be retail is minimal.

(b) City operates a swimming pool located at a high school. This swimming pool is open to the public in the evenings. City charges user fees for swimming lessons, water exercise classes, and general admission to the pool. City will occasionally "rent" the pool to a private organization for the organization's own use. In these cases, the private organization controls the overall operation and admission to the facility. City has no authority to control access and/or use when "renting" the pool to these organizations. City compares the user fees generated by the swimming pool to the total costs associated with the operation of the pool on an annual basis. The user fees never total "more than fifty percent" of the cost of pool operation, therefore the operation of the pool is not an enterprise activity.

City must collect and remit retail sales tax on all retail sales for which a retail sales tax exemption is not available, even though the B&O tax does not apply. Retail sales tax must be charged and collected on all general admission charges. Retail sales tax does not apply to the water exercise classes because of the retail sales tax exemption provided for physical fitness classes provided by local governments. City would not collect retail sales tax on the charges for the swimming lessons or the "rental" of the pool to private businesses (license to use real estate) because these charges are not retail sales.

(c) City sponsors various baseball leagues as a part of City's efforts to provide recreational activities to its citizens. Teams joining a league are charged a "league fee." Individual participants are charged a "participation fee." The league fee entitles a team to join the league, and reserve the use of the ball fields for league games. The participation fee entitles an individual team member to participate in the baseball activity. City does not account for the operation of the ball fields under a single specific budget. The user fees generated from the baseball fields, as well as the costs of operating and maintaining these fields, are accounted for in City's overall parks and recreation system budget, which is not an enterprise activity.

The participation fees are retail sales and subject to the retail sales tax, because the team members pay these fees for the right to actually engage in an amusement and recreation activity. The league fees are not retail sales, because they simply entitle the teams to join an association of baseball teams that compete amongst themselves. (Refer also to WAC 458-20-183 on amusement and recreational activities.) The participation fees and league fees are not subject to the B&O tax, because these baseball fields are not operated as an enterprise activity. Had these fields been operated as an enterprise activity, the participation fees and league fees would also have been subject to the retailing and service and other business activities B&O tax classifications, respectively.

(d) Jane Doe enters into a contract with City to provide an aerobics class at City's community center. Jane is responsible for providing the aerobics class. City merely "rents" a room to Jane under a license to use agreement.

Jane Doe must collect and remit retail sales tax upon the charges for the aerobics classes. The charges for the aerobics classes do not qualify for the retail sales tax exemption provided by RCW 82.08.0291 merely because the classes are held at a local government facility. Jane Doe is not entitled to the retail sales tax exemption available to local governments.

AMENDATORY SECTION (Amending WSR 91-24-020, filed 11/22/91, effective 1/1/92)

WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property. (1) **Introduction.** This section explains Washington's B&O tax and retail sales tax applications to interstate sales of tangible personal property. It covers the outbound sales of goods originating in this state to persons outside this state and of inbound sales of goods originating outside this state to persons in this state. This section does not include import and export transactions.

(2) **Definitions:** For purposes of this section the following terms mean:

(a) "State of origin" means the state or place where a shipment of tangible personal property (goods) originates.

(b) "State of destination" means the state or place where the purchaser/consignee or its agent receives a shipment of goods.

(c) "Delivery" means the act of transferring possession of tangible personal property. It includes among others the transfer of goods from consignor to freight forwarder or for-hire carrier, from freight forwarder to for-hire carrier, one for-hire carrier to another, or for-hire carrier to consignee.

(d) "Receipt" or "received" means the purchaser or its agent first either taking physical possession of the goods or having dominion and control over them.

(e) "Agent" means a person authorized to receive goods with the power to inspect and accept or reject them.

(f) "Nexus" means the activity carried on by the seller in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington.

(3) **Outbound sales.** Washington state does not assess its taxes on sales of goods which originate in Washington if receipt of the goods occurs outside Washington.

(a) Where tangible personal property is located in Washington at the time of sale and is received by the purchaser or its agent in this state, or the purchaser or its agent exercises ownership over the goods inconsistent with the seller's continued dominion over the goods, the sale is subject to tax under the retailing or wholesaling classification. The tax applies even though the purchaser or its agent intends to and thereafter does transport or send the property out-of-state for use or resale there, or for use in conducting interstate or foreign commerce. It is immaterial that the contract of sale or contract to sell is negotiated and executed outside the state or that the purchaser resides outside the state.

(b) Where the seller delivers the goods to the purchaser who receives them at a point outside Washington neither retailing nor wholesaling business tax is applicable. This exemption applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or purchaser. It also applies whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis. The shipment may be made by the seller's own transportation equipment or by a carrier for-hire. For purposes of this section, a for-hire carrier's signature does not constitute receipt upon obtaining the goods for shipment unless the carrier is acting as the purchaser's agent and has express written authority from the purchaser to accept or reject the goods with the right of inspection.

(4) **Proof of exempt outbound sales.**

(a) If either a for-hire carrier or the seller itself carries the goods for receipt at a point outside Washington, the seller is required to retain in its records documentary proof of the sales and delivery transaction and that the purchaser in fact received the goods outside the state in order to prove the sale is tax exempt. Acceptable proofs, among others, will be:

(i) The contract or agreement of sale, if any, **And**

(ii) If shipped by a for-hire carrier, a waybill, bill of lading or other contract of carriage indicating the seller has delivered the goods to the for-hire carrier for transport to the purchaser or the purchaser's agent at a point outside the state with the seller shown on the contract of carriage as the consignor (or other designation of the person sending the goods) and the purchaser or its agent as consignee (or other designation of the person to whom the goods are being sent); or

(iii) If sent by the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

The seller's name and address,

The purchaser's name and address,

The place of delivery, if different from purchaser's address,

The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated outside the state of Washington.

(b) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier merely utilized to arrange for and/or transport the goods is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection. See also WAC 458-20-174, 458-20-17401, 458-20-175, 458-20-176, 458-20-177, 458-20-238 and 458-20-239 for certain statutory exemptions.

(5) **Other B&O taxes - outbound and inbound sales.**

(a) **Extracting, manufacturing.** Persons engaged in these activities in Washington and who transfer or make delivery of such produced articles for receipt at points outside the state are subject to business tax under the extracting or manufacturing classification and are not subject to tax under the retailing or wholesaling classification. See also WAC 458-20-135 and 458-20-136. The activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey. The tax is measured by the value of products as determined by the selling price in the case of articles on which the seller performs no further manufacturing after transfer out of Washington. It is immaterial that the value so determined includes an additional increment of value because the sale occurs outside the state. If the seller performs additional manufacturing on the article after transferring the article out-of-state, the value should be measured under the principles contained in WAC 458-20-112.

(b) **Extracting or processing for hire, printing and publishing, repair or alteration of property for others.** These activities when performed in Washington are also inherently local and the gross income or total charge for work performed is subject to business tax, since the operating incidence of the tax is upon the business activity performed in this state. No deduction is permitted even though the articles produced, imprinted, repaired or altered are delivered to persons outside the state. It is immaterial that the customers are located outside the state, that the work was negotiated or contracted for outside the state, or that the property was shipped in from outside the state for such work.

(c) **Construction, repair.** Construction or repair of buildings or other structures, public road construction and similar contracts performed in this state are inherently local business activities subject to B&O tax in this state. This is so even though materials involved may have been delivered from outside this state or the contracts may have been negotiated outside this state. It is immaterial that the work may be performed in this state by foreign sellers who performed preliminary services outside this state.

(d) **Renting or leasing of tangible personal property.** Lessors who rent or lease tangible personal property for use in this state are subject to B&O tax upon their gross proceeds from such rentals for periods of use in this state. Proration of tax liability based on the degree of use in Washington of leased property is required.

It is immaterial that possession of the property leased may have passed to the lessee outside the state or that the lease agreement may have been consummated outside the state. Lessors will not be subject to B&O tax if all of the following conditions are present:

(i) The equipment is not located in Washington at the time the lessee first takes possession of the leased property; and

(ii) The lessor has no reason to know that the equipment will be used by the lessee in Washington; and

(iii) The lease agreement does not require the lessee to notify the lessor of subsequent movement of the property into Washington and the lessor has no reason to know that the equipment may have been moved to Washington.

(6) **Retail sales tax - outbound sales.** The retail sales tax generally applies to all retail sales made within this state. The legal incidence of the tax is upon the purchaser, but the seller is obligated to collect and remit the tax to the state. The retail sales tax applies to all sales to consumers of goods located in the state when goods are received in Washington by the purchaser or its agent, irrespective of the fact that the purchaser may use the property elsewhere. However, as indicated in subsection (4)(b), delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier arranged either by the seller or the purchaser, merely utilized to arrange for and/or transport the goods out-of-state is not receipt of the goods by the purchaser or its agent in this state, unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(a) The retail sales tax does not apply when the seller delivers the goods to the purchaser who receives them at a point outside the state, or delivers the same to a for-hire carrier consigned to the purchaser outside the state. This exemption applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or the purchaser. It also applies regardless of whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis and regardless of who bears the risk of loss. The seller must retain proof of exemption as outlined in subsection (4), above.

(b) RCW 82.08.0273 provides an exemption from the retail sales tax to certain nonresidents of Washington for purchases of tangible personal property for use outside this state when the nonresident purchaser provides proper documentation to the seller. This statutory exemption is available only to residents of states and possessions or Province of Canada other than Washington when the jurisdiction does not impose a retail sales tax of three percent or more. These sales are subject to B&O tax.

(c) A statutory exemption (RCW 82.08.0269) is allowed for sales of goods for use in states, territories and possessions of the United States which are not contiguous to any other state (Alaska, Hawaii, etc.), but only when, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or its designated agent at the usual receiving terminal of the for-hire carrier selected to transport the goods, under such circumstance that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories and possessions. As proof of exemption, the seller must retain the following as part of its sales records:

(i) A certification of the purchaser that the goods will not be used in the state of Washington and are intended for use in the specified noncontiguous state, territory or possession.

(ii) Written instructions signed by the purchaser directing delivery of the goods to a dock, depot, warehouse, airport or other receiving terminal for transportation of the goods to their place of ultimate use. Where the purchaser is also the carrier, delivery may be to a warehouse receiving terminal or other facility maintained by the purchaser when the circumstances are such that it is reasonably certain that the goods will be transported directly to their place of ultimate use.

(iii) A dock receipt, memorandum bill of lading, trip sheet, cargo manifest or other document evidencing actual delivery to such dock, depot, warehouse, freight consolidator or forwarder, or receiving terminal.

(iv) The requirements of (i) and (ii) above may be complied with through the use of a blanket exemption certificate as follows:

Exemption Certificate

We hereby certify that all of the goods which we have purchased and which we will purchase from you will not be used in the State of Washington but are for use in the state, territory or possession of. . . . . .

You are hereby directed to deliver all such goods to the following dock, depot, warehouse, freight consolidator, freight forwarder, transportation agency or other receiving terminal:

. . . . . .

. . . . . .

for the transportation of those goods to their place of ultimate use.

This certificate shall be considered a part of each order that we have given you and which we may hereafter give to you, unless otherwise specified, and shall be valid until revoked by us in writing.

DATED . . . . . .

. . . . . .
(Purchaser)

By . . . . . .
(Officer or Purchaser's Representative)

Address . . . . . .

(v) There is no business and occupation tax deduction of the gross proceeds of sales of goods for use in noncontiguous states unless the goods are received outside Washington.

(d) See WAC 458-20-173 for explanation of sales tax exemption in respect to charges for labor and materials in the

repair, cleaning or altering of tangible personal property for nonresidents when the repaired property is delivered to the purchaser at an out-of-state point.

(7) **Inbound sales.** Washington does not assert B&O tax on sales of goods which originate outside this state unless the goods are received by the purchaser in this state and the seller has nexus. There must be both the receipt of the goods in Washington by the purchaser and the seller must have nexus for the B&O tax to apply to a particular sale. The B&O tax will not apply if one of these elements is missing.

(a) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier located outside this state merely utilized to arrange for and/or transport the goods into this state is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(b) When the sales documents indicate the goods are to be shipped to a buyer in Washington, but the seller delivers the goods to the buyer at a location outside this state, the seller may use the proofs of exempt sales contained in subsection 4 to establish the fact of delivery outside Washington.

(c) If a seller carries on significant activity in this state and conducts no other business in the state except the business of making sales, this person has the distinct burden of establishing that the instate activities are not significantly associated in any way with the sales into this state. Once nexus has been established, it will continue throughout the statutory period of RCW 82.32.050 (up to five years), notwithstanding that the instate activity which created the nexus ceased. Persons taxable under the service B&O tax classification should refer to WAC 458-20-194. The following activities are examples of sufficient nexus in Washington for the B&O tax to apply:

(i) The goods are located in Washington at the time of sale and the goods are received by the customer or its agent in this state.

(ii) The seller has a branch office, local outlet or other place of business in this state which is utilized in any way, such as in receiving the order, franchise or credit investigation, or distribution of the goods.

(iii) The order for the goods is solicited in this state by an agent or other representative of the seller.

(iv) The delivery of the goods is made by a local outlet or from a local stock of goods of the seller in this state.

(v) The out-of-state seller, either directly or by an agent or other representative, performs significant services in relation to establishment or maintenance of sales into the state, even though the seller may not have formal sales offices in Washington or the agent or representative may not be formally characterized as a "salesperson."

(vi) The out-of-state seller, either directly or by an agent or other representative in this state, installs its products in this state as a condition of the sale.

(8) **Retail sales tax - inbound sales.** Persons engaged in selling activities in this state are required to be registered with the department of revenue. Sellers who are not required to be registered may voluntarily register for the collection and reporting of the use tax. The retail sales tax must be collected and reported in every case where the retailing B&O tax is due as outlined in subsection 7. If the seller is not required to collect retail sales tax on a particular sale because the transaction is disassociated from the instate activity, it must collect the use tax from the buyer.

(9) **Use tax - inbound sales.** The following sets forth the conditions under which out-of-state sellers are required to collect and remit the use tax on goods received by customers in this state. A seller is required to pay or collect and remit the tax imposed by chapter 82.12 RCW if within this state it directly or by any agent or other representative:

((~~(i)~~)) (a) Has or utilizes any office, distribution house, sales house, warehouse, service enterprise or other place of business; or

((~~(ii)~~)) (b) Maintains any inventory or stock of goods for sale; or

((~~(iii)~~)) (c) Regularly solicits orders whether or not such orders are accepted in this state; or

((~~(iv)~~)) (d) Regularly engages in the delivery of property in this state other than by for-hire carrier or U.S. mail; or

((~~(v)~~)) (e) Regularly engages in any activity in connection with the leasing or servicing of property located within this state.

((~~(a)~~)) (i) The use tax is imposed upon the use, including storage preparatory to use in this state, of all tangible personal property acquired for any use or consumption in this state unless specifically exempt by statute. The out-of-state seller may have nexus to require the collection of use tax without personal contact with the customer if the seller has an extensive, continuous, and intentional solicitation and exploitation of Washington's consumer market. (See WAC 458-20-221).

((~~(b)~~)) (ii) Every person who engages in this state in the business of acting as an independent selling agent for unregistered principals, and who receives compensation by reason of sales of tangible personal property of such principals for use in this state, is required to collect the use tax from purchasers, and remit the same to the department of revenue, in the manner and to the extent set forth in WAC 458-20-221.

(10) **Examples - outbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate in Washington (outbound sales). The examples presume the seller has retained the proper proof documents and that the seller did not manufacture the items being sold.

(a) Company A is located in Washington. It sells machine parts at retail and wholesale. Company B is located in California and it purchases machine parts from Company A. Company A carries the parts to California in its own vehicle to make delivery. It is immaterial whether the goods are received at either the purchaser's out-of-state location or at any other place outside Washington state. The sale is not subject to Washington's B&O tax or its retail sales tax because the buyer did not receive the goods in Washington. Washington treats the transaction as a tax exempt interstate sale. California may impose its taxing jurisdiction on this sale.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in California. Company B has not previously received the parts in Washington directly or through a receiving agent. It is immaterial whether the goods are

received at either Company B's out-of-state location or any other place outside Washington state. It is immaterial whether the shipment is freight prepaid or freight collect. Again, Washington treats the transaction as an exempt interstate sale.

(c) Company B, above, has its employees or agents pick up the parts at Company A's Washington plant and transports them out of Washington. The sale is fully taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies.

(d) Company B, above, hires a carrier to transport the parts from Washington. Company B authorizes the carrier, or another agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped out of Washington. This sale is taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies.

(e) Washington will not tax the transactions in the above examples (a) and (b) if Company A mails the parts to Company B rather than using its own vehicles or a for-hire carrier for out-of-state receipt. By contrast, Washington will tax the transactions in the above examples (c) and (d) if for some reason Company B or its agent mails the parts to an out-of-state location after receiving them in Washington. The B&O tax applies to the latter two examples and if the parts are not purchased for resale by Company B then retail sales tax will also apply.

(f) Buyer C who is located in Alaska purchases parts for its own use in Alaska from Seller D who is located in Washington. Buyer C specifies to the seller that the parts are to be delivered to the water carrier at a dock in Seattle. The buyer has entered into a written contract for the carrier to inspect the parts at the Seattle dock. The sale is subject to the B&O tax because receipt took place in Washington. The retail sales tax does not apply because of the specific exemption at RCW 82.08.0269. This transaction would have been exempt of the B&O tax if the buyer had taken no action to receive the goods in Washington.

(11) **Examples - inbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate outside Washington (inbound sales). The examples presume the seller has retained the proper proof documents.

(a) Company A is located in California. It sells machine parts at retail and wholesale. Company B is located in Washington and it purchases machine parts for its own use from Company A. Company A uses its own vehicles to deliver the machine parts to its customers in Washington for receipt in this state. The sale is subject to the retail sales and B&O tax if the seller has nexus, or use tax if nexus is not present.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in Washington. The goods are not accepted by Company B until the goods arrive in Washington. The sale is subject to the retail sales or use tax and is also subject to the B&O tax if the seller has nexus in Washington. It is immaterial whether the shipment is freight prepaid or freight collect.

(c) Company B, above, has its employees or agents pick up the parts at Company A's California plant and transports them into Washington. Company A is not required to collect sales or use tax and is not liable for B&O tax on the sale of these parts. Company B is liable for payment of use tax at the time of first use of the parts in Washington.

(d) Company B, above, hires a carrier to transport the parts from California. Company B authorizes the carrier, or an agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped to Washington. The seller is not required to collect retail sales or use tax and is not liable for the B&O tax on these sales. Company B is subject to use tax on the first use of the parts in Washington.

(e) Company B, above, instructs Company A to deliver the machine parts to a freight consolidator selected by Company B. The freight consolidator does not have authority to receive the goods as agent for Company B. Receipt will not occur until the parts are received by Company B in Washington. Company A is required to collect retail sales or use tax and is liable for B&O tax if Company A has nexus for this sale. The mere delivery to a consolidator or for-hire carrier who is not acting as the buyer's receiving agent is not receipt by the buyer.

(f) Transactions in examples (11)(a) and (11)(b) will also be taxable if Company A mails the parts to Company B for receipt in Washington, rather than using its own vehicles or a for-hire carrier. The tax will continue to apply even if Company B for some reason sends the parts to a location outside Washington after the parts were accepted in Washington.

(g) Company W with its main office in Ohio has one employee working from the employee's home located in Washington. The taxpayer has no offices, inventory, or other employees in Washington. The employee calls on potential customers to promote the company's products and to solicit sales. On June 30, 1990 the employee is terminated. After this date the company no longer has an employee or agent calling on customers in Washington or carries on any activities in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington. Washington customers who had previously been contacted by the former employee continue to purchase the products by placing orders by mail or telephone directly with the out-of-state seller. The nexus which was established by the employee's presence in Washington will be presumed to continue through December 31, 1994 and subject to B&O tax. Nexus will cease on December 31, 1994 if the seller has not established any new nexus during this period. Company W may disassociate and exclude from B&O tax sales to new customers who had no contact with the former employee. The burden of proof to disassociate is on the seller.

(h) Company X is located in Ohio and has no office, employees, or other agents located in Washington or any other contact which would create nexus. Company X receives by mail an order from Company Y for parts which are to be shipped to a Washington location. Company X purchases the parts from Company Z who is located in Washington and requests that the parts be drop shipped to Company Y. Since Company X has no nexus in Washington, Company X is not

subject to B&O tax or required to collect retail sales tax. Company X has not taken possession or dominion or control over the parts in Washington. Company Z may accept a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a Streamlined Sales and Use Tax Agreement Certificate of Exemption or a Multistate Tax Commission Exemption Certificate (WAC 458-20-102) for sales made on or after January 1, 2010, from Company X which will bear the registration number issued by the state of Ohio. Company Y is required to pay use tax on the value of the parts. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by Company Z for five years from the date of last use or December 31, 2014.

(i) Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Upon receiving the order, Company XYZ ships the goods by a for-hire carrier to a public warehouse in Washington. The goods will be considered as having been received by Company ABC at the time Company ABC is entitled to receive a warehouse receipt for the goods. Company XYZ will be subject to the B&O tax at that time if it had nexus for this sale.

(j) P&S Department Stores has retail stores located in Washington, Oregon, and in several other states. John Doe goes to a P&S store in Portland, Oregon to purchase luggage. John Doe takes physical possession of the luggage at the store and elects to finance the purchase using a credit card issued to him by P&S. John Doe is a Washington resident and the credit card billings are sent to him at his Washington address. P&S does not have any responsibility for collection of retail sales or use tax on this transaction because receipt of the luggage by the customer occurred outside Washington.

(k) JET Company is located in the state of Kansas where it manufactures specialty parts. One of JET's customers is AIR who purchases these parts as components of the product which AIR assembles in Washington. AIR has an employee at the JET manufacturing site who reviews quality control of the product during fabrication. He also inspects the product and gives his approval for shipment to Washington. JET is not subject to B&O tax on the sales to AIR. AIR receives the parts in Kansas irrespective that JET may be shown as the shipper on bills of lading or that some parts eventually may be returned after shipment to Washington because of hidden defects.

AMENDATORY SECTION (Amending WSR 94-07-050, filed 3/10/94, effective 4/10/94)

WAC 458-20-209 Farming for hire and horticultural services performed for farmers. (1) **Introduction.** This section provides tax reporting information for persons performing horticultural services for farmers. Persons providing horticultural services to persons other than farmers should refer to WAC 458-20-226 (Landscape and horticultural services). Farmers and persons making sales to farmers may also want to refer to the following sections ((~~of chapter 458-20 WAC~~)):

(a) ((~~WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use);~~

~~(b)~~)) WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers); and

((~~(c)~~)) (b) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements, and related services).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Farmer" means any person engaged in the business of growing ((~~or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber~~)), raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. "Farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to ((~~a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural product" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)~~)): A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals defined as pet animals under RCW 16.70.020. RCW 82.04.213.

(c) "Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products. The term "horticultural services" includes, but is not limited to, the following:

(i) Soil preparation services such as plowing or weed control before planting;

(ii) Crop cultivation services such as planting, thinning, pruning, or spraying; and

(iii) Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.

(3) **Business and occupation (B&O) tax.** Persons performing horticultural services for farmers are generally subject to the service and other business activities B&O tax upon the gross proceeds. However, if the person providing horticultural services also sells tangible personal property for a separate and distinct charge, the charge made for the tangible personal property will be subject to either the wholesaling or retailing B&O tax, depending on the nature of the sale. Persons making sales of tangible personal property to farmers should refer to WAC ((~~458-20-122~~)) 458-20-210 to determine whether the wholesaling or retailing tax applies, and under what circumstances retail sales tax must be collected.

(a) A farmer who occasionally assists another farmer in planting or harvesting a crop is generally not considered to be engaged in the business of performing horticultural services. These activities are generally considered to be casual and incidental to the farming activity. For example, a farmer owning baling equipment which is used primarily for baling hay produced by the farmer, but who may occasionally accommodate neighboring farmers by baling small quantities of hay produced by them, is not considered to be in business with respect thereto.

(b) The extent to which horticultural services are performed for others is determinative of whether or not they are considered taxable business activities. Persons who advertise or hold themselves out to the public as being available to perform farming for hire will be considered as being engaged in business. For example, a person who regularly engages in baling hay or threshing grain for others is engaged in business and taxable upon the gross proceeds derived therefrom, irrespective of the amount of such business or that this person also does some farming of his or her own land.

(c) In cases where doubt exists in determining whether or not a person is engaged in the business of performing horticultural services, all pertinent information should be submitted to the department of revenue (department) for a specific ruling.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of machinery, machinery parts and repair, tools, and cleaning materials by persons performing horticultural services are subject to retail sales tax.

(b) Persons taxable under the service and other business activities B&O tax classification are defined as consumers of anything they use in performing their services. (Refer to RCW 82.04.190.) As such, these persons are required to pay retail sales or use tax upon the purchase of all items used in performing the service, such as fertilizers, spray materials, and baling wire, which are not sold separate and apart from the service they perform.

(5) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) John Doe is a wheat farmer owning threshing equipment which is generally used only for threshing his own wheat. Occasionally a neighbor's threshing equipment may break down and John will use his own equipment to assist the neighbor in completing the neighbor's wheat harvest. While John receives payment for providing the threshing assistance, this activity is considered to be a casual and isolated sale. John does not hold himself out as being in the business of performing farming (threshing) for hire. John Doe is not considered to be engaging in taxable business activities. The amounts John Doe receives for assisting in the harvest of his neighbors' wheat is not subject to tax.

(b) X Spraying applies fertilizer to orchards owned by Farmer A. The sales invoice provided to Farmer A by X Spraying reflects a "lump sum" amount with no segregation of charges for the fertilizer and the application. When reporting its tax liability, X Spraying would report the total charge under the service B&O tax classification. X Spraying must also remit retail sales or use tax upon the purchase of the fertilizer. The entire amount charged by X Spraying is for horticultural services, and X Spraying is considered the consumer of the fertilizer.

(c) Z Flying aerial sprays pesticides on crops owned by Farmer B. The sales invoice Z Flying provides to Farmer B segregates the charge for the pesticides and the charge for the application. When reporting its tax liability, Z Flying would report the charge for the application under the service B&O tax classification. The charge for the sale of the spray materials is subject to the wholesaling B&O tax, provided Z Flying obtains a resale certificate for sales made before January 1, 2010, or a reseller permit for sales made on or after January 1, 2010, from Farmer B to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). ((~~(See WAC 458-20-122.)~~)) Z Flying's purchase of the pesticides is a purchase for resale and not subject to the retail sales tax. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by Z Flying for five years from the date of last use or December 31, 2014.

AMENDATORY SECTION (Amending WSR 96-03-139, filed 1/24/96, effective 2/24/96)

WAC 458-20-211 Leases or rentals of tangible personal property, bailments. (1) **Introduction.** This section explains how persons are taxable who rent or lease tangible personal property or rent equipment with an operator. ((~~RCW 82.04.050(4) was amended by chapter 25, Laws of 1993 sp. sess. to specifically include the rental of equipment with an operator as a retail sale. However, as will be explained in more detail below,~~)) It explains that some activities performed by operated equipment may be taxable under classifications other than retail sales if the operator and equipment perform activities as a prime contractor or subcontractor and these activities are specifically classified under other tax classifications by the revenue act.

(2) **Definitions.**

(a) The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to and use of tangible personal property for a consideration. When "lease," "leasing," "lessee," or "lessor" are used in this section, these terms are intended to include rentals as well, even if not specifically stated.

Persons may not claim to be leasing or renting equipment to themselves since they are not granting to another the right of possession.

(b) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

(c) The term "subcontractor" refers to a person who has entered into a contract for the performance of an act with the person who has already contracted for its performance. A subcontractor is generally responsible for performing the work to contract specification and determines how the work will be performed. In purchasing subcontract services, the customer is primarily purchasing the knowledge, skills, and expertise of the contractor to perform the task, as distinguished from the operation of the equipment.

(d) The term "rental of equipment with operator" means the provision of equipment with an operator to a lessee to perform work under the specific direction of the lessee. In such cases the lessor is generally not responsible for performing work to contract specification and does not determine how the work will be performed. Though not controlling, persons who rent equipment with an operator typically bill on the basis of the amount of time the equipment was used.

(e) The term "true object test" as it relates to this section means the analysis of a transaction involving equipment and an operator to determine if the lessee is simply purchasing the use of the equipment or purchasing the knowledge, skills, and expertise of the operator beyond those needed to operate the equipment. Even if it is determined that the customer is purchasing the knowledge, skills, and expertise of the operator, the transaction may still be a retail sale if the activity is specifically included by statute within the definition of a retail sale. This test can also be applied to rentals of tangible personal property when the seller performs some service in connection with the rental.

(f) The term "true lease" (often referred to as an "operating lease") refers to the act of leasing property to another for consideration with the property under the dominion and control of the lessee for the term of the lease with the intent that the property will revert back to the lessor at the conclusion of the lease.

(g) The term "financing lease" (often referred to as a "capital lease") typically involves the lease of property for a stated period of time with ownership transferring to the "lessee" at the conclusion of the lease for a nominal or minimal payment. The transaction is structured as a lease, but retains some elements of an installment sale. Financing leases will generally be taxed as if they are installment sales. The presence of some or all of the following factors indicates a financing lease with the transaction treated as an installment sale:

(i) The lessee is given an option to purchase the equipment, and, if so, the option price is nominal (sometimes referred to as a "bargain purchase option");

(ii) The lessee acquires equity in the equipment;

(iii) The lessee is required to bear the entire risk of loss;

(iv) The lessee pays all the charges and taxes imposed on ownership;

(v) There is a provision for acceleration of rent payments; and

(vi) The property was purchased specifically for lease to this lessee.

(3) A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises dominion and control over it. Where the owner/lessor of the equipment or the owner's/lessor's employees or agents maintain dominion and control over the personal property and actually operate it, the owner/lessor has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property.

(4) RCW 82.04.050 excludes from the definition "retail sale" any purchases for the purpose of resale, "as tangible personal property." Persons who use equipment in performing services either as prime contractors or as subcontractors are not purchasing the equipment for purposes of reselling the equipment as tangible personal property. These contractors must pay retail sales tax or use tax at the time the equipment is acquired. Generally persons who rent equipment with an operator are not purchasing the equipment for resale as tangible personal property and must pay retail sales or use tax at the time the equipment is acquired. Persons renting operated equipment to others may purchase the equipment without payment of retail sales tax only when the equipment is rented as tangible personal property. This can be demonstrated only when:

(a) The agreement between the parties is designated as an outright lease or rental, without reservations; and

(b) The lessee acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

This last requirement is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor-lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned employee. If control of these factors is left with the owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor-lessee relationship for the rental of tangible personal property. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

(5) **Business and occupation (B&O) tax.**

(a) Outright rentals of bare (unoperated) equipment or other tangible personal property as well as leases of operated equipment are generally subject to the retailing classification of the business and occupation tax.

(i) When a lessor purchases equipment for bare rental or lease, the seller of the equipment is making a wholesale sale to the lessor and is required to obtain a resale certificate for sales made before January 1, 2010, or a reseller permit for sales made on or after January 1, 2010, from the lessor to document the wholesale nature of any sale as provided in WAC

((~~458-20-102~~)) 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(ii) Under unique circumstances when equipment is rented for rerent by the lessee, without intervening use, then the original rental is subject to the wholesaling classification of tax and the subsequent rental is subject to the retailing classification. The original seller is required to obtain a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010, for these wholesale sales.

(iii) Persons who purchase equipment for use as prime contractors or subcontractors are considered to be the consumers of these purchases. They are the consumers because they are not specifically reselling the tangible personal property. Persons selling equipment to these persons are retailers and subject to the retailing B&O tax.

(b) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are providing a service that is classified as a retail sale unless the nature of the activity is specifically classified under another tax classification. Where a specific tax classification applies to the activity, the income is subject to the business and occupation tax (or public utility tax) according to the classification of the activities performed by the equipment and operator. In the case of building construction, it will be presumed that the rental of equipment with operator to a contractor is a retail sale unless the operator has responsibility for performing construction to contract specifications and assumes control over how the work will be performed.

(c) Under some circumstances, the leasing or renting of tangible personal property can be subject to the special "retailing of interstate transportation equipment" B&O tax classification. This classification applies if the sale is exempt from retail sales tax because of the specific tax exemptions of RCW 82.08.0261, 82.08.0262, or 82.08.0263. These exemptions apply primarily to sales to private or common carriers who are engaged in interstate or foreign commerce.

(d) The following examples show how the tax would be applied to certain situations.

(i) The charge made by a subcontractor to a prime construction contractor for use of equipment with an operator used in the paving of a parking lot as part of the construction of a building would be taxable under wholesaling—other when the subcontractor has the responsibility to perform the work to contract specification and determines how the work will be performed.

(ii) A contractor performing work to contract specification making a charge to a city for use of equipment and operator in the construction of a publicly owned road would be taxable under public road construction.

(iii) Income for loading of a vessel using equipment with an operator is taxable under the stevedoring classification.

(iv) Income from transporting persons or property for hire by motor vehicle, including leasing or renting motor carrier equipment with driver, is generally taxable under either motor transportation or urban transportation.

(v) A customer rents scaffolding and the seller is responsible for a technician to setup, move, and dismantle it. This is the rental of tangible personal property since the true object of the transaction is having the scaffolding available for use by the customer. The customer also assumes dominion or control over the scaffolding by determining who will use the scaffolding and by controlling the use of the scaffolding.

(vi) Income from transporting persons or property for hire by vessel is not a retail equipment rental with operator.

(6) **Retail sales tax.** Persons who rent or lease tangible personal property to users or consumers are required to collect from their lessees the retail sales tax measured by gross income from rentals as of the time the rental payments fall due.

(a) RCW 82.04.050 excludes from the definition of the term "retail sale," purchases for resale "as tangible personal property." Thus the retail sales tax does not apply upon sales of tangible personal property to persons who purchase the same solely for the purpose of renting or leasing such property without operators. However, the retail sales tax applies upon sales to persons who provide such property with operators for a charge, without relinquishing substantial dominion and control, or who intend to make some use of the property other than or in addition to renting or leasing.

(b) Financing leases are treated for state tax purposes as installment sales. The retail sales tax applies to the full selling price. Refer to WAC 458-20-198.

(c) The retail sales tax does not apply to lease payments made by a seller/lessee under a sale/leaseback agreement in respect to property, equipment, and components used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the sales tax apply to the purchase amount paid by the lessee pursuant to an option to purchase this specific kind of processing equipment at the end of the lease term. (See RCW 82.08.0295.) In both situations the availability of this special sales tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such special processing property, equipment, and components. The use tax will also not apply if the sales tax does not apply.

(7) **Use tax and/or deferred retail sales tax.** Consumers who rent or lease tangible personal property from others and who have not paid the retail sales tax to their lessors are liable for the retail sales tax or use tax on the amount of the rental payments as of the time the payments fall due unless an exemption from the tax applies. However, if the rental payments do not represent a reasonable rental value for the article, the taxable value shall be determined according to the rental charges made by other sellers of similar articles of like quality and character. This can include using the rate of return as a percentage of the capitalized value that lessors of the particular type of property are generally using in rate setting.

In some cases lessors may lease articles wherein the lease payments do not include property taxes or insurance. These leases are often referred to as "net leases" with the insurance and taxes paid directly by the lessee. If the lessor is

the party insured and the party legally liable for payment of the taxes, the payments made directly by the lessee must be treated as additional consideration to the lessor and subject to the retailing and retail sales tax.

(a) Bailment. The value of tangible personal property held or used under bailment is subject to use tax if the property was purchased or acquired under conditions whereby the retail sales tax was not paid by the bailor. Tax liability is that of the bailor, or of the bailee if the bailor has not paid the tax. The measure of the tax to the bailor is the fair market value of the article at the time the article was first put to use in Washington. The measure of the use tax to the bailee for articles acquired by bailment is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. In the absence of rental prices for similar products, the reasonable rental may be computed by prorating the retail selling price over the period of possession had by a bailee and payable in monthly installments. No further use tax is due upon property acquired by bailment after tax has been paid by the bailee or any previous bailee upon the full original value of the article.

(b) Use tax does not apply to use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental, and testing activities conducted by the user, providing the acquisition or use of such articles by the bailor are exempt from sales or use tax. (RCW 82.12.0265.)

(8) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In some situations it may be difficult to determine if the transaction is a retail equipment rental with operator. If in doubt as to whether a particular rental with an operator is a retail sale, taxpayers should contact the department for a specific ruling.

(a) ABC Crane is hired to supply a crane and operator to lift air conditioning equipment from the ground and hold it in place on the roof of a six-story building while the prime construction contractor bolts the unit down. ABC Crane's operator will retain control over the crane. ABC Crane has no responsibility to attach wiring, plumbing, or otherwise make the unit operational. ABC Crane is renting equipment with an operator since it has no responsibility to perform actual construction to contract specification. The activity of renting a crane with an operator is a service included within the definition of a retail sale and is not otherwise tax classified elsewhere within the revenue act. The purchase of the crane by ABC is also a retail transaction because ABC retained control over the crane and is not renting the crane as tangible personal property.

(b) ABC Crane is hired by a prime contractor to install a neon sign on the side of a new six-story building which is being constructed. ABC is responsible for making certain that the sign is correctly fastened to the side of the building and for installation of the electrical connections and meets the proper building codes. ABC is directly involved in construction and performs work to contract specification. Since the work is being done for the prime contractor for further resale, this is a wholesale sale, provided a resale certificate (WAC 458-20-102A) is obtained for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010. Had ABC only been hired to hold the sign in place while the prime contractor fastened it, this would have been a retail rental of equipment with operator.

(c) XYZ Concrete Pumping is hired by a prime contractor to supply a concrete pump and operator to pump concrete from a premix concrete delivery truck to the location of the forms. XYZ has no responsibility to build forms, do the concrete finishing, or otherwise see that the concrete meets or is placed according to contract specifications. In short, the pump functions similarly to a wheelbarrow, but in a more efficient manner. XYZ is not a subcontractor and is making a retail rental of equipment with an operator.

(d) ABC Company purchases a crane which it rents to others as a bare rental. It periodically rents the crane to lessees on this basis for two years. Beginning in the third year of ownership of this crane, ABC decides to start providing these customers with an employee to operate the crane. The employee will operate under the direction of ABC with ABC retaining dominion and control over the crane. Does ABC owe use tax on the crane, and if so, what is the measure of the use tax?

ABC owes use tax upon the first use of the crane as a consumer. This occurred in the third year of ownership when ABC began supplying an operator. The measure of the tax is the retail market value of the crane at the time it is put to use by ABC.

(e) Farm Services, Inc. specializes in the cutting and baling of hay for farmers. The hay, after being cut and baled, is sold by the farmer. Farm Services is not making a retail rental of equipment with operator, but is engaged in a farming for hire activity which is taxable under the service and other business activities B&O tax classification. See WAC 458-20-209.

(f) Helicopter, Inc. contracts with Logs, Inc. to move logs from where they have been cut in the woods to a landing approximately one mile away where the logs will be sorted, loaded on trucks, and transported to a mill. Total control over the helicopter operation rests with Helicopter, Inc. This is not a rental of equipment with an operator, nor is it considered as an air transportation service. This activity is directly part of the timber extracting and harvesting activity and is taxable as extracting for hire.

(g) ABC Sound Productions provides lighting, amplifying equipment, and speakers as part of the services it sells to entertainment promoters. ABC also provides several operators of the equipment. This is a rental of equipment with operator. In applying the true object test, the promoter is primarily purchasing the use of the lighting and sound equipment. The performer or promoter could be expected to specify the color, location, and degree of lighting and may also request changes and modifications to the level of sound amplification during the performance.

(h) John Doe purchased a vessel which will be rented to others as a bare boat rental. The rentals will be arranged through an agent at a marina. The marina receives a commission based on any usage of the vessel, including usage by the

owner. The rental of the boat is a retail sale when the boat is rented to others. The usage of the boat by John Doe is not a rental. Since John Doe will be using the boat at times for his own use, he may not purchase the boat for resale.

AMENDATORY SECTION (Amending Order ET 83-1, filed 3/30/83)

WAC 458-20-218 Advertising agencies. Advertising agencies are primarily engaged in the business of rendering professional services, but may also make sales of tangible personal property to their clients or others or make purchases of such articles as agents in behalf of their clients. Articles acquired or produced by advertising agencies may be for their own use in connection with the rendition of an advertising service or may be for resale as tangible personal property to their clients.

Business and Occupation (B&O) Tax

The gross income received for advertising services, including commissions or discounts received upon articles purchased as agents in behalf of clients, is taxable under the service and other business activities B&O tax classification. (See WAC 458-20-144 for discounts or commissions allowed by printers.) Included in this classification are amounts attributable to sales of tangible personal property, unless charges for such articles are separately stated in billings rendered to clients.

The retailing or wholesaling classification B&O tax applies to articles of tangible personal property sold to persons for whom no advertising service is rendered and also to charges to clients for such articles if separately stated from charges for advertising services in billings rendered.

The manufacturing classification applies to articles manufactured for sale or commercial or industrial use (see WAC 458-20-134), and also to interstate sales of manufactured articles separately stated from advertising services. (General principles covering sales or services to persons in other states are contained in WAC 458-20-193.)

Retail Sales Tax

The retail sales tax applies upon all sales of plates, engravings, electrotypes, etchings, mats, and other articles to advertising agencies for use by them in rendering an advertising service and not resold to clients.

The retail sales tax must be paid by advertising agencies to vendors upon retail purchases made by them as agent in behalf of clients.

Advertising agencies are required to collect the retail sales tax upon charges taxable under the retailing B&O tax classification ((~~as indicated hereinabove, and resale certificates may be given by advertising agencies in respect to purchases of such articles~~)). Advertising agencies must provide a resale certificate for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to the vendor to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the vendor for five years from the date of last use or December 31, 2014.

Use Tax

The use tax applies upon the use of articles purchased or manufactured for use in rendering an advertising service. Articles acquired without payment of retail sales tax which are resold to clients, but not separately stated from charges for advertising service, are also subject to use tax.

AMENDATORY SECTION (Amending WSR 99-08-033, filed 3/31/99, effective 5/1/99)

WAC 458-20-222 Veterinarians. (1) **Introduction.** This ((~~rule~~)) section explains Washington's business and occupation (B&O), retail sales, and use tax applications to sales and services provided by veterinarians. It explains the tax liability resulting from the performance of professional services and the sale of medicines and supplies for use in the care of animals. This ((~~rule~~)) section also explains the tax liability of persons who provide other services for live animals including grooming, boarding, training, artificial insemination, and stud services.

(2) **Business and occupation tax.** Persons providing services for live animals are subject to the B&O tax as follows:

(a) **Service and other activities.** The service and other activities B&O tax applies to the gross income derived from veterinary services. For purposes of this ((~~rule~~)) section, "veterinary services" includes the diagnosis, cure, mitigation, treatment, or prevention of disease, deformity, defect, wounds, or injuries of animals. It also includes the administration of any drug, medicine, method or practice, or performance of any operation, or manipulation, or application of any apparatus or appliance for the diagnosis, cure, mitigation, treatment, or prevention of any animal disease, deformity, defect, wound, or injury. "Veterinary services" does not include the therapeutic use of an item of personal property opened and partly administered by the veterinarian or by an assistant under his or her direction, and taken by the customer for further administration by the customer to the animal, provided the charge for the item is separately stated on the invoice.

(i) The gross income derived from veterinary services includes the amount paid by a customer for any drug, medicine, apparatus, appliance, or supply administered by the veterinarian or by an assistant under his or her direction, even when the charge is separately stated on the invoice from charges for other veterinary services.

(ii) The service and other activities B&O tax applies to the gross income derived from grooming, boarding, training, artificial insemination, stud services, or other services provided to live animals. However, if the person providing these services also sells tangible personal property to a consumer for a separate and distinct charge, the charge made for the tangible personal property is subject to the retailing classification of B&O tax.

(b) **Retailing.** The retailing classification of B&O tax applies to the gross income from the sale of drugs, medicines, or other substances or items of personal property to consum-

ers when the sale is not part of veterinary services. The retailing classification applies only when the veterinarian does not administer, or only administers part of the drug, medicine, or other substance or item of personal property to the animal with further administration to be completed by the customer. Adequate records must be kept by the veterinarian to distinguish drugs, medicines, or other substances or items of personal property that are administered as part of veterinary services from those that are sold at retail. The retailing classification also applies to gross income from the sale of tangible personal property for which there is a separate and distinct charge, when sold by persons providing grooming, boarding, training, artificial insemination, stud services, or other services for live animals.

(3) **Retail sales tax.** The retail sales tax applies to all the retail sales identified under subsection (2) of this ((~~rule~~)) section, unless a specific exemption applies.

(a) **Sales to veterinarians and others who provide services to live animals.** Sales of tangible personal property to veterinarians for use or consumption by them in performing veterinary services are retail sales upon which the retail sales tax must be collected. Such sales include, among others, sales of medicines, bandages, splints and other supplies primarily for use by veterinarians in performing their professional services. Sales of tangible personal property to persons who provide grooming, boarding, training, artificial insemination, stud services, or other services for live animals for use or consumption by those persons in performing their services are also retail sales upon which the retail sales tax must be collected.

Sales to veterinarians and others who purchase tangible personal property for the purpose of resale in the regular course of business without intervening use by the buyer are sales at wholesale, and not subject to the retail sales tax((~~, provided~~)). The buyer must present((~~s~~)) the seller with a resale certificate((~~. Refer to WAC 458-20-102 (Resale certificates) for more information regarding the use of resale certificates, and particularly the subsection of that rule regarding purchases for dual purposes.~~)) for purchases made before January 1, 2010, or a reseller permit for sales made on or after January 1, 2010, to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(b) **Sales to consumers.** Tangible personal property sold by a veterinarian to a consumer that is carried away by or left with the consumer is a retail sale and the retail sales tax must be collected. Items of personal property include those that the veterinarian may have opened and used for therapy but were taken by the consumer to complete the therapy. The tax applies whether the tangible personal property was sold at the time the professional services were performed or was sold subsequently, provided the charge for the item is separately stated. Sales to a consumer of tangible personal property by a person who provides other than veterinary services to live animals and who separately states the charges, are subject to retail sales tax and the retail sales tax must be collected. (See WAC ((~~458-20-122~~)) 458-20-210 for additional information regarding sales ((~~of feed~~)) to farmers.)

(c) **Exemptions.** A retail sales tax exemption is available for sales of feed for purebred livestock used for breeding purposes, provided the seller obtains a completed ((~~purebred livestock exemption~~)) Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions certificate from the buyer. Also exempt are sales of semen for use in the artificial insemination of livestock. These sales remain subject to the retailing B&O tax. (See WAC 458-20-210 for additional information regarding exemptions for farmers.)

(4) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. (See also WAC 458-20-178.) If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales or use tax directly to the department unless the purchase and/or use is exempt from tax. Complementary use tax exemptions are available for the use of those items identified in subsection (3)(c) of this ((~~rule~~)) section. Veterinarians and others who provide services to live animals are required to pay use tax on any samples that they acquire or give away unless retail sales tax or use tax has been previously paid on these samples.

(5) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(a) A dog owner brings her dog to a veterinarian for professional services. The dog has multiple wounds and a broken leg. The veterinarian sets the broken bone and uses a cast and other appropriate therapeutic medicines on the dog in the course of treatment. The veterinarian also applies some salve to the wounds and gives the remainder of the salve to the dog's owner for application over the next few days. The veterinarian segregates the charges for the veterinary services, including the cast materials, and the medicines. The charge for the salve is also separately stated on the billing invoice. The gross income for the veterinary services is subject to the service and other activities B&O tax classification. This includes the charges for the cast materials and the medicines. The charge for the salve is considered a retail sale, and subject to the retailing B&O and retail sales taxes. If the veterinarian had previously paid sales or use tax on the salve, he or she is allowed a tax paid at source deduction. (See also the discussion of tax paid at source deductions in WAC 458-20-102.)((~~.~~))

(b) AB boards other person's horses for a fee. When AB bills the customer, AB separately lists the charges for the boarding services and the feed. The gross income received by AB for boarding services is subject to B&O tax under the service classification. The charges for the feed are subject to the retailing B&O and retail sales taxes. However, a retail sales tax exemption is available for any sales of feed for purebred livestock, if the livestock is used for breeding purposes and AB obtains a completed ((~~purebred livestock exemp-~~

~~tion~~)) Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions certificate from the customer.

(c) CD trains and boards dogs for various lengths of time. CD bills the customer a lump sum amount for the training and boarding, including feed for the dogs. The gross income received by CD is subject to B&O tax under the service classification. CD must pay retail sales tax or use tax on the feed it purchases for the dogs.

(d) EF is a farrier and shoes horses for others. When EF performs this service, he lists a separate charge on the invoice for the horseshoes. The charge for the horseshoeing service is subject to B&O tax under the service classification, and the separate charge for the horseshoes is subject to the retailing B&O and retail sales taxes. EF's purchases of the horseshoes are purchases for resale and not subject to the retail sales tax.

AMENDATORY SECTION (Amending WSR 99-09-013, filed 4/13/99, effective 5/14/99)

WAC 458-20-226 Landscape and horticultural services. (1) **Introduction.** This ((~~rule~~)) section provides tax reporting instructions for persons who provide landscape and horticultural services. This ((~~rule~~)) section does not apply to silvicultural activities or to horticultural services provided to farmers. Silviculture means the commercial production of timber and includes activities such as growing seed into seedlings, planting, fertilizer and pesticide application, pruning and thinning as provided to timber growers. Silvicultural activities are generally subject to the extracting B&O tax classification or the service and other business activities B&O tax classification. (See WAC 458-20-135 and 458-20-224.)

(2) **Retail landscape and horticultural services.** Landscape and horticultural services which are retail sales include:

(a) Grading, filling, leveling, planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, and fertilizing to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover and other flora for ornamentation or other nonagricultural purposes.

(b) The sale or rental of landscaping materials and the construction of sprinkling systems, walks, pools, fences, trellises, rockeries, and retaining walls.

(c) Cultivating fruits, flowers, and vegetables for consumers other than farmers.

(d) All tree trimming other than for farmers or persons engaged in silviculture. This includes all trimming for size, shape, aesthetics, removal of diseased branches, and removal of limbs because they are too close to structures. It does not include tree trimming performed for public and private electric utilities or at the direction of electric utilities to keep power lines, distribution lines, or equipment free of tree branches or brush.

(3) **Nonretail landscape and horticultural services.** Landscape and horticultural services which are not retail sales include:

(a) Landscape design services performed by a landscape architect separate from a contract for landscape maintenance.

(b) Planting trees for farmers.

(c) Thinning or planting of trees for persons who are involved in the commercial production of timber. These are silvicultural activities and silvicultural activities are not considered to be horticultural or landscape maintenance activities. (See WAC 458-20-135 and 458-20-209.)

(d) Landscape services performed for municipal corporations or political subdivisions of the state on real property owned by those entities if the real property is used or held for public road purposes. (See WAC 458-20-171.)

(e) Horticultural services, including spraying and fertilizing, performed for farmers for agricultural purposes. See WAC 458-20-209 for examples of horticultural services performed for farmers.

(f) Pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility. The removing and clearing of trees includes the stump removal by grinding, digging, or any other means, if performed by or at the direction of an electric utility. These are retail activities when not performed by or at the direction of an electric utility.

(4) **Business and occupation tax.** The business and occupation (B&O) tax applies as follows.

(a) **Retailing.** The gross income from landscape and horticultural services which are retail sales and which are performed for consumers is taxable under the retailing classification.

(b) **Wholesaling.** The gross income from services which are retail sales and which are performed for other contractors for resale is taxable under the wholesaling classification.

(c) **Service.** The gross income from horticultural services provided to farmers is taxable under the service and other activities classification. This tax classification also applies to income received from pruning, tree trimming, removing and clearing of trees and brush near electric lines, if performed by or at the direction of an electric utility. ((~~Beginning July 1, 1998,~~)) Income from services performed by landscape architects is also subject to ((~~this~~)) the service and other activities classification. (((~~(See chapter 7, Laws of 1997.) For the period July 1, 1993, through June 30, 1998, landscape architects who performed design services were taxable under the selected business service tax classification.~~)) RCW 82.04.290.

(d) **Public road construction.** Persons who perform landscape services for municipal corporations or political subdivisions of the state on real property owned by those entities are taxable under the public road construction B&O tax classification, but only if the real property is used or held for public road purposes.

(e) **Government contracting.** This classification applies to persons engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures for the United States, or a city or county housing authority created under chapter 35.82 RCW. This classification would include the construction or maintenance of items such as walls, fences, walks, pools and other structures. This classification does not include the planting of lawns or trees or the cutting of grass or tree trimming performed for these customers. These activities are subject to the retailing classification.

(5) **Retail sales and use tax.** Landscape gardeners and horticulturists, except horticulturists performing services for farmers, must generally collect and report the retail sales tax upon the full contract price when performing landscaping or horticultural services for consumers. For purposes of collecting the local option retail sales tax, the sale takes place where the service is performed. See WAC 458-20-145. The retail sales tax does not apply to charges to the United States for landscape services, including landscape maintenance services, and sellers may take a deduction from the retail sales tax classification in reporting those sales which are taxable under the retailing B&O tax classification.

(a) Persons performing a landscaping or horticultural service for a contractor for resale must provide a resale certificate((~~. See WAC 458-20-102.~~)) for sales made before January 1, 2010, or a reseller permit for sales made on or after January 1, 2010, to document the wholesale nature of any sale as provided by WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by a seller for five years from the date of last use or December 31, 2014.

(b) Landscape gardeners and horticulturists must pay the retail sales tax to their vendors when purchasing tools, equipment, and supplies which are not resold, either directly or as a component part of the finished work. They must pay deferred sales or use tax directly to the department upon the value of any such property that was purchased or acquired without payment of Washington retail sales tax.

(c) Plants, shrubs, trees, sod, seed, chemicals, fertilizer, peat moss, sprinkler systems, rocks, building materials and any other tangible personal property which becomes a part of the finished work may be purchased for resale, except items used in providing horticultural services for farmers and items used in performing public road construction, government contracting, or services for timber growers.

(d) Retail sales tax or use tax is due with respect to items purchased by horticulturists for use in performing services for farmers. (See also WAC 458-20-209.)

(e) Retail sales tax or use tax is due with respect to items purchased for use in performing services for timber growers or which are taxable as either public road construction or government contracting. This includes items such as sod, seed, trees, building materials, fertilizers, spray materials, etc.

(f) The retail sales tax does not apply to the charge made by persons performing tree trimming near electric transmission or distribution lines, but only if the work is performed at the direction of an electric utility. Persons performing these services must pay retail sales or use tax on all materials, supplies, tools, and equipment used in performing the service.

(6) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(a) John Doe, a landscaper, was hired by a city to maintain the landscaping around the buildings at the city's municipal golf courses. He must collect and report the retail sales tax and pay retailing B&O tax on the full contract amount.

(b) John Doe purchased several plants, some fertilizer, and insect spray to use in landscaping the golf course. He also purchased some solvent and mineral oil to clean and maintain some of his landscaping tools. His purchases of the plants, fertilizer and insect spray are purchases for resale. He must pay retail sales tax to his vendors on his purchases of the solvent and mineral oil.

(c) Landscaping company provides complete landscaping services including landscape design by a licensed landscape architect, installation, and maintenance. Landscaping charged Jane Smith two hundred dollars for a landscaping plan for her new home. She planned to purchase the plants and do the landscaping work herself. Landscaping must report B&O tax on the charge for the design service at the service and other activities classification rate.

(d) Landscaping company entered into a contract to landscape the yard for a client's new home. The company must collect and report retail sales tax and pay retailing B&O on the full contract amount, even though part of Landscaping's services included drawing a landscaping plan.

(e) Landscaping company entered into a two-phase contract with a county. Phase one required the company to plant trees and shrubs and put in a sprinkling system as part of a public road project. The sprinkler system is located in the public road right of way. The contract provided Landscaping would receive five hundred thousand dollars for phase one of the project. Phase two provided that Landscaping would maintain the trees and shrubs for a period of five years. The contract provided for payments of four thousand dollars per month plus costs for fertilizer and spray for maintaining the planted strips.

(i) Phase one is part of public road construction and Landscaping is taxable under the public road construction classification upon the five hundred thousand dollars received for phase one. The company must pay sales tax when purchasing the trees and shrubs and materials for the sprinkling system for use in phase one of the project. See WAC 458-20-171 for the tax liability for public road construction.

(ii) Phase two for the maintenance of the completed project is also public road construction. This is not a retail sale because the work is performed for a municipal corporation or political subdivision of the state on land owned by that entity and which is being used for public road purposes. See RCW 82.04.190.

Landscaping will owe B&O tax under the public road construction classification and must pay retail sales or use tax on any items used in performing this work, including purchases of fertilizers, chemicals and other materials.

(f) John Doe operates a tree trimming business and has a contract with a public utility district (PUD) to trim trees along the PUD's power lines. Some of these trees are on private property with the PUD obtaining the permission of the owners to trim the trees. Some trees are also located on land for which the PUD has an easement, including along public road right of ways. This tree trimming is not a retail sale, but taxable under the service and other activities classification. This includes trimming performed along the road right of way. The property on the road right of way is not owned by the PUD for whom the work is being performed. The easement is

not for use as a public road and as such the tree trimming is not public road construction.

(g) John Doe provides a tree trimming service to his residential customers. The tree trimming is performed at the direction of the residential customer to remove diseased limbs, limbs too close to the house, limbs which are a safety hazard because of their proximity to power lines, and limbs which are objectionable to the desired shape of the tree. All of this tree trimming is a retail activity, regardless of the specific reason for cutting the limbs.

AMENDATORY SECTION (Amending WSR 06-17-007, filed 8/3/06, effective 9/3/06)

WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed after 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 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, 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 section sets forth the requirements for applications made after March 31, 2004. For applications made prior to 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 rural counties and job training and should be contacted directly for information concerning these programs.

(2) **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, both manufacturers and processors for hire may qualify for the deferral program as being engaged in manufacturing activities. Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information on processors for hire.

For purposes of this 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 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. 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 Order 88-5, filed 8/16/88)

WAC 458-20-24002 Sales and use tax deferral—New manufacturing and research/development facilities. (1) Introduction. Chapter 82.61 RCW, as amended, establishes a sales and use tax deferral program for certain manufacturing or research and development investment projects. The deferral will be granted only to persons not currently engaged in manufacturing or research and development activities in the state of Washington on June 14, 1985, the effective date of the deferral program. Applications for the tax deferral may be accepted up through June 30, 1994; a holder of a tax deferral certificate must initiate construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate. In general, the deferral applies to the construction of new buildings and the acquisition of related machinery and equipment.

(2) In addition to the tax deferral benefits of this program, the department of employment security administers economic incentives and funding programs which encourage "first source contract" hiring of unemployed persons and state public assistance recipients. The employment security department should be contacted directly for information concerning such nontax-related programs.

(3) Definition of terms. Unless the context clearly requires otherwise, the definitions in this section apply throughout this rule.

(4) "Applicant" means a person applying for a tax deferral under this section.

(5) "Person" has the meaning given in RCW 82.04.030. It means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. For purposes of this section the relationship of landlord and tenant between separate persons, at arms length, shall not be considered as any of the types of relationships which are identified above as "persons".

(6) "Eligible investment project" means construction of new buildings and the acquisition of new related machinery and equipment when the buildings, machinery, and equipment are to be used for either manufacturing or research and development activities, which construction is commenced prior to December 31, 1994. (See subsection (37) of this section for special provisions relating to aluminum plants.)

(7) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use and includes the production or fabrication of specially made or custom-made articles.

(8) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun.

(9) "Buildings" means only those new structures used for either manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw materials or finished goods if such facilities are an essential or integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development purposes. If a building is used partly for manufacturing or research and development purposes and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under this section.

(10) "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.

(11) "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 the machinery. For purposes of this definition, new machinery and equipment means either new to the taxing jurisdiction of the state or new to the certificate holder. Used machinery and equipment are eligible for deferral if the certificate holder either brings the machinery and equipment into Washington

for the first time or makes a retail purchase of the machinery and equipment in Washington.

(12) "Acquisition of equipment and machinery" shall have the meaning given to the term "sale" in RCW 82.04.040. It means any transfer of the ownership of, title to, or possession of, tangible personal property for a valuable consideration. A sale takes place when the goods sold are actually or constructively delivered to the buyer in this state.

(13) "Recipient" means a person receiving a tax deferral under this section.

(14) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(15) "Operationally complete" means that the eligible investment project is constructed or improved to the point of being fully and functionally useable for the intended purpose as described in the application.

(16) "Initiation of construction" means that date upon which on-site construction commences.

(17) "Plant complex" shall mean land, machinery, and buildings adapted to commercial, industrial, or research and development use as a single functional or operational unit for the designing, assembling, processing or manufacturing of finished or partially finished products from raw materials or fabricated parts.

(18) "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. A person who does not build its own building, but leases from a third party, is eligible for sales and use tax deferral 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. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, and equipment vests in the same persons. An eligible investment project does not include any project which or person who have previously been the recipient of a tax deferral under Washington law.

(19) Application procedures. An application for sales and use tax deferral under this program must be made prior to either the initiation of construction or the acquisition of equipment or machinery, as defined above, whichever occurs first. Application forms will be supplied to the applicant by the department upon request. The completed application is to be sent in duplicate to the following address:

State of Washington
Department of Revenue
Audit Procedures & Review
Olympia, WA 98504
Mail Stop AX-02

(20) The application shall contain information regarding the location of the investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department, including information relating to employment at the investment project.

(21) The department will examine and verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, a tax deferral certificate will be issued effective as of the date the application was received by the department. If disapproved, the department shall notify the applicant as to the reason(s) for disapproval. The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100 within twenty days from the date of notice of the department's refusal, or within any extension of such time granted by the department. A certificate holder shall initiate construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate.

(22) A tax deferral certificate shall only be issued to persons who, on June 14, 1985, are not engaged in manufacturing or research and development activities within this state. For purposes of this section, a person shall not be considered to be engaged in manufacturing or research and development activities where the only activities performed by such person in this state are sales, installation, repair, or promotional activities in respect to products manufactured outside this state. Any person who has succeeded by merger, consolidation, incorporation, or any other form or change of identity to the business of a person engaged in manufacturing or research and development activities in this state on June 14, 1985 and any person who is a subsidiary of a person engaged in manufacturing or research and development activities in this state on June 14, 1985 shall also be ineligible to receive a tax deferral certificate.

(23) No application for deferral of taxes shall be accepted after June 30, 1994. For purposes of this regulation, the time of receipt of an application shall be determined by the date shown by the post office cancellation mark stamped upon the envelope containing the application if transmitted by the United States Postal Service, the date stamped on the envelope if transmitted by another carrier, or the date of receipt if hand delivered to an office of the department.

(24) Use of the certificate. A tax deferral certificate issued under this program shall be for the use of the recipient thereof for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings, machinery, and equipment as defined in this section. Thus, sales and use taxes cannot be deferred on items which do not become part of the qualified buildings, machinery, and equipment.

(25) ((~~The tax deferral certificate shall be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102.~~)) The certificate holder shall provide its vendors with a copy of the tax deferral certificate at the time goods or services are purchased. The seller or vendor shall be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller or vendor shall retain a copy of the certificate as part of its permanent records. 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 or vendor is liable for reporting business and occupation tax on all deferral sales.

(26) Audit procedures. The certificate holder shall notify the department in writing when the construction project is operationally complete. Upon receipt of such notification or other information, the department shall conduct a final audit

of the investment project. The certificate holder shall open its books and records to the department and make available the final cost figures for the investment project. The department may request reasonable supporting documentation and other proof to justify the final cost of the project.

(27) Upon completion of the audit the department shall certify the amount of sales and use taxes subject to deferral and the date on which the project was operationally complete. The recipient shall be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes shall 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 sale 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 twenty days from the date of the notice of disallowance.

(28) The deferral is allowable only in respect to investment in the construction of a new plant complex used in manufacturing or research and development activities, as defined above. Where a plant complex is used partly for manufacturing or research and development purposes and partly for purposes which do not qualify for deferral under this section and it is not possible to identify the nonqualifying items through separate accounting, the applicable tax deferral shall be determined by apportionment according to the ratio which the construction cost per square foot of that portion of the plant complex directly used for manufacturing purposes bears to the construction cost per square foot of the total plant complex.

(29) The amount of tax deferral allowable for leased equipment shall be calculated upon that amount of the consideration paid by the lessee/recipient to the lessor:

(a) Over the initial term of the lease, excluding any period of extension or option to renew, where the lease term ends on or before the last date for repayment of the deferred taxes; or

(b) Over that portion of the lease term to the last date for repayment of deferred taxes as provided hereinafter, where the lease term, excluding any period of extension or option to renew extends beyond such repayment date.

(30) After that date the lessee/recipient shall pay the appropriate sales tax to the lessor for the remaining term of the lease.

(31) No taxes may be deferred under this section prior to June 14, 1985. No applications for deferral of taxes will be accepted after June 30, 1994, nor will sales or use tax deferral certificates be issued after August 29, 1994. A certificate holder must commence construction of the investment project within one hundred eighty days of receiving approval from the department and issuance of the tax deferral certificate but no later than December 31, 1994.

(32) Reporting and monitoring procedure. An applicant must provide the department with the estimated cost of the investment project at the time the application is made. The applicant shall also provide information relative to the number of jobs contemplated to be created by the project.

(33) The department and the department of trade and economic development shall jointly make two reports to the legislature about the effect of this deferral law on new manufacturing and research and development activities and projects in Washington. The report shall contain information concerning the number of deferral certificates granted, the amount of state and local sales and use taxes deferred, the number of jobs created, and other information useful in measuring such effects. The departments shall submit their joint reports to the legislature by January 1, 1986 and by January 1 of each year through 1995.

(34) Any recipient of a sales and use tax deferral may be asked to submit reports to the department or department of trade and economic development during any period of time the recipient is receiving benefits under this deferral law. The report shall be made to the department in a form and manner prescribed by the department. The recipient may be asked to report information regarding the actual average employment related to the project, the actual wages of the employees related to the project, and any other information required by the department. If the recipient fails to submit a report, the department may not impose any penalties or sanctions against the recipient.

(35) Payment procedures. The recipient of sales and use tax deferral under this program shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project was operationally complete. 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	10%
2	15%
3	20%
4	25%
5	30%

(36) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest shall not be charged on any taxes deferred under this program 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. The debt for deferred taxes shall not be extinguished by insolvency or other failure of the recipient nor shall the debt for the deferred taxes be extinguished by the sale, exchange, or other disposition of the recipient's business. Any person who becomes a successor (see WAC 458-20-216) to such investment project shall be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(37) Special provisions affecting aluminum production facilities. Effective May 19, 1987, the law makes special provisions for sales and use tax deferrals for new or used equipment, machinery and operating property, and labor and services in connection with the startup or continued operation of aluminum smelter facilities which were in operation before 1975, but which have ceased operations (or are in imminent

danger of ceasing operations). Also, such special provisions may apply to modernization projects involving the construction, acquisition, or upgrading of new or used equipment and machinery to increase the operating efficiency of aluminum smelters or aluminum rolling mills and facilities. Such special provisions entail consultation with collective bargaining units for existing employees as well as the concurrence by such bargaining units with the deferral requested. Persons who operate such facilities should contact the department of revenue to determine if the sales and use tax deferrals are available in any specific case.

(38) Disclosure of information. The law provides that information contained in applications, reports, and other information received by the department in connection with this tax deferral program shall not be confidential and shall be subject to disclosure.

AMENDATORY SECTION (Amending WSR 07-17-132, filed 8/20/07, effective 9/20/07)

WAC 458-20-274 Staffing services. (1) **Introduction.** This ((~~rule~~)) section explains the application of business and occupation (B&O) tax, public utility tax (PUT); and the retail sales tax collection responsibilities of staffing businesses providing staffing services.

(2) **To whom does this ((~~rule~~)) section apply?** This ((~~rule~~)) section applies to any person engaged in the business activity of providing staffing services. This section does not apply to persons providing professional employer services. Persons providing professional employer services should refer to RCW 82.04.540 for information on their tax-reporting responsibilities.

(3) **What is the definition of a staffing business and staffing services?** A "staffing business" is a person engaged in the business activity of providing staffing services. "Staffing services" means services consisting of a person:

• Recruiting and hiring its own employees;

• Finding other organizations that need the services of those employees;

• Assigning those employees on a temporary basis to perform work at or services for the other organizations to support or supplement the other organizations' work forces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the customer; and

• Customarily attempting to reassign the employees to other organizations when they finish each assignment.

(4) **Generally, what kinds of business activities are workers assigned by a staffing business?** Business activities may include, but are not limited to, services rendered with respect to:

• Construction (both custom and speculative);

• Customer software design and implementation;

• Manufacturing and light industrial activities;

• Professional services including medical and clerical; and

• Other skilled and unskilled labor.

(5) **Is the gross income received by a staffing business subject to Washington tax?** Yes, the gross income received by a staffing business is subject to B&O and/or PUT tax.

(6) **Is the tax paid by a staffing business or is the tax collected from the client to whom the workers are assigned?**

• B&O tax and/or PUT are paid by the staffing business.

• When the activity of the assigned worker is a retail sale, retail sales tax must be collected from the client unless a specific exemption or exclusion, such as the activity being a sale for resale, applies. The collected tax is paid by the staffing business to the department.

(7) **May a staffing business deduct payroll and other business expenses from gross income?**

• Chapters 82.04 and 82.16 RCW provide limited deductions from the B&O tax and PUT.

• The requirements of each specific deduction or exemption must be met to qualify for the deduction or exemption.

• Generally, amounts paid to the worker, amounts deducted for payroll taxes, or any other expenses paid or accrued may not be deducted by a staffing business.

• But income received for work performed outside the state may be deducted from gross income for B&O tax purposes. Similarly, an interstate haul is deducted from the PUT.

• Bad debts on which tax has been paid and which may be written off for federal tax purposes may be deducted from the gross income of both B&O and PUT.

• Exemptions, deductions and special tax rates that may apply to the client do not automatically also apply to the staffing business.

• **Example 1.**

– Under the Revenue Act, certain nonprofit hospitals may qualify for a B&O tax deduction for income received through medicare.

– Also, nonprofit and public hospitals are taxable under a special B&O tax classification.

– However, because the staffing business does not meet the criteria for the B&O tax deduction for income received through medicare or, for the B&O tax special nonprofit hospital classification, the income received by a staffing business from assigning physicians, nurses, or other health care workers to the hospital is taxable under the service and other activities classification.

• **Example 2.**

– Similarly, the Revenue Act exempts from B&O tax income received by licensed adult family homes.

– However, the gross income received by a staffing business from assigning a health care worker to the adult family home is taxable under the service and other activities B&O tax classification.

(8) **What if an activity is not subject to sales tax because it is a sale for resale?**

• When a service that would otherwise be a retail sale is performed for a person that resells that service, such as construction work performed for a general contractor, sales tax is not collected when the staffing business receives a completed resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010, from the client resell-

ing the service. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

• When a resale certificate for sales made before January 1, 2010, or a seller permit for sales made on or after January 1, 2010, is received, the staffing business must report such charges for the worker under the wholesaling B&O tax classification. (((~~See WAC 458-20-102 for more information about resale certificates.~~)))

(9) **What is the tax rate?**

• The B&O tax rate and/or the PUT rate is determined by the classification of the activity engaged in by the assigned worker.

• The retail sales tax rate is determined, generally, by the location of where the retail sale is performed. See WAC 458-20-145.

(10) **If the B&O tax rate is determined by the B&O tax classification, who determines or identifies the correct classification?**

• It is the responsibility of the staffing business to determine or identify the applicable B&O tax classification for the activity performed by the assigned worker.

• This determination should be made prior to dispatching the worker to the customer.

• It is important for the staffing business to know whether retail sales tax should be collected from the customer, or if a resale certificate, reseller permit, exemption certificate, or other documentation should be received from the customer as evidence of a sales tax exemption.

(11) **Is the proper B&O tax classification as reported by the staffing business always the same classification as reported by the client customer to whom the worker is assigned?**

• Regardless of the nature of the customer's business, the staffing business looks to the activity engaged in by the worker assigned.

• The staffing business should not assume that the income it receives through the activities of its workers is taxable under the same classification that the customer reports.

• It is the activity of each worker, not the reporting classification of the customer that determines the tax classification.

• **Example:**

– A person operating an insurance agency is taxable under the insurance agents B&O tax classification.

– If the staffing business assigns a receptionist for the insurance agency, the gross income received for the receptionist's services is subject to B&O tax under the service and other activities classification. The service classification applies because the receptionist is not providing services under the authority of an insurance agent's license.

– However, if the staffing business assigns a worker licensed as an insurance agent to an insurance agency, and the licensed insurance agent performs services under the authority of his/her license, the related income is taxable under the insurance agents B&O tax classification.

(12) **What are the major B&O tax classifications?** The major B&O tax classifications include:

• Retailing.
• Wholesaling.
• Manufacturing.
• Processing for hire.
• Service and other activities.
• Stevedoring.
• Travel agent activities.

(13) **Where can I get a description of the activities included in the major B&O tax classification? Where can I get a complete list of the B&O tax classifications and more information?**

• The department's *Staffing Industry Guide* provides detailed information on the staffing industry and includes a description of the activities included in the major B&O tax classifications. The *Staffing Industry Guide* is located on the department's web site http://dor.wa.gov/

• A complete list of the B&O tax classifications and more information about the B&O and PUT can be found on the department's web site http://dor.wa.gov/

(14) **What is the public utility tax (PUT)? What are the major classifications of PUT?**

• The public utility tax is a tax on gross receipts, similar to the B&O tax.

• It applies to most utility services, such as water, power, and gas distribution, and sewerage collection.

• It also applies to providing transportation of persons or property for hire within five miles of the city limits (urban transportation classification) and beyond (motor transportation classification).

– These classifications apply whether or not the person performing the work owns the vehicle with which the activity is being performed.

– Examples include taxi cab service, limousine service, and hauling goods belonging to others (hauling for hire).

(15) **How is income reported when the assigned worker is engaging in more than one activity?**

• An assigned worker provided by a staffing business to a client may engage in several different activities while on the same job.

• The different activities may be taxable under separate B&O tax and/or PUT classifications.

• If the staffing business separates the amounts it charges the client by activities, the separated charges are reported.

• If the staffing business does not separate its charge to the client the charge is reported under the classification of the predominant activity.

• "Predominant activity" for two worker activities is when more than fifty percent of the worker's time is spent working in one tax classified activity.

• "Predominant activity" for more than two worker activities is the activity the worker spends the greatest amount of time doing.

• When two or more workers, engaged in different activities, are assigned to one client, the charge for each worker is reported based on the predominant activity of each individual worker.

• **Example 1:**

– A staffing business assigns a housekeeper whose primary job is to clean an apartment (subject to the service and other activities B&O tax classification).

– The job also calls for the housekeeper to prepare one meal per day (subject to retailing B&O tax and retail sales tax).

– The majority (over half) of the time spent is associated with the housekeeping service (apartment cleaning - subject to the service and other activities B&O tax classification).

– No segregated charge is made for the preparation of the meal.

– In this case, the predominant activity is cleaning the apartment.

– Therefore, the gross income received by staffing business from the charge to the client is reportable under the service and other activities B&O tax classification. Retail sales tax will not apply.

• **Example 2:**

– A staffing business assigns a construction worker to a client that is a developer/property owner performing construction-related services (subject to retailing B&O tax and retail sales tax).

– The assigned worker has a commercial driver's license and is only occasionally required to drive the client's truck within the city to pick up a load of gravel (an activity subject to the urban transportation PUT classification).

– The worker also spends about one hour per day helping in the office.

– The predominant activity is the retailing activity of performing construction work because the greatest amount of time is spent performing retailing construction work.

– The staffing business has not segregated charge for the other lesser activities.

– In this case, the staffing business reports the gross amount charged to the client under the retailing B&O tax classification. Additionally, the staffing business must also collect from the client retail sales tax measured by the gross charge to the client.

• **Example 3:**

– Same facts as Example 2, except the staffing business also provides a receptionist to the client (developer/property owner).

– As demonstrated in Example 2, the staffing business is subject to the retailing B&O tax on the gross amount charged to the client for work done by the construction worker; and retail sales tax must be collected on this charge.

– However, the staffing business is subject to service and other activities B&O tax on the gross amount charged to the client for the receptionist's work. The service and other activities B&O tax classification is the proper classification notwithstanding the client reports under the retailing classification.

(16) **Is the staffing business required to keep documentation of the activities their assigned workers performed?**

• The staffing business must keep documentation showing what services their assigned workers performed.

• All available information should be recorded concurrently with the assignment of the worker and the charge for the service.

• It is important that the client's labor and skill requirements are detailed up front as much as possible prior to dispatch.

• This is particularly important for purposes of billing retail sales tax.

• Documentation may be in the form of a copy of a client order or other documented request by a client for a worker.

• The documentation must state the specific work to be performed, and/or the worker skills requested by the client.

• If the client's request comes in by telephone, the staffing business should ask exactly what type of services are required and write them down on an order form, or as a memo to the client's file.

• Also, the worker can provide a written explanation of the services actually performed.

• Documentation to support the B&O tax classification must be sufficiently detailed to support the classification reported.

• The classification of primary interest to the client is retailing. Only under retailing is the staffing company, as seller of the service, required to collect retail sales tax from the client.

• Any other classification which does not directly impact the client may be of less interest to the client. Nevertheless, because the rates may vary between classifications, it is in the person providing staffing service's best interest to gather enough information to classify all services correctly.

• If, subsequent to filing a return, it is later determined that income has been incorrectly classified, amended returns should be submitted to the department to make the appropriate adjustment.

WSR 10-06-078
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed March 1, 2010, 7:47 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: This is a complete new licensing law that goes into effect on July 1, 2010, and requires all new administrative codes to implement the new statutes.

Citation of Existing Rules Affected by this Order: Repealing 93.

Statutory Authority for Adoption: RCW 18.85.040 and 18.85.041.

Adopted under notice filed as WSR 10-02-065 on January 4, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-124A-735, the requirement for this information is not necessary as it is in RCW 18.85.091 except the two year renewal. WAC 308-124A-775, the original license fee was added under the real estate managing broker as it was inadvertently missed. WAC 308-124B-200, removed "and branch managers" because it is an endorsement not a license. WAC 308-124D-215, changed the word "as" to "at" in the last sentence of the preamble.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 93, Amended 0, Repealed 93.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 93, Amended 0, Repealed 93.

Date Adopted: March 1, 2010.

Walt Fahrer
Rules Coordinator

DEFINITIONS AND BRIEF ADJUDICATIVE PROCEEDINGS

NEW SECTION

WAC 308-124-300 Definitions. Words and terms used in this chapter shall have the same meaning as each has under chapter 18.85 RCW unless otherwise clearly provided in this chapter, or the context in which they are used in this chapter clearly indicates that they be given some other meaning.

(1) "Branch manager" is the natural person who holds a managing broker's license and has delegated authority by the designated broker to manage a single physical location of a branch office. The department shall issue an endorsement for "branch managers."

(2) "Affiliated licensees" are the natural persons licensed as brokers or managing brokers employed by a firm and who are licensed to represent the firm in the performance of any of the acts specified in chapter 18.85 RCW.

(3) "Prospect procurement" is initiating contact with a prospective buyer, seller, landlord or tenant for the purpose of engaging in a sale, lease or rental of real estate or a business opportunity, and the contact is initiated under a promise of compensation.

(4) "Brokerage service contracts" include, but are not limited to, purchase and sale agreements, lease or rental agreements, listings, options, agency agreements, or property management agreements.

(5) "Branch office" means:

(a) A separate physical office of the real estate firm; and

(b) Has a different mailing address of the main firm office; and

(c) Uses the real estate firm's UBI (unified business identifier) number.

NEW SECTION

WAC 308-124-305 Application of brief adjudicative proceedings. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request, and/or at the discretion of the director pursuant to RCW 34.05.482, for the categories of matters set forth in WAC 308-09-525.

NEW SECTION

WAC 308-124-310 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for an original or renewal license, for approval of an education course or curriculum, or for the proper issuance of a cease and desist order shall consist of:

(a) The application for the license, renewal, or approval and all associated documents; or the cease and desist order and all associated documents;

(b) All documents relied upon by the program in proposing to deny the license, renewal, or approval; or all documents relied upon by the program in issuing a cease and desist order; and

(c) All correspondence between the applicant for license, renewal, or approval and the program regarding the application; or all correspondence between the respondent and the program regarding the issuance of the cease and desist order.

(2) The preliminary record with respect to determination of compliance with a previously issued final order or agreement shall consist of:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

(3) The preliminary record with respect to the determination of nonpayment or default by the license holder on a federally or state-guaranteed education loan or service-conditional scholarship shall consist of:

(a) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed education loan or service-conditional scholarship; or

(b) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

(4) The preliminary record with respect to all other issues subject to a brief adjudicative hearing shall consist of:

(a) All documents relied upon by the program in proposing disciplinary action as provided under RCW 18.235.110; and

(b) All correspondence between the license holder and the program regarding alleged violations.

NEW SECTION

WAC 308-124-315 Conduct of brief adjudicative proceedings. (1) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the director. The presiding officer for brief adjudicative proceedings shall not have personally participated in the decision which resulted in the request for a brief adjudicative proceeding.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for the decision.

(6) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124-007	Meetings.
WAC 308-124-021	Definitions.
WAC 308-124-025	Application of brief adjudicative proceedings.
WAC 308-124-035	Preliminary record in brief adjudicative proceedings.
WAC 308-124-045	Conduct of brief adjudicative proceedings.

LICENSING PROCESSES

NEW SECTION

WAC 308-124A-700 Application for a license—Fingerprinting. (1) New applicants applying for their first broker's license under chapter 18.85 RCW will be required to submit a fingerprint card.

(2) Applicants applying for their first managing broker's license using alternative qualifications will be required to submit a fingerprint card.

(3) Fingerprint cards and background checks are required for every active renewal every six years. If the department background check was within the last six years, then no new background check is required to activate a license.

(4) An application submitted without the required fingerprint card is considered incomplete.

(5) When a fingerprint card is rejected, the licensee or applicant must submit to the department a new fingerprint card within twenty-one calendar days of written notice to the address of record with the real estate program. Failure to submit a new fingerprint card will result in a suspension of the real estate license until the fingerprint card is received by the department.

(6) If the fingerprint card is rejected, the applicant must pay a new fee for fingerprinting and background processing.

NEW SECTION

WAC 308-124A-705 Application examination process. (1) Any person desiring to take an examination for a broker license must:

(a) Contact the testing service at least one day prior to the desired test date to schedule and pay for an examination.

(b) On the day of the examination, the candidate shall submit a completed examination application together with any supporting documents, including evidence satisfactory to the department of having successfully completed an approved sixty clock hour fundamentals course, and a thirty-hour practices course approved by the real estate program to the testing service.

(2) Any person desiring to take a broker or managing broker license examination who received clock hours in another jurisdiction must:

(a) Submit proof of education to be substituted for clock hours required under WAC 308-124A-755. After receiving written notice that the qualifications for the examination have been verified by the department, the candidate shall contact the testing service at least one day prior to the desired test date to schedule and pay for an examination.

(b) Provide a completed examination application to the testing service on the day of the examination.

NEW SECTION

WAC 308-124A-707 Exam scheduling. (1) Candidates requesting a morning or afternoon exam will be scheduled immediately for an examination and will be provided a registration number confirming their reservation. On the day of the examination, the candidate shall submit the approved completed examination application to the testing service.

(2) A candidate shall be assessed the full examination fee for any examination in which the candidate fails to provide two days notice to the testing service for changing their examination date or for failing to arrive and take an examination at the time the examination is scheduled or rescheduled.

NEW SECTION

WAC 308-124A-710 Successful applicants must apply for a license. Examination results are valid for one year only. Any person who has passed the examination for broker or managing broker must become licensed within one year from the date of such examination. You will be required to take and pass another examination if you do not comply with this provision.

NEW SECTION

WAC 308-124A-713 Application for managing broker license examination—Other qualification or related experience. Applications for a managing broker license examination by persons who do not possess three years of actual experience as a full-time broker as required by RCW 18.85.111 who show qualification by reason of practical experience in a business allied with or related to real estate shall be submitted to the real estate program. The application shall be accompanied by a letter requesting approval of alter-

native qualifications or experience and indicating the basis for such approval. The letter must include a detailed personal history or work resume, with supporting documentation, and a letter from each of five business references describing from personal knowledge the qualifications and experience of the applicant. The following guidelines are provided as examples of experience which may qualify in lieu of three years of full-time broker experience:

(1) Postsecondary education with major study in real estate together with one year experience as a real estate broker or one year experience under the provisions of subsections (2) through (7) of this section.

(2) Experience as an attorney at law with practice in real estate transactions for not less than one year.

(3) Five years' experience, with decision-making responsibility, in closing real estate transactions for escrow companies, mortgage companies, or similar institutions.

(4) Five years' experience with a commercial bank, savings and loan association, title company or mortgage company, involving all details of real estate transactions.

(5) Five years' experience as a real property fee appraiser or salaried appraiser.

(6) Five years' experience in all phases of land development, construction, financing, selling and leasing of residences, apartments or commercial buildings.

(7) Five years' experience in real estate investment, property management, or analysis of investments or business opportunities.

All time periods referenced in WAC 308-124A-713 shall be within the last seven years prior to the date of application.

NEW SECTION

WAC 308-124A-715 Unsuccessful managing broker applicants—Alternate qualifications. The managing broker applicant who is approved to take the exam based upon alternate qualifications and subsequently fails the exam is not permitted to repeat the exam unless they satisfy the requirements in RCW 18.85.111.

NEW SECTION

WAC 308-124A-720 Application for real estate examination, licensed in another jurisdiction. (1) Any person applying for a broker or managing broker examination who is actively licensed in the same or greater capacity in another jurisdiction and has maintained his or her license in good standing or who was actively licensed in the same or greater capacity in good standing within the preceding six months is only required to take the Washington law portion of the examination.

(2) Any person applying to take the examination under this section shall submit evidence of licensure in another jurisdiction by a license verification form completed by the licensure authority in such jurisdiction.

(3) After receiving notification that the qualifications for the examination have been verified by the department, the candidate shall contact the testing service at least one day prior to the desired test date to schedule and pay for an examination. Candidates requesting a morning or afternoon exam shall be scheduled immediately for an examination and will be provided with a registration number confirming their reservation. On the day of the examination, the candidate shall submit at the test site the approved examination application and any supporting documents required by the department.

(4) The director, upon advice of the Washington state real estate commission, may consider entering into written recognition agreements with other jurisdictions which license brokers and managing brokers similarly to Washington state. The recognition agreement(s) shall require the other jurisdiction to grant the same licensing process to licensees of Washington state as is offered by Washington state to license applicants from other jurisdictions.

NEW SECTION

WAC 308-124A-725 Application for license or endorsement. A person who desires to be licensed as a real estate broker, managing broker or endorsed as a branch manager or designated broker, shall make application on a form approved by the director and the broker and managing broker application shall be signed by the designated broker to whom the license will be issued. The branch manager may sign for the designated broker for licenses to be issued to that branch office.

NEW SECTION

WAC 308-124A-727 Application as broker license for interim period. Applicants for a broker's license may commence working on or after the postmark date of delivery to the department, or on or after the date of hand delivery to the real estate program, of the following:

(1) Notice of passing the examination;

(2) License application form;

(3) Fingerprint card; and

(4) License and fingerprint fees.

The completed license application form shall serve as an interim license for a period up to forty-five days unless grounds exist to take disciplinary action against the license under RCW 18.235.130 and 18.85.361.

NEW SECTION

WAC 308-124A-730 Broker, managing brokers—Termination of services. (1) A person licensed as a broker or managing broker may perform duties and activities only under the direction and supervision of a licensed managing broker, branch manager or designated broker and as a representative of the firm. This licensed relationship may be terminated unilaterally by either the broker, managing broker, branch manager or designated broker.

(a) All terminations shall be by written notice by the broker or managing broker, or branch manager to the designated broker or the designated broker's delegated representative; or by the designated broker to the broker, managing broker or branch manager.

(b) All notices of termination shall be given to the real estate program without delay and such notice shall be accompanied by and include the surrender of the real estate license.

(c) The managing broker, branch manager or designated broker may not condition his or her surrender of license to the

real estate program upon performance of any act by the broker or managing broker.

(d) If the license cannot be surrendered because the managing broker or designated broker is conditioning the surrender of the license, the licensee shall so advise the department in writing.

(e) Upon receipt of the licensee's written statement about the conditioned release of the license, the real estate program shall process the release or license transfer.

(f) The termination date shall be the postmark date, fax date or date the license is hand delivered to the real estate program.

(2) If the license cannot be surrendered to the real estate program because the license has been lost, the licensee and the responsible managing broker, branch manager or the designated broker shall submit a letter of release. No license transfers shall be permitted unless the license is surrendered or the letter of release is submitted and filed with the real estate program.

NEW SECTION

WAC 308-124A-735 Firm licenses. Licenses issued to firms expire two years from the date of issuance.

NEW SECTION

WAC 308-124A-740 Firm license renewal. Proof required. Applicants for renewal of a firm license shall furnish proof of current master business license renewed by authority of the secretary of state.

NEW SECTION

WAC 308-124A-750 Application for managing broker license examination—Clock hour requirements. (1) Applicants for the managing broker's examination shall have successfully completed ninety clock hours of approved real estate instruction in addition to any other clock hours completed and used to satisfy requirements of chapter 18.85 RCW. Instruction must include a course in advanced real estate law, a course in real estate brokerage management, and a course in business management. All courses completed to satisfy this requirement must be approved subject matter as defined in WAC 308-124H-820 and be at least thirty clock hours in length and include a comprehensive examination. Courses must be completed within three years prior to applying for the managing broker's examination.

(2) Courses in advanced real estate law, real estate brokerage management, and business management, used to satisfy continuing education requirements within three years of applying for the managing broker's examination shall satisfy the requirements of subsection (1) of this section provided the applicant successfully completed a comprehensive examination. Licensees will be required to provide additional approved course work if they have submitted real estate law, brokerage management, or business management education classes to satisfy any other continuing educational requirements.

NEW SECTION

WAC 308-124A-755 Substitution of clock hours. (1) The director may allow for substitution of the clock hour requirements in RCW 18.85.141 and 18.85.111 if the individual is qualified by completing equivalent educational course work in any institution of higher education or degree granting institution.

(2) Individuals requesting approval for real estate equivalent educational course work shall submit a transcript of course work completed from an institution of higher education or a degree granting institution together with an application for the license examination. The department may also require certification from an authorized representative of the institution of higher education or degree granting institution that the course work satisfies the department's prescribed course content or curriculum for a given course(s).

NEW SECTION

WAC 308-124A-760 Grading of examinations. (1) To pass the broker examination a minimum scaled score of 70 is required on each portion. The broker examination shall consist of two portions:

(a) The national portion consisting of questions that test general real estate practices; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing.

(2) To pass the managing broker examination a minimum scaled score of 75 is required on each portion. The managing broker examination shall consist of two portions:

(a) The national portion consisting of questions that test general real estate brokerage practices; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing, and the closing/settlement process.

(3) A passing score for a portion of an examination is valid for a period of six months.

NEW SECTION

WAC 308-124A-765 Reexamination. An applicant who failed the examination or failed to appear for a scheduled examination may apply for reexamination by contacting the testing service to schedule and pay for an examination. Managing broker exam applicants who applied using alternate qualifications and failed the examination must comply with the provisions of WAC 308-124A-750.

NEW SECTION

WAC 308-124A-770 Examination procedures. (1) Each applicant will be required to present one piece of valid government issued photo-bearing identification. Failure to produce the required identification will result in the applicant being refused admission to the examination.

(2) Applicants are prohibited from:

(a) Talking to other examinees during the examination unless specifically directed or permitted to do so by a test monitor.

(b) Attempting to communicate or record any information.

(c) Using unauthorized materials during any portion of the examination.

(d) Removing test materials and/or notes from the testing room.

(e) Disruptive behavior.

(3) Applicants who participate in any activity listed in subsection (2) of this section will be required to turn in their test materials to the test monitor and leave the examination site. Their opportunity to sit for the examination will be forfeited. Their answer sheet will be voided. A voided answer sheet will not be scored and the examination fee will not be refunded. A candidate must then reapply to take the examination.

(4) Any applicant who was removed from the testing site for any of the reasons listed in subsection (2) of this section will be required to submit a letter to the department requesting permission to retest and stating the circumstances of the event. After receipt of the applicant's letter, the department will review the proctor's report and the applicant's letter and may deny testing for up to one year.

NEW SECTION

WAC 308-124A-775 Real estate fees. These fees are applicable to all original licenses, examination services, and fee generating services issued or performed after July 1, 2010, and all renewals for existing licenses with expiration date after July 1, 2010. The fees for an original license and renewal include a ten dollar fee which is assessed for the real estate research center. The following fees shall be charged by the department of licensing:

Title of Fee	Fee
Real estate broker:	
Application/examination	$138.25
Reexamination	138.25
Original license	146.25
License renewal	146.25
Late renewal with penalty	172.75
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate managing broker:	
Application/examination	$138.25
Reexamination	138.25
Original license	210.00
License renewal	210.00
Late renewal with penalty	236.50
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate firm:	
Original license	$210.00
License renewal	210.00
Late renewal with penalty	236.50
Name or address change	0.00
Duplicate license	26.50
Certification	26.50
Real estate branch:	
Original license	$189.50
License renewal	189.50
Late renewal with penalty	216.50
Certification	26.50
Duplicate license	26.50
Name or address change, transfer or license activation	0.00
Fingerprint processing	$35.25

Fingerprinting fee does not include the cost of obtaining prints. Applicants will be responsible for obtaining their fingerprints for their cards.

NEW SECTION

WAC 308-124A-780 Reinstatement of a canceled license for nonpayment of renewal fee. Any person desiring to be reinstated as a real estate licensee within two years of cancellation may have their license reinstated by satisfying either of the following options:

(1) Submission of an application to the director providing proof of the following:

(a) Successful completion of sixty clock hours of approved real estate course work completed within one year preceding the application for reinstatement. A minimum of thirty clock hours must include real estate law;

(b) Payment of all back renewal fees with penalty at the current rate; and

(c) Payment of a reinstatement penalty fine of one hundred dollars; or

(2) Satisfy the procedures and qualifications for initial licensing, including the following:

(a) Successful completion of any applicable licensing examinations; and

(b) Successful completion of required courses pursuant to RCW 18.85.101 and/or 18.85.111, whichever is applicable, within three years preceding the application for reinstatement.

(3) Former licensees canceled for nonpayment of fees for periods in excess of two years will be required to satisfy the requirements of subsection (2) of this section.

NEW SECTION

WAC 308-124A-785 Broker first active license renewal. The minimum requirements for a broker to be issued the first renewal of an active license are: The broker has furnished proof of successful completion of ninety clock

hours commenced after the date first licensed, from a prescribed curriculum approved by the real estate program, including real estate law, advanced practices and thirty hours in approved continuing education, including the core curriculum.

NEW SECTION

WAC 308-124A-787 Previously licensed salesperson—First active renewal. For individuals licensed as salespersons between July 1, 2008, and July 1, 2010, and whose first license renewal will occur between July 1, 2010, and July 1, 2012, the minimum requirements for the broker first active license renewal are: The broker has furnished proof of successful completion of sixty clock hours commenced after the date first licensed, from a prescribed curriculum approved by the real estate program, including real estate practices and thirty hours in approved continuing education, including the core curriculum and the transitions course. This section is effective until July 1, 2012.

NEW SECTION

WAC 308-124A-790 Continuing education clock hour requirements. A licensee shall submit to the department evidence of satisfactory completion of clock hours, pursuant to RCW 18.85.211, in the manner and on forms prescribed by the department.

(1) A licensee applying for renewal of an active license shall submit evidence of completion of at least thirty clock hours of instruction in a course(s) approved by the real estate program and commenced within thirty-six months of a licensee's renewal date. A minimum of fifteen clock hours must be completed within twenty-four months of the licensee's current renewal date, and a portion of that fifteen must include three hours of the prescribed core curriculum defined in WAC 308-124A-800. Up to fifteen clock hours of instruction beyond the thirty clock hours submitted for a previous renewal date may be carried forward to the following renewal date. Failure to report successful completion of the prescribed core curriculum clock hours shall result in denial of license renewal.

(2) The thirty clock hours shall be satisfied by evidence of completion of approved real estate courses as defined in WAC 308-124H-820. A portion of the thirty clock hours of continuing education must include three clock hours of prescribed core curriculum defined in WAC 308-124A-800 and three clock hours of prescribed transition course pursuant to RCW 18.85.481(2).

(3) Courses for continuing education clock hour credit shall be commenced after issuance of a first license.

(4) A licensee shall not place a license on inactive status to avoid the continuing education requirement or the post-licensing requirements. A licensee shall submit evidence of completion of continuing education clock hours to activate a license if activation occurs within one year after the license had been placed on inactive status and the last renewal of the license had been as an inactive license. A licensee shall submit evidence of completing the post-licensing requirements if not previously satisfied upon returning to active status.

(5) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(6) Clock hour credit for continuing education shall not be accepted if:

(a) The course is not approved pursuant to chapter 308-124H WAC and chapter 18.85 RCW;

(b) Course(s) was taken to activate an inactive license pursuant to RCW 18.85.265(3);

(c) Course(s) submitted to satisfy the requirements of RCW 18.85.101 (1)(c), broker's license, RCW 18.85.211, 18.85.111, broker's license and WAC 308-124A-780, reinstatement.

(7) Instructors shall not receive clock hour credit for teaching or course development.

NEW SECTION

WAC 308-124A-800 Defining prescribed core curriculum. A licensee shall submit to the department evidence of satisfactory completion of at least three clock hours of core curriculum continuing education approved by the director. Core curriculum continuing education is a specific course of study, recommended by the real estate commission for approval by the director that provides practical information on contemporary issues relating to the practices of real estate. The commission may recommend multiple core curricula to address residential, commercial, and property management disciplines or may recommend approval of the same core curriculum if appropriate. Core curriculum may be developed in a separate three clock-hour course or may be three clock hours contained within an approved thirty or less clock-hour course. Core curriculum must be completed within twenty-four months of the licensee's renewal date. Core curriculum commenced within thirty-six months but more than twenty-four months prior to the licensee's renewal date, may not count towards the core curriculum requirement, but may apply as regular continuing education credit for renewal.

NEW SECTION

WAC 308-124A-805 Address on designated broker's endorsement. The address on the designated broker's endorsement will be the location where the designated broker is the managing broker.

The real estate program will register each firm's address where the designated broker accepts endorsement from other firms.

NEW SECTION

WAC 308-124A-815 Firm names—Name prohibited. (1) Department can deny, suspend, reject firm names or assumed names that are in the department's opinion: Derogatory, similar or the same as other licensed firm names, implies that it is a public agency or government, implies nonprofit or research organization.

(2) A real estate firm shall not be issued a license nor advertise in any manner using names or trade styles which are similar to currently issued licenses or imply that the real estate firm is a nonprofit organization, research organization, public bureau or public group. A bona fide franchisee may be

licensed using the name of the franchisor with the firm name of the franchisee.

NEW SECTION

WAC 308-124A-825 Change of designated broker. Submit a statement signed by both the outgoing designated broker and the incoming designated broker, listing all outstanding client trust liabilities, pending transactions, and certifying sufficient funds are in trust to meet client trust liabilities.

NEW SECTION

WAC 308-124A-830 Firm closing—Designated broker responsibility. Designated brokers will be responsible for providing the department a closing firm affidavit when closing the firm.

NEW SECTION

WAC 308-124A-835 Courses completed in other jurisdictions. A course completed in another jurisdiction may be approved for clock hour credit if:

(1) The course was offered by a tax-supported, public technical or community college, or any other institution of higher learning, and the director determines that the course substantially satisfies the general requirements for course approval consistent with the intent of this chapter;

(2) The course was approved to satisfy an education requirement for real estate licensing or renewal and offered by an entity approved to offer the course by the real estate licensing agency in that jurisdiction; or

(3) If the director determines that the course substantially satisfies the general requirements for course approval consistent with the intent of this chapter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124A-010	Character report.
WAC 308-124A-020	Application for a license—Fingerprinting.
WAC 308-124A-025	Application process to take examination not licensed in another jurisdiction.
WAC 308-124A-030	Successful applicants must apply for license.
WAC 308-124A-040	Unsuccessful broker applicants—Loss of waiver privilege.
WAC 308-124A-110	Application for real estate examination, licensed in another jurisdiction.
WAC 308-124A-120	Application for license—Interim license.
WAC 308-124A-130	Salesperson, associate brokers—Termination of services.
WAC 308-124A-200	Corporate or copartnership applicants for licenses—Proof required.
WAC 308-124A-205	Corporate license renewal—Proof required.
WAC 308-124A-410	Application for broker license examination—Two years sales experience.
WAC 308-124A-420	Application for broker license examination, other qualification or related experience.
WAC 308-124A-422	Application for broker license examination—Clock hour requirements.
WAC 308-124A-425	Substitution of clock hours.
WAC 308-124A-430	Grading of examinations.
WAC 308-124A-440	Reexamination.
WAC 308-124A-450	Examination procedures.
WAC 308-124A-460	Real estate brokers and salespersons and land development representative fees.
WAC 308-124A-570	Reinstatement of a cancelled license for nonpayment of renewal fee.
WAC 308-124A-590	Salesperson first active license renewal—Post license requirements.
WAC 308-124A-595	License activation.
WAC 308-124A-600	Continuing education clock hour requirements.
WAC 308-124A-605	Defining prescribed core curriculum.

REAL ESTATE OFFICE REQUIREMENTS

NEW SECTION

WAC 308-124B-200 Display of licenses. (1) Licenses of the real estate brokers and real estate managing brokers must be available at the address appearing on the individual license.

(2) All firm and branch office licenses must be displayed in an area visible to the public.

NEW SECTION

WAC 308-124B-205 Change of office location. The real estate designated broker of the firm shall submit within ten days a completed change of address application to the real

estate program together with the return of all licenses, completed transfer applications, and payment of the correct fees.

NEW SECTION

WAC 308-124B-210 Advertising. A firm must operate under their firm name or an assumed name as licensed. All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, e-mail, newspaper, and other visual media must include the firm name or an assumed name as licensed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124B-030	Franchise advertising.
WAC 308-124B-100	Office identification.
WAC 308-124B-110	Display of licenses.
WAC 308-124B-120	Change of office location.
WAC 308-124B-130	Names prohibited.
WAC 308-124B-140	Multiple business usage of office.
WAC 308-124B-145	Two or more real estate businesses in same location.
WAC 308-124B-150	Office requirement for brokers actively licensed in another jurisdiction.

LICENSE RESPONSIBILITIES

NEW SECTION

WAC 308-124C-105 Required records. The designated broker is required to keep the following on behalf of the firm:

(1) Trust account records:

(a) Duplicate receipt book or cash receipts journal recording all receipts;

(b) Sequentially numbered, nonduplicative checks with check register, cash disbursements journal or check stubs;

(c) Validated duplicate bank deposit slips or daily verified bank deposit;

(d) Client's accounting ledger summarizing all moneys received and all moneys disbursed for each real estate or business opportunity transaction or each property management account, contract or mortgage collection account;

(e) In conjunction with (d) of this subsection, separate ledger sheets for each tenant (including security deposit), lessee, vendee or mortgagor; for automated systems, the ledger sheets may be a computer generated printout which contains required entrees;

(f) Reconciled bank statements and canceled checks for all trust bank accounts.

(2) Other records:

(a) An accurate, up-to-date log of all agreements or contracts for brokerages services submitted by the firm's affiliated licensees.

(b) A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firm's files.

(c) A transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and correspondence for each real estate or business opportunity transaction, and for each rental, lease, contract or mortgage collection account.

(d) All required records shall be maintained at one location where the firm is licensed. This location may be the main or any branch office.

NEW SECTION

WAC 308-124C-110 Accuracy and accessibility of records. (1) Accuracy. All required real estate records shall be accurate, posted and kept up to date.

(2) Location. All required real estate records shall be kept at an address where the real estate firm is licensed to maintain a real estate office. Transactions that have been closed for at least one year can be maintained at one central facility located in Washington. Transactions not stored at the firm location must be available upon demand of the department and maintained in a manner to be readily retrievable. A listing of all transactions must be maintained at the firm's licensed office for all the transactions stored at the remote facility. All records shall be retained and available for inspection by the director or the director's authorized representative for a minimum of three years.

(3) Alternative storage. Records may be stored on permanent storage media, such as optical disk or microfilm, or other storage media, provided the retrieval process does not permit modification of the documents. Retrieval must be possible at the firm's licensed office and allow for viewing and printing the document in its original form. The permanent media storage shall be nonerasable and prevent changes to the stored documents or records. The designated broker must maintain equipment at firm's location in good repair to allow viewing and printing upon demand by the department. The storage media must be indexed to allow for immediate retrieval of all documents.

NEW SECTION

WAC 308-124C-115 Suit or complaint notification. Every licensee shall, within twenty days after service or knowledge thereof, notify the real estate program of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in which the subject matter therein involves any real estate or business-related activity by the licensee. Notification is required regardless of any pending appeal.

NEW SECTION

WAC 308-124C-125 Designated broker responsibilities. Designated broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensure that copies of required records are made available upon demand.

(4) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(5) Ensuring monthly trial balances are completed, accurate and up-to-date.

(6) Ensuring that the trial balance and the reconciliation show the account(s) are in balance.

(7) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

(8) Maintaining up-to-date written assignments of delegations of managing brokers and branch manager duties. The delegation agreement(s) must be signed by all parties to the agreement. Delegations must:

(a) Only be made to managing brokers licensed to the firm.

(b) Address duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.

(c) Address hiring, transferring and releasing licensees to or from the firm.

(9) Maintaining, implementing and following a written policy that addresses:

(a) Referral of home inspectors in compliance with Washington Administrative Code.

(b) Levels of supervision of all brokers and managing brokers of the firm.

(c) The review of all brokerage service contracts which involve any affiliated licensee of the firm that has been licensed for less than two years. This review must be completed by the designated broker or their delegated managing broker within five calendar days of client's signature and shall be evidenced by the reviewer's initials and date on the first page of the documents.

(10) Ensuring that all persons performing real estate brokerage services on behalf of the firm and the firm itself are appropriately licensed.

(11) Ensuring affiliated licensees submit their transaction documents to the designated broker or delegated managing broker in a timely manner.

(12) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

NEW SECTION

WAC 308-124C-130 Branch manager responsibilities. Branch manager responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensuring that copies of required records are made available upon demand.

(4) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(5) Following the written policy on referral of home inspectors.

(6) Ensuring all persons employed, contracted or representing the firm at the branch location are appropriately licensed.

(7) Overseeing of the branch licensees, employees and contractors.

(8) Ensuring brokers, managing brokers and branch managers are timely submitting their transaction documents to the designated broker or delegated managing broker, if delegated.

(9) Hiring, transferring and releasing licensees to and from the branch.

(10) All activity within the branch office including supervision of brokers and managing brokers, and heightened supervision of brokers that are licensed for less than two years.

(11) If delegated - client/customer funds or property:

(a) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(b) Ensuring monthly trial balances are completed, accurate and up-to-date.

(c) Ensuring that the trail balance and the reconciliation show the account(s) are in balance.

(d) Safe handling of customer/client funds and property.

(e) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

(12) If delegated - other duties:

(a) Record maintenance.

(b) Proper and legal advertising.

(c) Review of contracts.

(d) Modify or terminate brokerage service contracts on behalf of the firm.

(e) Following and implementing the designated brokers written policy:

(i) On referral of home inspectors.

(ii) Addressing levels of supervision of all brokers and managing brokers.

(iii) That includes a review of all brokers (with less than two years of licensure) transactions within five calendar days of client's signature.

This review must be evidenced with the designated broker or delegated managing broker's initials and date on each brokerage service contract.

NEW SECTION

WAC 308-124C-135 Managing broker responsibilities. Managing broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(4) Keeping the real estate program informed of his or her current mailing address.

NEW SECTION

WAC 308-124C-137 Managing broker delegated responsibilities. If delegated by the designated broker, the managing brokers responsibilities include, but are not limited to, ensuring:

(1) Monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(2) Monthly trial balances are completed, accurate and up-to-date.

(3) The trial balance and the reconciliation show the account(s) are in balance.

(4) Policies or procedures are in place to account for safe handling of customer or client funds or property.

(5) Required records are maintained and up-to-date.

(6) Advertising is proper and legal.

(7) Timely review of contracts.

(8) Brokerage service contracts are modified or terminated appropriately on behalf of the firm.

(9) Persons employed, contracted or representing the firm that the managing broker has delegated authority to supervise are appropriately licensed.

(10) Brokers and managing brokers timely submit their transaction documents to the designated broker or delegated managing broker, if delegated.

(11) Proper and adequate supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.

(12) Accessibility of the firm's offices and records to the director's authorized representatives, and must ensure that copies of required records are made available upon demand.

(13) All affiliated licensees are following the designated brokers written policy on:

(a) Referral of home inspectors.

(b) Levels of supervision for all brokers and managing brokers.

(c) All brokers' (with less than two years of licensure) transactions are reviewed within five calendar days of client's signature.

This review must be evidenced with the designated broker or delegated managing broker's initials and date on the first page of each brokerage service contract.

NEW SECTION

WAC 308-124C-140 Broker responsibilities. Broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(4) Keeping the real estate program informed of his or her current mailing address.

(5) Following the written policy on referral of home inspectors.

(6) Being appropriately licensed.

(7) Following licensing laws and rules regarding:

(a) Safe handling of customer/client funds and property.

(b) Timely delivery of transaction documents, brokerage service contracts and customer/client funds or property.

(c) Proper and legal advertising.

(d) Modifying or terminating brokerage service contracts on behalf of the firm.

NEW SECTION

WAC 308-124C-145 Broker responsibilities (with less than two years experience). Broker responsibilities (with less than two years experience) include, but are not limited to:

(1) All the responsibilities listed in WAC 308-124C-140.

(2) Being subject to a heightened degree of supervision for the initial two years of licensing which includes:

(a) Participating in all required reviews of real estate brokerage agreements and services by the designated broker or appointed managing broker.

(b) Submitting evidence of completion of department required clock hour education courses to the designated broker or appointed managing broker.

(c) Securing advice or assistance from the designated broker or appointed managing broker when offering brokerage services beyond the broker's level of expertise.

(d) Timely submission of brokerage service contracts, documents and funds to the appropriate managing broker or designated broker.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124C-010	Licensee's responsibilities.
WAC 308-124C-020	Required records.
WAC 308-124C-030	Accuracy and accessibility of records.
WAC 308-124C-040	Suit or complaint notification.
WAC 308-124C-050	Home inspector referrals.

BROKERAGE SERVICE REQUIREMENTS AND PROCEDURES

NEW SECTION

WAC 308-124D-200 Checks—Payee requirements. All checks received as earnest money, security or damage deposits, rent, lease payments, contract or mortgage payments on real property or business opportunities owned by clients shall be made payable to the real estate firm as licensed, unless it is mutually agreed in writing by the principals that the deposit shall be paid to the lessor, the seller or an escrow agent named in the agreement. The designated broker shall retain a copy of the written agreement.

NEW SECTION

WAC 308-124D-205 Negotiating agreements and closing. The real estate licensee shall be responsible for negotiating the agreement between seller and purchaser as follows:

(1) The real estate licensee shall furnish or cause to be furnished to each buyer and to each seller in every real estate or business opportunity transaction wherein the licensee provides brokerage services, at the time the transaction is closed, a complete detailed closing statement as it applies to the buyer and a complete detailed closing statement as it applies to the seller. The firm shall retain a copy of all closing statements of the respective buyers and sellers wherein the licensee provides brokerage services for all transactions even though funds are not handled by a licensee and closing is done elsewhere.

(2) The closing statements of all real estate or business opportunity transactions in which a real estate firm participates shall show the date of closing, the total purchase price of the property, an itemization of all adjustments, money, or things of value received or paid showing to whom each item is credited and/or to whom each item is debited. The dates of the adjustments shall be shown, together with the names of the payees, makers and assignees of all notes paid or made or assumed.

(3) The net proceeds of sale on all real estate transactions closed by a real estate licensee are to be paid direct to the seller unless otherwise provided by written agreement.

(4) Where an agreement for the sale of real estate has been negotiated involving the services of more than one licensee, and funds are to be deposited by the purchaser prior to the closing of the transaction, the firm first receiving such funds shall retain custody and be accountable, until such funds are distributed or delivered in accordance with written instructions signed by all parties to the transaction.

(5) All licensees must keep the party to whom they provided brokerage services informed of the earnest money deposit status and must retain and provide copies of receipts to the principals and participating firms.

NEW SECTION

WAC 308-124D-210 Expeditious performance. A real estate licensee shall perform all acts required of the licensee by a real estate agreement as expeditiously as possible. Intentional or negligent delays in such performance shall be considered detrimental to the public interest in violation of RCW 18.85.361(23).

NEW SECTION

WAC 308-124D-215 Management agreements and disclosures. (1) All properties managed by the firm must be supported by a written management agreement signed by the owner and designated broker and retained. The management agreement must state at a minimum:

(a) The firm's compensation;

(b) The type (i.e., apartments, industrial) and number of individual units in the project or square footage (if other than residential);

(c) Whether or not the firm is authorized to collect funds and disburse funds and for what purposes;

(d) Authorization, if any, to hold security deposits and the manner in which security deposits may be disbursed; and

(e) The frequency of furnishing summary statements to the owner.

(2) All properties rented or leased by the firm must be supported by a written rental or lease agreement.

(3) Each owner of property managed by the firm must be provided a summary statement as provided in the property management agreement for each property managed showing: (The designated broker is to retain a true copy of this statement.)

(a) Balance carried forward from previous summary statement.

(b) Total rent receipts.

(c) Owner contributions.

(d) Other itemized receipts.

(e) Itemization of all expenses paid.

(f) Ending balance.

(g) Number of units rented or square footage if other than residential.

(4) The firm may provide other services to owners of properties managed provided full disclosure to the owner is provided in writing of the broker's relationship with any and all persons providing such services, prior disclosure of fees charged, and permission is granted by the owner.

(5) Any amendment or modification to the property management agreement must be made in written form and signed by the owner and the designated broker and retained.

NEW SECTION

WAC 308-124D-220 Office requirement for brokers actively licensed in another jurisdiction. The term "office" in RCW 18.85.180 for a broker actively licensed in another jurisdiction in which the broker's headquarter office is located shall mean the Washington location where trust account and transaction records are maintained. Such records are required to be maintained for three years. The trust account and transaction records shall be open and accessible to representatives of the department of licensing. The parties to the transaction shall have access to the transaction records prepared or retained for the requesting party.

A broker actively licensed in another jurisdiction seeking licensure in Washington, whose headquarter office is

located in that other jurisdiction, shall notify the department of the location address where the records are maintained in the state of Washington and shall include this address with the headquarter's address on the license application.

The Washington license shall be posted at the location where the records are being maintained.

Within thirty days after mailing of the notice of audit, the broker shall come to the department's office, after making an appointment, in the geographic location (Seattle or Olympia) nearest to the location of the records to sign the audit report.

If a real estate licensee actively licensed in another jurisdiction, whose headquarter office is located in that other jurisdiction, has obtained a Washington real estate license through a license recognition agreement, that licensee may maintain required Washington real estate transaction records in their out-of-state jurisdiction and with the out-of-state broker to whom they are licensed, providing it is allowed for in the license recognition agreement.

NEW SECTION

WAC 308-124D-225 Multiple business usage of office. A broker may conduct a real estate brokerage business at an office location where the broker concurrently conducts a separate, business activity. The brokerage business activities shall be carried out and business records shall be maintained separate and apart from any other business activities by the broker.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124D-010	Checks—Payee requirements.
WAC 308-124D-020	Negotiating agreements and closing.
WAC 308-124D-030	Expeditious performance.
WAC 308-124D-050	Property management agreements and disclosures.
WAC 308-124D-061	Broker supervision of affiliated licensees.
WAC 308-124D-070	Discriminatory acts—Prohibition.
WAC 308-124D-080	Payment of earned commissions.

CLIENT FUNDS

NEW SECTION

WAC 308-124E-100 Delivery of client funds, negotiable instruments and transaction documents. All brokers and managing brokers will deliver or transmit all transaction records and brokerage agreements; and physically deliver all funds, moneys, negotiable instruments or items of value to the appropriate managing broker, branch manager or their designated broker within the shorter of the following:

(1) Two business days of the client's/customer's signature (business days are not Saturday, Sunday or other legal holidays as defined in RCW 1.16.050); or

(2) Sooner if the terms of the client/customer contract necessitate quicker delivery than two business days.

NEW SECTION

WAC 308-124E-105 Administration of funds held in trust—General procedures. Any real estate broker who receives funds or moneys from any principal or any party to a real estate or business opportunity transaction, property management agreement, contract/mortgage collection agreement, or advance fees, shall hold the funds or moneys in trust for the purposes of the brokerage service contract or transaction, and shall not utilize such funds or moneys for the benefit of the broker, managing broker, real estate firm or any person not entitled to such benefit. Designated brokers are responsible for ensuring their affiliated licensees safeguard client funds by following these rules. Funds or moneys received in trust shall be deposited in a bank, savings association, or credit union insured by the Federal Deposit Insurance Corporation or the share insurance fund of the National Credit Union Administration, or any successor federal deposit insurer. The designated broker is responsible for the administration of trust funds and accounts to include, but not be limited to:

- Depositing;
- Holding;
- Disbursing;
- Receipting;
- Posting;
- Recording;
- Accounting to principals;
- Notifying principals and cooperating licensees of material facts; and
- Reconciling and properly setting up a trust account.

The designated broker is responsible for handling trust funds as provided herein.

(1) Bank accounts shall be designated as trust accounts in the firm name or assumed name as licensed.

(2) Interest credited to a client's account must be recorded as a liability on client ledger. Interest assigned or credited by written assignment agreement to the firm may not be maintained in the trust account. The designated broker is responsible for making arrangements with the financial institution to credit this interest to the general account of the firm.

(3) The designated broker shall establish and maintain a system of records and procedures approved by the real estate program that provides for an audit trail accounting of all funds received and disbursed. All funds must be identified to the account of each individual client.

(4) Alternative systems of records or procedures proposed by a designated broker shall be approved in advance in writing by the real estate program.

(5) The designated broker shall be responsible for deposits, disbursements, or transfers of clients' funds received and held in trust.

(6) All funds or moneys received for any reason pertaining to the sale, renting, leasing, optioning of real estate or business opportunities, contract or mortgage collections or advance fees shall be deposited in the firm's real estate trust bank account not later than the first banking day following receipt thereof; except:

(a) Cash must be deposited in the firm's trust account the next banking day;

(b) Checks received as earnest money deposits when the earnest money agreement states that a check is to be held for a specified length of time or until the occurrence of a specific event; and

(c) For purposes of this section, Saturday, Sunday, or other legal holidays as defined in RCW 1.16.050 shall not be considered a banking day.

(7) All checks, funds or moneys received shall be identified by the date received and by the amount, source and purpose on either a cash receipts journal or duplicate receipt retained as a permanent record.

(8) All deposits to the trust bank account shall be identified by the source of funds and transaction to which it applies.

(9) An individual client's ledger sheet shall be established and maintained for each client for whom funds are received in trust, which shows all receipts and disbursements. The firm will maintain the minimum amount required by the financial institution in the trust account to prevent the trust account from being closed. A ledger sheet identified as "opening account" will be required for funds that are used to open the account or to keep the trust account from being closed. The credit entries must show the date of deposit, amount of deposit, and item covered including, but not limited to "earnest money deposit," "down payment," "rent," "damage deposit," "rent deposit," "interest," or "advance fee." The debit entries must show the date of the check, check number, amount of the check, name of payee and item covered. The "item covered" entry may indicate a code number per chart of accounts, or may be documented by entry in a cash receipts journal, cash disbursements journal, or check voucher.

(10) The reconciled real estate trust bank account balance must be equal at all times to the outstanding trust liability to clients and the funds in the "open account" ledger. The balance shown in the check register or bank control account must equal the total liability to clients and the "open account" ledger.

(11) The designated broker shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account check register or bank control account. The checkbook balance, the reconciliation and the client ledgers (including the "open account" ledger) must be in agreement at all times. A trial balance is a listing of all client ledgers, including the "open account" ledger, showing the owner name or control number, date of last entry to the ledger and the ledger balance.

(12) All disbursements of trust funds shall be made by check, or electronic transfer, drawn on the real estate trust bank account and identified thereon to a specific real estate or business opportunity transaction, or collection/management agreement. The number of each check, amount, date, payee, items covered and the specific client's ledger sheet debited must be shown on the check stub or check register and all data must agree exactly with the check as written. No check numbers on any single trust account can be duplicated.

(a) No disbursement from the trust account shall be made based upon wire transfer receipts until the deposit has been verified.

(b) The designated broker must provide a follow-up "hard-copy" debit memo when funds are disbursed via wire transfer.

(c) The designated broker shall retain in the transaction file a copy of instructions signed by the owner of funds to be wire-transferred which identifies the receiving entity and account number.

(13) Voided checks written on the trust bank account shall be permanently defaced and shall be retained.

(14) Commissions owed to another firm may be paid from the real estate trust bank account. Those commissions shall be paid promptly upon receipt of funds. Commissions shared with another firm are a reduction of the gross commissions received.

(15) No deposits to the real estate trust bank account shall be made of funds:

(a) That belong to the designated broker or the real estate firm, except that a designated broker may deposit a minimal amount to open the trust bank account or maintain a minimal amount to keep the account from being closed; or

(b) That do not pertain to a client's real estate or business opportunity sales transaction or are not received in connection with a client's rental, contract or mortgage collection account.

(16) No disbursements from the real estate trust bank account shall be made:

(a) For items not pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account;

(b) Pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account in excess of the actual amount held in the real estate trust bank account in connection with that transaction or collection account;

(c) In payment of a commission owed to any person licensed to the firm or in payment of any business expense of the firm. Payment of commissions to persons licensed to the firm or of any business expense of the designated broker or firm shall be paid from the regular business bank account of the firm.

(d) For bank charges of any nature, including bank services, checks or other items, except as specified in WAC 308-124E-110 (1)(a) and (d). Bank charges are business overhead expenses of the real estate firm. Arrangements must be made with the bank to have any such charges applicable to the real estate trust bank account charged to the regular business bank account, or to provide a separate monthly statement of bank charges so that they may be paid from the firm's business bank account.

(17) The provisions of this chapter are applicable to manual or computerized accounting systems. For clarity, the following is addressed for computer systems:

(a) The system must provide for a capability to back up all data files.

(b) Receipt, check or disbursement registers or journals, bank reconciliations, and monthly trial balances will be maintained in printed or electronic formats and available for immediate retrieval or printing upon demand of the department.

(c) The designated broker will maintain a printed, dated source document file or index file to support any changes to existing accounting records.

NEW SECTION

WAC 308-124E-110 Administration of funds held in trust—Real estate and business opportunity transactions. The procedures in this section are applicable to funds received by the firm in connection with real estate sales, business opportunity transactions or options. These procedures are in addition to the requirements of the general trust account procedures contained in WAC 308-124E-105.

(1) Bank accounts, deposit slips, checks and signature cards shall be designated as trust accounts in the firm or assumed name as licensed. Trust bank accounts for real estate sales or business opportunity transactions shall be interest bearing demand deposit accounts. These accounts shall be established as described in RCW 18.85.285 and this section.

(a) The firm shall maintain a pooled interest-bearing trust account identified as housing trust fund account for deposit of trust funds which are ten thousand dollars or less.

Interest income from this account will be paid to the department by the depository institution in accordance with RCW 18.85.285(8) after deduction of reasonable bank service charges and fees, which shall not include check printing fees or fees for bookkeeping systems.

(b) The licensee shall disclose in writing to the party depositing more than ten thousand dollars that the party has an option between (b)(i) and (ii) of this subsection:

(i) All trust funds not required to be deposited in the account specified in (a) of this subsection shall be deposited in a separate interest-bearing trust account for the particular party or party's matter on which the interest will be paid to the party(ies); or

(ii) In the pooled interest-bearing account specified in (a) of this subsection if the parties to the transaction agree in writing.

(c)(i) For accounts established as specified in (a) of this subsection, the designated broker will maintain an additional ledger card with the heading identified as "Housing trust account interest." As the monthly bank statements are received, indicating interest credited, the designated broker will post the amount to the pooled interest ledger card. When the bank statement indicates that the interest was paid to the state or bank fees were charged, the designated broker will debit the ledger card accordingly.

(ii) For accounts established as specified in (b)(i) of this subsection, the interest earned or bank fees charged will be posted to the individual ledger card.

(d) When the bank charges/fees exceed the interest earned, causing the balance to be less than trust account liability, the designated broker shall within one banking day after receipt of such notice, deposit funds from the firm's business account or other nontrust account to bring the trust account into balance with outstanding liability. The designated broker may be reimbursed by the party depositing the funds for these charges for accounts established as specified in (b)(i) of this subsection if the reimbursement is authorized in writing by the party depositing the funds. For accounts established under (a) of this subsection, the designated broker will absorb the excess bank charges/fees as a business expense.

(2) A separate check shall be drawn on the real estate trust bank account, payable to the firm as licensed, for each commission earned, after the final closing of the real estate or business opportunity transaction. Each commission check shall be identified to the transaction to which it applies.

(3) No disbursements from the real estate trust bank account shall be made in advance of closing of a real estate or business opportunity transaction or before the happening of a condition set forth in the purchase and sale agreement, to any person or for any reason, without a written release from both the purchaser and seller; except that:

(a) If the agreement terminates according to its own terms prior to closing, disbursement of funds shall be made as provided by the agreement without a written release; and

(b) Funds may be disbursed to the escrow agent designated in writing by the purchaser and seller to close the transaction, reasonably prior to the date of closing in order to permit checks to clear.

(4) When a transaction provides for the earnest money deposit/note or other instrument to be held by a party other than the firm, a broker shall deliver the deposit to the designated broker or responsible managing broker. The designated broker will have the ultimate responsibility to deliver the funds. A dated receipt from the party receiving the funds will be obtained and placed in the transaction file.

NEW SECTION

WAC 308-124E-115 Administration of funds held in trust—Property management. These procedures are applicable to property management and contract/mortgage collection agreements, and are in addition to the general trust account procedures in WAC 308-124E-105.

(1) Trust bank accounts for property management transactions are exempt from the interest-bearing requirement of RCW 18.85.285. However, interest-bearing accounts for property management transactions may be established as described in this section.

(a) Interest-bearing trust bank accounts or dividend-earning investment accounts containing only funds held on behalf of an individual owner of income property managed by the firm may be established when directed by written property management agreement or directive signed by the owner: Provided, That all interest or earnings shall accrue to the owner;

(b) Interest-bearing trust bank accounts containing only damage or security deposits received from tenants of residential income properties managed by the firm for an individual owner may be established by the designated broker when

directed by written management agreement, and the interest on such trust bank accounts may be paid to the owner, if the firm is by written agreement designated a "representative of the landlord" under the provisions of RCW 59.18.270, Residential Landlord-Tenant Act;

(c) The designated broker is not required to establish individual interest-bearing accounts for each owner when all owners assign the interest to the firm;

(d) A common account, usually referred to as a "clearing account" may be established if desired. This account must be a trust account.

(2) Any property management accounting system is to be an accounting of cash received and disbursed. Any other method of accounting offered to owners for their rental properties, unit and/or complexes are to be supplementary to the firms accounting of all cash received and disbursed through the firms trust account(s). All owners' summary statements must include this accounting.

(3) The preauthorization of disbursements or deductions by the financial institution for recurring expenses such as mortgage payments on behalf of the owner is not permitted if the account contains tenant security deposits or funds belonging to more than one client.

(4) A single check may be drawn on the real estate trust bank account, payable to the firm as licensed, in payment of all property management fees and commissions, if such check is supported by a schedule of commissions identified to each individual client. Property management commissions shall be withdrawn at least once monthly.

(5) No disbursements from the real estate trust bank account shall be made of funds received as damage or security deposit on a lease or rental contract for property managed by the firm to the owner or any other person without the written agreement of the tenant, until the end of the tenancy when the funds are to be disbursed to the person or persons entitled to the funds as provided by the terms of the rental or lease agreement.

(6) When the management agreement between the owner(s) and the firm is terminated, the owner(s) funds shall be disbursed according to the agreement. Funds held as damage or security deposits shall be disbursed to the owner(s) or successor property manager, and the tenants so notified by the disbursing firm consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124E-012	Administration of funds held in trust—General procedures.
WAC 308-124E-013	Administration of funds held in trust—Real estate and business opportunity transactions.
WAC 308-124E-014	Administration of funds held in trust—Property management.

EDUCATION

NEW SECTION

WAC 308-124H-805 Course approval required. (1) Any education provider or course developer may submit a course to the department for approval.

(2) Course approval by the department is required prior to the date on which the course is offered for clock hour credit.

(3) Each application for approval of a course shall be submitted to the department on the appropriate application form provided by the department.

(4) The director or designee shall approve, disapprove, or conditionally approve applications based upon criteria established by the commission.

(5) Upon approval, disapproval or conditional approval, the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(6) Approval shall expire two years after the effective date of approval.

NEW SECTION

WAC 308-124H-810 Course titles reserved for prescribed curriculum courses. Any approved school desiring to offer fundamentals, business management, broker management, real estate law, advanced real estate law, real estate practices, advanced real estate practices, and/or transition course shall utilize the most recent course curriculum prescribed by the department, and shall include in its title the phrase "real estate fundamentals," "real estate brokerage management," "real estate law," "advanced real estate law," "business management," "real estate practices," "advanced real estate practices," or "transition course" if submitted for approval for clock hours. No other courses shall use these phrases in their titles.

NEW SECTION

WAC 308-124H-815 Application process for previously approved courses. (1) If there are no changes for a previously approved course in the course content or in the original course approval application or WAC 308-124H-820 affecting the topic areas or criteria for approval, the course will be approved upon receipt of a course renewal application and payment of the required fee for one renewal cycle only.

(2) If there are changes in course content or in the original course approval application for a previously approved course, other than updating for changes required by WAC 308-124H-850, the application will not be processed as a renewal, and will require completion of a course approval application and payment of the required fee.

(3) If a course renewal application or a course approval application is submitted at least thirty days prior to the current course expiration date, the previous course approval shall remain in effect until action is taken by the director.

NEW SECTION

WAC 308-124H-820 General requirements for course approval. Courses shall meet the following requirements:

(1) Be offered by a private entity approved by the director to operate as a school;

(2) Be offered by a tax-supported, public technical or community college or other institution of higher learning that certifies clock hours as indicated in RCW 18.85.011(5), consistent with the approval standards prescribed by the director and this chapter;

(3) Be offered by the Washington real estate commission;

(4) Have a minimum of three hours of course work or instruction for the student. A clock hour is a period of fifty minutes of actual instruction;

(5) Provide practical information related to the practice of real estate in any of the following real estate topic areas:

(a) Department prescribed curricula:

(i) Fundamentals;

(ii) Practices;

(A) Residential;

(B) Commercial;

(iii) Advanced practices;

(A) Residential;

(B) Commercial;

(iv) Real estate law;

(v) Advanced real estate law;

(vi) Brokerage management;

(vii) Business management;

(viii) Core curriculum;

(A) Residential;

(B) Commercial;

(C) Property management;

(b) Open curricula:

(i) Legal aspects;

(ii) Taxation;

(iii) Appraisal;

(iv) Evaluating real estate and business opportunities;

(v) Property management and leasing;

(vi) Construction and land development;

(vii) Ethics and standards of practice;

(viii) Real estate closing practices;

(ix) Current trends and issues;

(x) Principles/essentials;

(xi) Finance;

(xii) Hazardous waste and other environmental issues;

(xiii) Commercial;

(xiv) Real estate sales and marketing;

(xv) Instructor development;

(xvi) Consumer protection;

(xvii) Cross cultural communication;

(xviii) Advanced management practices;

(xix) Use of computers and/or other technologies as applied to the practice of real estate;

(6) Be under the supervision of an instructor approved to teach the topic area, who shall, at a minimum, be available to respond to specific questions from students on an immediate or reasonably delayed basis;

(7) The following types of courses will not be approved for clock hours:

(a) Mechanical office and business skills, such as, keyboarding, speed-reading, memory improvement, grammar, and report writing;

(b) Standardized software programs such as word processing, e-mail, spreadsheets or data bases; an example: A course using spreadsheet program to demonstrate investment analysis would be acceptable, but a course teaching how to use a spreadsheet would not be acceptable;

(c) Orientation courses for licensees, such as those offered by trade associations;

(d) Personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business;

(e) Courses that are designed or developed to serve other professions, unless each component of the curriculum and content specifically shows how a real estate licensee can utilize the information in the practice of real estate;

(f) Personal finance, etiquette, or motivational type courses;

(g) Courses that are designed to promote or offer to sell specific products or services to real estate licensees such as warranty programs, client/customer data base systems, software programs or other devices. Services or products can be offered during nonclock hour time, such as breaks or lunchtime. Letterhead, logos, company names or other similar markings by itself, on course material are not considered promotional;

(h) Clock hours will not be awarded for any course time devoted to meals or transportation;

(8) Courses of thirty clock hours or more which are submitted for approval shall include a comprehensive examination(s) and answer key(s) of no fewer than three questions per clock hour with a minimum of ninety questions, and a requirement of passing course grade of at least 70 percent; essay question examination keys shall identify the material to be tested and the points assigned for each question;

(9) Include textbook or instructional materials approved by the director, which shall be kept accurate and current;

(10) Not have a title which misleads the public as to the subject matter of the course;

(11) The provider's course application shall identify learning objectives and demonstrate how these are related to the practice of real estate;

(12) Courses offering the prescribed core curriculum shall meet the requirements of WAC 308-124A-800;

(13) Only primary providers shall be approved to teach the prescribed core curriculum; and

(14) Course providers offering core curriculum within a course exceeding three clock hours must clearly indicate in the application for approval where the core curriculum elements are met in the course.

NEW SECTION

WAC 308-124H-825 Secondary education provider course content approval application. (1) An approved school may offer courses, except for the mandated courses, that are currently approved for another education provider or

course developer provided a secondary provider course content approval application is submitted to the department;

(2) The applicant must also provide written authorization by the original education provider/developer permitting use of the course content by the applicant;

(3) A certificate of course approval will be provided to the secondary education provider;

(4) The applicant must use the course approval number issued by the department on all certificates of course completion;

(5) Course approval is valid only for the dates of the original education provider/course developer's approval; and

(6) Secondary provider course content approval applications may not be used for real state fundamentals, real estate brokerage management, real estate law, advanced real estate law, business management, real estate practices, advanced real estate practices, core course, or transition course.

NEW SECTION

WAC 308-124H-830 Distance education delivery methods—Defined. As used in this chapter, a distance education delivery method is one in which instruction takes place in other than a live classroom setting, the instructor and the student are in physically separate locations, and interactive instructional methods such as video-based instruction, computer conferencing, video conferencing, interactive audio, interactive computer software, web cast, webinar, or internet-based instruction are used.

NEW SECTION

WAC 308-124H-835 Interactive defined. (1) As used in this chapter, interactive means the course structure and technologies promote active student involvement with the course content, including the ability to:

(a) Access or bypass optional content, if applicable;

(b) Submit questions or answer test items, and receive direct feedback; and

(c) Communicate with the instructor and/or other students on an immediate or reasonably delayed basis.

(2) Interactive instruction specifically excludes courses that only provide passive delivery of instructional content.

NEW SECTION

WAC 308-124H-840 Distance education delivery method approval required. Applicants are required to submit an application for each separate distance education delivery method for which they propose to offer approved courses for clock hours. When submitting a distance education delivery method application, the following minimum criteria must be provided by the applicant:

(1) Specify the course learning objectives for each learning unit and clearly demonstrate that the learning objectives cover the subject matter and how these relate to the practice of real estate. Objectives must be specific to ensure that all content is covered adequately to ensure mastery;

(2) Demonstrate how mastery of the material is provided by:

(a) Dividing the material into major learning units, each of which divides the material into modules of instruction;

(b) Specifying learning objectives for each learning unit or module of instruction. Learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;

(c) Specifying an objective, quantitative criterion for mastery used for each learning objective and provide a structured learning method designed to enable students to attain each objective;

(3) Demonstrate that the course includes the same or reasonably similar informational content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction and how the provider will know that the student completed the required number of clock hours;

(4) Describe consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course learning objectives. The application must identify the interactive events included in the course and specify how the interactive events contribute to achievement of the stated learning objectives;

(5) Demonstrate how the course provides a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process;

(6) Measure, at regular intervals, the student's progress toward completion of the mastery requirement for each learning unit or module. In the case of computer-based instruction, the course software must include automatic shutdown after a period of inactivity;

(7) Demonstrate that approved instructors are available to answer questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, e-mail and fax;

(8) Demonstrate how reasonable security will be provided to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the approved school and the student must certify in writing that the student has completed the course, and the required number of clock hours;

(9) Provide a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the course material and an assessment of the availability and adequacy of the equipment, software, or other technologies to the achievement of the course's instructional claims;

(10) Provide an orientation session with the instructor or an affiliated representative of an approved school. Mechanisms must be clearly in place which allow students an early orientation to discuss course specifics;

(11) Demonstrate how the provider determined the number of clock hours requested in the distance education delivery method approval application; and

(12) Provide with each distance education delivery method approval application a copy of a course evaluation form. The provider must provide each student with the man-

datory evaluation form and retain the completed form in the school records as required under WAC 308-124H-895(4).

NEW SECTION

WAC 308-124H-845 Distance education delivery methods certified by the Association of Real Estate License Law Officials (ARELLO). An applicant who provides evidence of certification of the distance education delivery method for his or her course by the Association of Real Estate License Law Officials (ARELLO) need not submit an application for approval of the same distance education delivery method when delivering the same course within the state of Washington.

NEW SECTION

WAC 308-124H-850 Changes and updates in approved courses. (1) Course materials shall be updated no later than thirty days after the effective date of a change in federal, state, or local statutes or rules. Course materials shall also be updated no later than thirty days after changes in procedures or other revisions to the practice of real estate which affect the validity or accuracy of the course material or instruction.

(2) Changes in course instructors may be made only if the substitute instructors are currently approved to teach the topic area pursuant to chapter 308-124H WAC.

NEW SECTION

WAC 308-124H-855 Certificate of course completion. Each approved school shall issue a certificate of course completion to students who have satisfactorily completed the course requirements. The certificate shall include the following information:

(1) Student's name;

(2) School's name and identification number issued by the department;

(3) The course commencement date and completion date;

(4) Course title;

(5) Clock hours for the course;

(6) School administrator's signature;

(7) Course identification number issued by the department;

(8) Instructor name and number; and

(9) Completion of a required examination, if applicable.

NEW SECTION

WAC 308-124H-860 Courses offered in a symposium or conference format. (1) Approved schools offering courses in a symposium or conference format with two or more modules of independent instruction may issue certificates of course completion for fewer clock hours than approved by the department on their original course approval application; and

(2) Students must complete a minimum of three clock hours of instruction to receive clock hour credit.

NEW SECTION

WAC 308-124H-865 Disciplinary action—Procedures—Investigation. (1) The department shall have the authority on its own motion or upon complaint made to it to investigate or audit any course to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved courses should be made in writing to the department and contain the following information when appropriate:

(a) The complainant's name, address, and telephone number;

(b) School name, address, and telephone number;

(c) Instructor(s) name;

(d) Nature of complaint and facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, and any other pertinent information;

(e) An explanation of what efforts if any, have been taken to resolve the problem with the school; and

(f) Copies of pertinent documents, publications, and advertisements.

NEW SECTION

WAC 308-124H-870 Grounds for denial or withdrawal of course approval. Course approval may be denied or withdrawn if the instructor or any owner, administrator or affiliated representative of a school, or a course provider or developer:

(1) Submits a false or incomplete course application or any other information required to be submitted to the department;

(2) Includes in its title the phrase "real estate fundamentals," "real estate brokerage management," "real estate law," "advanced real estate law," "business management," "real estate practice," "advanced real estate practice," and "transition course" if the course was not submitted for approval of clock hours pursuant to WAC 308-124H-810;

(3) If the title of the course misleads the public and/or licensees as to the subject matter of the course;

(4) If course materials are not updated within thirty days of the effective date of a change in the statute or rules;

(5) If course content or material changes are not submitted to the department for approval prior to the date of using the changed course content;

(6) Failed to meet the requirements under WAC 308-124H-820, 308-124H-825, and 308-124H-840;

(7) If a course or prescribed core curriculum was approved through the mistake or inadvertence of the director.

NEW SECTION

WAC 308-124H-875 Hearing procedure. Upon notice of course denial or disapproval or withdrawal of course approval, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and the provisions of WAC 308-124-305, 308-124-310 and 308-124-315. To exercise the right to a hearing under this section, a person must request a hearing within

twenty days after receipt of the notice of denial, disapproval, or withdrawal of course approval. Any person aggrieved by a final decision of the director or authorized representative of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 308-124H-880 School and school administrator approval required. (1) School and school administrator approval by the department is required prior to the date on which courses are offered for clock hour credit.

(2) Each application for approval of a school or school administrator shall be submitted to the department on the appropriate application form provided by the department. The most recent application form shall be obtained from the department prior to submission.

(3) The director or designee shall approve or disapprove applications based upon criteria established by the commission. The director or designee shall approve only complete applications which meet the requirements of this chapter.

(4) Upon approval or disapproval the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(5) No school for which approval is required shall promote a course for clock hour credit prior to approval of the school.

(6) No school shall allow an instructor for whom approval is required to supervise a course for clock hour credit prior to approval of the instructor.

(7) No school shall issue to a student certification for completion of an approved course unless the course had been approved prior to the first day of instruction.

(8) Approval shall expire two years after the effective date of approval.

(9) School names submitted that are similar to those currently approved shall not be granted approval.

NEW SECTION

WAC 308-124H-885 Application process for previously approved schools. (1) If there are no changes in the original school or school administrator approval application for a previously approved school or school administrator, the school or school administrator will be approved upon receipt of a school or school administrator renewal application and payment of the required fee.

(2) If there are changes in the original school or school administrator approval application for previously approved schools or school administrators, the application will not be processed as a renewal, and will require completion of a school or school administrator approval application and payment of required fees.

(3) If a school or school administrator renewal application or a school or school administrator approval application is submitted at least thirty days prior to the current school expiration date, the previous school or school administrator approval shall remain in effect until action to approve or disapprove the application is taken by the director.

NEW SECTION

WAC 308-124H-890 Application for school approval. An application for school approval shall include the following information attested to by the school's administrator, who shall be responsible for administration of the school:

(1) The complete legal name of the school, current telephone number, current mailing address, the school's administrative office address, and date of establishment;

(2) The form of ownership of the school, whether sole proprietorship, partnership, limited partnership, or corporation, limited liability company or limited liability partnership;

(3) If the school is a corporation or a subsidiary of another corporation, current evidence of registration with the Washington secretary of state's office and the name, address, and telephone number of the corporation's registered agent;

(4) The administrator's name, and evidence of previous experience in administration of educational institutions, courses or programs, previous experience in the administration of business activities related to real estate, or administrative experience in the field of real estate;

(5) The publication required under WAC 308-124H-907 and the course description required under WAC 308-124H-910.

NEW SECTION

WAC 308-124H-895 Administrator responsibilities. Each school administrator shall be responsible for performing the following:

(1) Ensure that the school, course(s), and instructor(s) are all currently approved before offering clock hour courses;

(2) Ensure that all instructors are approved to teach in the appropriate topic area(s);

(3) Sign and verify all course completion certificates;

(4) Maintain all required records for five years, including attendance records, required publications, and course evaluations;

(5) Safeguard comprehensive examinations;

(6) Ensure the supervision and demonstrate responsibility for the conduct of employees and individuals affiliated with the school;

(7) Periodically review courses and advise department of content currency as required;

(8) Ensure each student is provided a course curriculum; and

(9) Ensure each student is provided a course evaluation form.

NEW SECTION

WAC 308-124H-900 Affiliated representative of an approved school—Defined—Tasks and duties described. (1) An affiliated representative of an approved school is the natural person employed by or associated with an approved real estate school, and who is authorized by the school administrator to perform the following tasks and duties:

(a) Conduct student orientation sessions;

(b) Provide technical and/or procedural advice regarding course requirements and program operations;

(c) Perform routine or periodic audits of student progress; and

(d) Perform other tasks delegated by the approved school administrator, not requiring the interpretation of course content or subject matter expertise.

(2) Responsibility for an affiliated representative in the performance of the tasks and duties described above shall rest with the approved school administrator.

NEW SECTION

WAC 308-124H-905 Notice of actions by governmental entities or accrediting commissions. School applicants and approved schools shall present the department with written details of any consent orders with the Federal Trade Commission or other jurisdictions and any final actions which have been taken against the school, its administrator, its owners, officers, or directors by any federal or state agencies, including courts or accrediting commissions, of which the school has knowledge and inform the department in writing of actions being taken to correct deficiencies cited. Directors, officers, and owners shall advise the administrator of any such actions taken against the directors, officers, or owners. School applicants and approved schools shall not purposely avoid gaining knowledge of such actions. Final actions shall not include traffic violations or traffic convictions.

NEW SECTION

WAC 308-124H-907 Required publication. Each school shall have available to prospective and enrolled students a publication containing the following information:

(1) Date of publication;

(2) Name and address of school. The name of the administrator and telephone number(s) of the school's administrative offices;

(3) A list of courses, as outlined in WAC 308-124H-910;

(4) Description of all course prerequisites;

(5) The school's policy regarding:

(a) Admission procedure;

(b) Causes for dismissal and conditions for readmission;

(c) Attendance requirements, leave, absences, makeup work, and tardiness;

(d) Standards of progress required of the student, including a definition of the grading system of the school, the minimum grades considered satisfactory, and the conditions for reentrance for those students whose course of study is interrupted;

(e) Refund policy of registration or tuition fees, record retrieval fee, or any other charges, including procedures a student shall follow to cancel enrollment before or after instruction has begun.

(6) The statement that: "This school is approved under chapter 18.85 RCW; inquiries regarding this or any other real estate school may be made to the: Washington State Department of Licensing, Real Estate Program, P.O. Box 9015, Olympia, Washington 98507-9015";

(7) Dated supplements or errata sheets so as to maintain accuracy of the information in the publication, which shall clearly indicate that such information supersedes that which it contradicts and/or replaces elsewhere in the publication.

NEW SECTION

WAC 308-124H-910 Course description. Each approved school shall have available for distribution to prospective and enrolled students a course description containing the following information:

(1) Name of approved school;

(2) Date(s) and location of the course;

(3) The course title;

(4) The educational objectives of the course;

(5) The type of instruction (e.g., live classroom or distance education) in the course and the length of time required for completion;

(6) The number of clock hours approved for the course, or, a statement that an application for approval is pending;

(7) Name(s) of instructors when available;

(8) Equipment and supplies which the student must provide;

(9) Fees for the course;

(10) The specific education requirements under chapter 18.85 RCW or chapter 308-124H WAC which will be met upon completion of the course students shall be informed, that for courses of thirty clock hours or more, a comprehensive examination is available and is mandatory to satisfy the requirements of RCW 18.85.101 and 18.85.111;

(11) Cancellation policy; and

(12) Tuition refund policy.

NEW SECTION

WAC 308-124H-915 Certificate of school approval. Upon approval a school shall be issued a certificate of approval containing the school's name, address, identification number, date of approval, and name of administrator. No school shall adopt or make a change in its name of its administrative office prior to receipt of a new certificate from the department.

NEW SECTION

WAC 308-124H-920 Disciplinary action—Procedures—Investigation. (1) The department shall have the authority, on its own motion or upon complaint made to it, to investigate or audit any school to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved schools should be made in writing to the department.

(3) All approved schools shall be subject to periodic visits by an official representative for the department who may observe classroom and distance education activities, evaluate course content, exams and instructor proficiency to ensure that courses are being taught in accordance with the provisions of this chapter.

NEW SECTION

WAC 308-124H-925 Grounds for denial or withdrawal of school or school administrator approval. Approval may be denied or withdrawn if the instructor or any owner, administrator, or affiliated representative of a school:

(1) Has had any disciplinary action taken against his/her professional license in this or any other jurisdiction;

(2) Falsified any student records or clock hour certificates;

(3) Falsified any application or any other information required to be submitted to the department;

(4) Attempted in any manner to discover, or to impart to any license candidate, the content of and/or answer to any real estate license examination question(s);

(5) Violated any provision in chapter 18.85 RCW or the rules promulgated thereunder;

(6) Failed to cooperate with the department in any investigation or hearing;

(7) Has been convicted of a crime within the preceding ten years;

(8) Violated any of the provisions of any local, state, or federal antidiscrimination law;

(9) Continued to teach or offer any real estate subject matter whereby the interests of the public are endangered, after the director, by order in writing, stated objections thereto;

(10) Offered, sold, or awarded any clock hours without requiring the student to successfully complete the clock hours for which the course was approved;

(11) Accepted registration fees and not supplied the service and/or failed to refund the fees within thirty days of not supplying the service;

(12) Represented in any manner that the school is associated with a "college" or "university" unless it meets the standards and qualifications of and has been approved by the state agency having jurisdiction;

(13) Represented that a school is recommended or endorsed by the state of Washington or by the department, provided that a school authorized to offer clock hours under this chapter may state: "This school is approved under chapter 18.85 RCW";

(14) Advertised, published, printed, or distributed false or misleading information;

(15) Advertised the availability of clock hour credit for a course in any manner without affixing the name of the school as approved by the department;

(16) Solicited, directly or indirectly, information from applicants for a real estate license following the administration of any real estate examination to discover the content of and/or answer to any examination question or questions;

(17) Has failed to meet the requirements of this chapter;

(18) Failed to teach a course consistent with the approved course content or curriculum;

(19) Used a substitute instructor who has not been approved to teach the topic area(s) pursuant to chapter 308-124H WAC.

NEW SECTION

WAC 308-124H-930 Hearing procedure. Upon notice of disapproval or issuance of charges, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and the provisions of WAC 308-124-305, 308-124-310 and 308-124-315. To exercise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of disapproval or charges. Any person aggrieved by a final decision of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 308-124H-935 Record retention. (1) Each school shall maintain for a minimum of five years each student's record and each edition of a required publication;

(2) A "student record" shall include:

(a) The name, address, and telephone number of the school;

(b) Full name, address, and telephone number of the student;

(c) Beginning and ending dates of attendance and date of registration agreement if the refund policy relates to the registration date;

(d) Clock hour courses completed and examination results;

(e) Course evaluation form.

(3) Each school shall provide a copy of a student's record to the student upon request.

NEW SECTION

WAC 308-124H-940 School closing/change of status. (1) A school shall make plans and take measures to protect the rights of present and former students if it goes out of business.

(2) Upon cessation of instruction or termination of approved status, a school shall immediately furnish to the department by certified mail or hand delivery:

(a) Its certificate of approval;

(b) Name, address, and telephone number of the person who will be responsible for closing arrangements;

(c) The student's name, address and telephone number, the name of the course, the amount of class time remaining to complete the course, and the total amount of tuition and fees paid by the student for the course;

(d) A copy of a written notice which shall be mailed to all enrolled students in clock hour courses who have not completed a current course because of cessation of instruction; the notice shall explain the procedures students must follow to secure refunds or to continue their education;

(e) Procedures for disbursement of refunds to enrolled students, in the full amount to which they are entitled, no later than thirty days from the last day of instruction.

(3) Upon closing, a school shall arrange for a person approved by the department to retain the records required under WAC 308-124H-935. If a school closes without

arranging for record retention, the department may obtain the records to protect the former students.

NEW SECTION

WAC 308-124H-945 Instructor approval required. (1) Instructor approval by the department is required prior to the date on which the course is offered for clock hour credit.

(2) Each application for approval of an instructor shall be submitted to the department on the appropriate application form provided by the department.

(3) The director or designee shall approve or disapprove instructor applications based upon criteria established by the commission.

(4) The director or designee shall approve only complete applications which meet the requirements of this chapter.

(5) Upon approval or disapproval the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(6) Approval shall expire two years after effective date of approval.

(7) Applicants shall identify on the application form the specific subject matter topic area or areas he or she proposes to teach.

NEW SECTION

WAC 308-124H-950 Application process for previously approved instructors. (1) If there are no changes in the original instructor approval application for a previously approved instructor, the instructor will be approved upon receipt of an instructor renewal form and payment of the required fee.

(2) If there are changes in an original instructor approval application for a previously approved instructor, the application will not be processed as a renewal, and will require completion of an instructor approval application and payment of required fees.

(3) If an instructor renewal application or an instructor approval application is submitted at least thirty days prior to the current instructor expiration date, the previous instructor approval shall remain in effect until action to approve or disapprove the application is taken by the director.

NEW SECTION

WAC 308-124H-955 Certificate of instructor approval. Upon approval an instructor shall be issued a certificate of approval containing the instructor's name, date of approval, department identification number, and the subject matter topic areas that the instructor is approved to teach.

NEW SECTION

WAC 308-124H-960 Qualifications of instructors. Each instructor shall demonstrate competency based on guidelines established by the commission in the subject matter/topic that they propose to teach and shall be qualified in techniques of instruction. Instructor qualifications in techniques of instruction shall be evidenced by one of the following:

(1) One hundred fifty classroom hours as an instructor within two years preceding application in courses acceptable to the director;

(2) Possession of the professional designation, DREI, from the Real Estate Educators Association (REEA);

(3) Successful completion of an instructor training course approved by the director upon recommendation of the commission and two years full-time experience in real estate or a related field within the five years immediately preceding the date of application;

(4) A bachelors or advanced degree in education and either two years teaching experience, or two years experience in real estate or a related field within the last five years;

(5) A current teaching certificate issued by an authorized governmental agency. The instruction must have been in a field allied to that which the instructor has applied to teach;

(6) At least ninety clock hours as an instructor in real estate within two years preceding the application;

(7) Ninety hours as an instructor at an institution of higher learning within two years preceding the application. The instruction must have been in a field allied to that which the instructor has applied to teach;

(8) Selection by a national or state association whose selection criteria have been approved by the director.

NEW SECTION

WAC 308-124H-965 Changes in instructors. Changes in course instructors may be made only if the substitute instructors are currently approved to teach the course pursuant to WAC 308-124H-525.

NEW SECTION

WAC 308-124H-970 Guest lecturer(s)—Defined. A topic area expert(s) may be utilized as a guest lecturer to assist an approved instructor teach an approved course. The approved instructor is responsible for supervision of the approved course. Guest lecturer(s) shall not be utilized to circumvent the instructor approval requirements of this chapter.

NEW SECTION

WAC 308-124H-975 Disciplinary action—Procedures—Investigation. (1) The department shall have the authority, on its own motion or upon complaint made to it, to investigate or audit any instructor to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved instructors should be made in writing to the department.

(3) All approved instructors shall be subject to periodic visits by an official representative of the department who shall observe classroom activities, evaluate course content and instructor proficiency to ensure that courses are being taught in accordance with the provisions set forth.

NEW SECTION

WAC 308-124H-980 Grounds for denial or withdrawal of instructor approval. Approval may be denied or withdrawn if the instructor:

(1) Has had any disciplinary action taken against his/her professional license in this or any other jurisdiction;

(2) Falsified any student records or clock hour certificates;

(3) Falsified any application or any other information required to be submitted to the department;

(4) Attempted in any manner to discover, or to impart to any license candidate, the content of and/or answer to any real estate license examination question(s);

(5) Violated any provision in chapter 18.85 RCW or the rules promulgated thereunder;

(6) Failed to cooperate with the department in any investigation or hearing;

(7) Has been convicted of a crime;

(8) Violated any of the provisions of any local, state, or federal antidiscrimination law;

(9) Continued to teach or offer any real estate subject matter whereby the interests of the public are endangered, after the director, by order in writing, stated objections thereto;

(10) Offered, sold, or awarded any clock hours without requiring the student to successfully complete the clock hours which the course was approved;

(11) Accepted registration fees and not supplied the service or failed to refund the fees within thirty days of not supplying the service;

(12) Represented in any manner that the school is associated with a "college" or "university" unless it meets the standards and qualifications of and has been approved by the state agency having jurisdiction;

(13) Represented that a school is recommended or endorsed by the state of Washington or by the department, provided that a school authorized to offer clock hours under this chapter may state: "This school is approved under chapter 18.85 RCW";

(14) Advertised, published, printed, or distributed false or misleading information;

(15) Solicited, directly or indirectly, information from applicants for a real estate license following the administration of any real estate examination to discover the content of and/or answer to any examination question or questions;

(16) Has failed to meet the requirements of this chapter;

(17) Failed to teach a course consistent with the approved course content or curriculum.

NEW SECTION

WAC 308-124H-985 Hearing procedure. Upon notice of disapproval or issuance of charges, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and the provisions of WAC 308-124-305, 308-124-310, and 308-124-315. To exercise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of disapproval or charges. Any person aggrieved by a final decision of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 308-124H-990 Real estate course, school, and instructor approval fees. (1) The following fees shall be charged for applications for approval of real estate courses, schools, and instructors. An application fee shall accompany each application. Approval, if granted, shall be two years from the date of approval. Applications submitted and disapproved may be resubmitted at no additional fee.

(2) Application for course content approval - a fee of five dollars per clock hour credit being offered, with a minimum fee of fifty dollars per course. Except, the application fee for approval of the sixty clock hour course in real estate fundamentals shall be one hundred fifty dollars.

(3) Application for school approval - a fee of two hundred fifty dollars.

(4) Application for instructor approvals:

(a) Approval to teach a specific course on one occasion - a fee of fifty dollars;

(b) Approval to teach as many subject areas as requested at time of initial application - a fee of seventy five dollars. Approval shall be for two years from the approval date;

(c) Approval to teach additional subject area(s) not requested at time of initial application or renewal - a fee of twenty-five dollars for each application to teach additional subject area(s). Approval, if granted, shall be for remainder of two year approval period. Applications submitted under (a), (b) and (c) of this section and disapproved may be resubmitted at no additional fee.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124H-011	Course approval required.
WAC 308-124H-012	Course titles reserved for prescribed curriculum courses.
WAC 308-124H-013	Application process for previously approved courses.
WAC 308-124H-014	Establishing time frame for approval of core curriculum.
WAC 308-124H-025	General requirements for course approval.
WAC 308-124H-026	Secondary education provider course content approval application.
WAC 308-124H-027	Distance education delivery methods—Defined.
WAC 308-124H-028	Interactive—Defined.
WAC 308-124H-029	Distance education delivery method approval required.

WAC 308-124H-031	Distance education delivery methods certified by the Association of Real Estate License Law Officials (ARELLO).
WAC 308-124H-034	Courses completed in other jurisdictions.
WAC 308-124H-039	Changes and updates in approved courses.
WAC 308-124H-041	Certificate of course completion.
WAC 308-124H-042	Courses offered in a symposium or conference format.
WAC 308-124H-051	Disciplinary action—Procedures—Investigation.
WAC 308-124H-061	Grounds for denial or withdrawal of course approval.
WAC 308-124H-062	Hearing procedure.
WAC 308-124H-210	School and school administrator approval required.
WAC 308-124H-221	Application process for previously approved schools.
WAC 308-124H-230	Application for school approval.
WAC 308-124H-245	Administrator responsibilities.
WAC 308-124H-246	Affiliated representative of an approved school—Defined—Tasks and duties described.
WAC 308-124H-250	Notice of actions by governmental entities or accrediting commissions.
WAC 308-124H-260	Required publication.
WAC 308-124H-270	Course description.
WAC 308-124H-280	Certificate of school approval.
WAC 308-124H-290	Change of ownership or circumstances.
WAC 308-124H-300	Disciplinary action—Procedures—Investigation.
WAC 308-124H-310	Grounds for denial or withdrawal of school or school administrator approval.
WAC 308-124H-320	Hearing procedure.
WAC 308-124H-330	Record retention.
WAC 308-124H-340	School closing/change of status.
WAC 308-124H-510	Instructor approval required.
WAC 308-124H-525	Application process for previously approved instructors.
WAC 308-124H-530	Certificate of instructor approval.
WAC 308-124H-540	Qualifications of instructors.
WAC 308-124H-550	Changes in instructors.
WAC 308-124H-551	Guest lecture(s) [lecturer(s)]—Defined.
WAC 308-124H-560	Disciplinary action—Procedures—Investigation.
WAC 308-124H-570	Grounds for denial or withdrawal of instructor approval.
WAC 308-124H-580	Hearing procedure.
WAC 308-124H-800	Real estate course, school, and instructor approval fees.

WSR 10-06-083
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed March 1, 2010, 10:13 a.m., effective April 1, 2010]

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

Purpose: The purpose of this rule is to clarify the director's discretion for incurred losses on claims with vocational plans. RCW 51.32.0991 provides for a reduction in incurred losses at the director's discretion, if a worker with a vocational plan had a prior vocational plan approved in 2008 or later, and the worker was performing in medically restricted activities when injured. The statute expires June 30, 2013. The rule clarifies when the director's discretion can no longer be granted based on the sunset language of the statute and how it is applied to an accident year's incurred losses for experience rating purposes.

Citation of Existing Rules Affected by this Order: New section WAC 296-17-871 Director's discretion for incurred losses on claims with vocational plans.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100.

Other Authority: Title 51 RCW.

Adopted under notice filed as WSR 09-21-101 on October 20, 2009.

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

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

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

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

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

Date Adopted: March 1, 2010.

Judy Schurke
Director

NEW SECTION

WAC 296-17-871 Director's discretion for incurred losses on claims with vocational plans. The incurred losses charged to an employer's experience rating can be reduced, at the director's discretion, for the vocational costs paid under RCW 51.32.099 (3)(d) for retraining and time-loss benefits paid for the retraining period. The director can reduce the incurred losses when:

• The worker had a vocational plan approved after December 31, 2007, on a previous Washington state industrial insurance claim; and

• The injury or occupational disease for the present claim resulted from employment and work-related activities beyond the worker's documented restrictions from the earlier claim.

• The director's decision was made on or before June 30, 2013.

When a claim's incurred losses are reduced by this section, the reduced losses will be used for experience rating and retrospective rating calculations.

WSR 10-06-086
PERMANENT RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)

[Filed March 1, 2010, 2:02 p.m., effective April 1, 2010]

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

Purpose: WAC 246-935-400 through 246-935-440, adding a new section defining nondiscretionary functions used in preparation, and administration of, legend drugs, nonlegend drugs and controlled substances associated with the practice of veterinary medicine which may be delegated to a licensed veterinary technician by a licensed veterinarian.

Statutory Authority for Adoption: RCW 18.92.030, 18.92.013.

Adopted under notice filed as WSR 10-01-063 on December 10, 2009.

A final cost-benefit analysis is available by contacting Judy Haenke, P.O. Box 47852, Olympia, WA 98504, phone (360) 236-4947, fax (360) 236-2901, e-mail judy.haenke@doh.wa.gov.

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

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

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

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

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

Date Adopted: March 1, 2010.

Timothy D. Gintz, DVM, Chair
Veterinary Board of Governors

PREPARATION AND ADMINISTRATION OF LEGEND DRUGS, NONLEGEND DRUGS AND CONTROLLED SUBSTANCES

NEW SECTION

WAC 246-935-400 Citation and purpose. As provided in RCW 18.92.013, the purpose of WAC 246-935-400 through 246-935-440, unless the context clearly requires otherwise, is to define and clarify nondiscretionary functions used in preparing, and administration of, legend drugs, nonlegend drugs, and controlled substances that may be delegated by a veterinarian to a licensed veterinary technician. The supervising veterinarian shall have legal responsibility for the health, safety, and welfare of the animal patient which the licensed veterinary technician serves. The supervising veterinarian shall delegate animal health care tasks only if the licensed veterinary technician is qualified to perform the task and the task is not precluded by the medical condition of the animal patient.

NEW SECTION

WAC 246-935-410 Definitions. The definitions in this section apply throughout WAC 246-935-400 through 246-935-440 unless the context clearly requires otherwise.

"Administer" means the direct application of a drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient.

"Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board of pharmacy rules.

"Deliver" or **"delivery"** means the actual, constructive, or attempted transfer from one person to another of a legend drug or controlled substance, whether or not there is an agency relationship.

"Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

"Preparing" includes the proper selection, measuring, labeling, or packaging necessary to prepare a prescription or order from a licensed veterinarian for delivery.

NEW SECTION

WAC 246-935-420 Delegated nondiscretionary functions used in preparing, and the administration of, legend drugs, nonlegend drugs and controlled substances. Nondiscretionary functions, tasks or actions used in preparing, and the administration of, legend drugs, nonlegend drugs and controlled substances, delegated orally or in writing by the supervising veterinarian to the licensed veterinary technician are:

- Accessing the drug;
- Selecting the appropriate quantity;
- Packaging and labeling of the drug;
- Administering the drug to the animal patient; and
- Delivery of the drug to the owner or authorized agent.

NEW SECTION

WAC 246-935-430 Controlled substance storage and records. (1) Under WAC 246-933-320, it is the responsibility of a licensed veterinarian to assure that:

(a) All controlled substances are maintained in a locked cabinet or other suitable secure container according to federal and Washington state laws;

(b) Controlled substance records are readily retrievable, according to federal and Washington state laws. Records shall be maintained in sufficient detail to account for the receipt, use, and disposition of all controlled substances.

(2) A licensed veterinary technician shall ensure that proper storage and records of controlled substances are maintained during the performance of delegated functions related to controlled substances.

NEW SECTION

WAC 246-935-440 Maintenance of patient medical records. The licensed veterinary technician shall include sufficient information in the patient medical record to document the care and treatment provided by the licensed veterinary technician. The records relating to delegated nondiscretionary functions used in preparing, and the administration of, legend drugs, nonlegend drugs and controlled substances shall, at a minimum, include dosage and route of the drugs prepared, administered, or delivered in response to a prescription or order from a licensed veterinarian.

WSR 10-06-090
PERMANENT RULES
WHATCOM COMMUNITY COLLEGE
[Filed March 1, 2010, 3:55 p.m., effective April 1, 2010]

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

Purpose: To amend sections of chapter 132U-120 WAC, Student complaints procedure.

Citation of Existing Rules Affected by this Order: Repealing x [WAC 132U-120-270, 132U-120-285, 132U-120-320 and 132U-120-330]; and amending x [WAC 132U-120-260].

Statutory Authority for Adoption: RCW 28B.50.130.

Adopted under notice filed as WSR 10-01-139 on December 21, 2009.

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

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

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

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

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

Date Adopted: February 5, 2010.

Patricia Onion
Vice-President of
Educational Services

STUDENT COMPLAINTS ((~~PROCEDURE~~))

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/12/03)

WAC 132U-120-260 Purpose. ((~~The purpose of this procedure is to:~~

~~• Protect each student's freedom of expression in the learning environment;~~

~~• Protect each student from improper, arbitrary or capricious academic evaluations (grades) or actions made by an instructor;~~

~~• Offer each student reasonable protection against arbitrary or capricious actions taken by college officials;~~

~~• Provide a mechanism for students to express concerns in an effort to improve the learning environment.~~

~~The emphasis of this procedure is on informal resolution of the complaint. Most differences are best resolved by direct, courteous, and respectful communication. Formal complaints, which involve hearings before the student rights and responsibilities committee, should be rare.~~)) Whatcom Community College is committed to providing quality service to students, including providing accessible services, accurate information, and equitable and fair application of policies and procedures, including evaluation of class performance, grading, and rules and regulations for student participation in college activities and student conduct. The college procedures pertaining to student complaints are delineated in the Whatcom Community College policy and procedures manual and published on the college web site.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132U-120-270	Complaints excluded.
WAC 132U-120-285	Time limits.
WAC 132U-120-320	Withdrawal of complaint.
WAC 132U-120-330	Administrative, faculty and staff grievances.

WSR 10-06-092
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed March 2, 2010, 7:27 a.m., effective April 2, 2010]

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

Purpose: The department of licensing is revising chapter 308-20 WAC for the cosmetology, barbering, manicuring and esthetics professions. Changes to the rules clarify language for monthly student reports, instructor-trainees, reciprocity and school inspections and renewals.

WAC 308-20-010 Definitions, subsection (2) adds language to the existing rule to include that the monthly student report must include the month and year.

WAC 308-20-040 Student records, subsection (1) adds language to the existing rule to include that each monthly student report shall include the month and the year. Subsection (4) adds language to the existing rule to include that schools shall maintain student records on the school premises.

WAC 308-20-107 Use and training of instructor-trainees, subsection (2) adds language to the existing rule to include that instructor-trainees shall hold a current Washington state cosmetology, barber, manicurist or esthetician license "in good standing" prior to becoming an instructor-trainee.

WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions, subsection (4) adds language to the existing rule to include that the department shall issue a license to any person who provides proof that he or she has passed an examination approved by the director. Removes "approved examinations with the minimum passing score approved by the director."

WAC 308-20-120 Written and performance examinations, removes subsection (2) that specifies the National Interstate Council of State Boards of Cosmetology (NIC) examinations as the approved written and performance examinations required for applicants.

WAC 308-20-572 Preinspection of schools, changes the section title to inspection of schools. Subsection (1) adds language to existing rule to include that prior to approval of "application or renewal" for licensure, any person wishing to operate a school shall submit to an inspection of the site.

WAC 308-20-575 School license renewal process, adds language to include that a site inspection shall accompany the renewal request for schools.

Citation of Existing Rules Affected by this Order: Amending WAC 308-20-010, 308-20-040, 308-20-107, 308-20-115, 308-20-120, 308-20-572, and 308-20-575.

Statutory Authority for Adoption: RCW 43.24.086 and 18.16.030.

Adopted under notice filed as WSR 10-03-094 on January 20, 2010.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: March 2, 2010.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

WAC 308-20-010 Definitions. (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the month, year and daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the Washington state apprenticeship and training committee, that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received journey level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Journey level training" is the completion of three years working as a licensed cosmetologist, barber, manicurist or esthetician.

(7) "Completion of the apprenticeship training" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080.

(8) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with the shop name, for use in recording apprentice training hours and activities.

AMENDATORY SECTION (Amending WSR 04-05-005, filed 2/6/04, effective 3/8/04)

WAC 308-20-040 Student records. (1) Schools shall collect and record monthly and final student reports. These reports as described in WAC 308-20-010 shall contain the cumulative number of hours the student has attended class and the number of times the student performs an activity as described in WAC 308-20-080. The hours attended shall not be recorded in less than one-quarter hour increments. Each monthly report shall include the month and the year.

(2) Monthly and final student reports shall be signed by either the school owner, school manager or a person the school has authorized to sign the student reports.

(3) The school shall certify to the department that the student has satisfied the minimum instruction guidelines described in WAC 308-20-080 on the student's license examination application. Certification shall be by a person authorized to sign student reports according to subsection (2) of this section.

(4) Schools shall maintain student records on the school premises for at least three years. The student records shall include documentation of student training.

(5) The school shall notify the department of the persons authorized to sign student records.

(6) Weekly reports provided by salon/shops verifying hours student earns in salon training must be included in student's records and recorded on student's monthly and final reports.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

WAC 308-20-107 Use and training of instructor-trainees. (1) Instructor-trainees shall be supervised by a licensed instructor. The licensed instructor shall be physically present where the instructor-trainee is working and be available for consultation with the instructor-trainee.

(2) Instructor-trainees shall hold a current Washington state cosmetology, barber, manicurist or esthetician license in good standing prior to becoming an instructor-trainee.

AMENDATORY SECTION (Amending WSR 06-02-048, filed 12/29/05, effective 2/1/06)

WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions. The department shall issue a license to any person who is properly licensed in any state, territory, or possession of the United States, or foreign country if the applicant submits:

(1) Application;

(2) Fee;

(3) Proof that he or she is currently licensed in good standing as a cosmetologist, barber, manicurist, esthetician, instructor, or the equivalent in that jurisdiction;

(4) Provides proof that he or she has passed an examination approved by the director ((~~approved examinations with the minimum passing score approved by the director~~)).

AMENDATORY SECTION (Amending WSR 06-02-048, filed 12/29/05, effective 2/1/06)

WAC 308-20-120 Written and performance examinations. (1) The department shall administer or approve the administration of a written and performance license examination. The department may approve written or performance examinations given by department-approved examination providers.

(2) ((~~The director adopts the National Interstate Council of State Boards of Cosmetology (NIC) examinations as the approved written and performance examinations required for applicants.~~

~~(3)~~)) The written and performance examinations for cosmetologist, barber, manicurist and esthetician shall reasonably measure the applicant's knowledge of safe and sanitary practice.

((~~(4)~~)) (3) The written and performance examinations for instructors shall be constructed to measure the applicant's knowledge of lesson planning and teaching techniques.

((~~(5)~~)) (4) In order to be eligible for licensure, a license applicant must pass both the written and performance examinations in the practice for which they are applying.

((~~(6)~~)) (5) The minimum passing score for both the written and performance examinations in all practices is a scaled score of 75.

AMENDATORY SECTION (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

WAC 308-20-572 ((~~Preinspection~~)) Inspection of schools. (1) Prior to approval of application or renewal for licensure, any person wishing to operate a school shall((~~, before opening a school~~)), meet the requirements in RCW 18.16.140; submit to ((~~a preinspection~~)) an inspection of the site; and provide the following:

(a) Name of owner and current mailing and physical address if solely owned.

(b) Names of partners and current mailing and physical addresses if a partnership.

(c) Names of corporate officers and current mailing and physical addresses if a corporation.

(d) Name of the school, complete mailing address, and physical address.

(e) A signed fire inspection report from the local fire authority indicating all standards and requirements have been met.

(f) Listing of all instructors including license number and expiration date.

(g) Sample of monthly student reports.

(h) Sample of student packet to be provided to student at enrollment that must contain, but is not limited to, a copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies.

(i) Floor plan drawn to scale showing placement of all equipment; areas designated for the clinic, dispensary, classroom, office and restrooms; and identify student capacity.

(2) All locations shall pass a preinspection by a department representative by meeting the following requirements:

(a) An entrance sign designating the name of the school.

(b) A time clock or other equipment necessary for verification of attendance and hours earned.

(c) An adequate supply of hot and cold running water shall be available for school operation.

(d) Textbooks/teaching materials - textbooks shall be provided for each student in attendance.

(e) Lavatories with hot and cold running water.

(f) When a salon and school are under the same ownership in the same building, separate operation of the salon and the school must be maintained. Common reception areas and restrooms will be allowed; however, the salon and school must have separate entrances and meet location requirements identified in chapter 18.16 RCW.

(g) Emergency evacuation plans posted for staff and students.

(h) There must be a sufficient number of tables/desks and chairs to accommodate the registered students.

(i) Department of licensing safety and sanitation guidelines posted in all dispensaries and classrooms.

(j) Supplemental training space must be located within two miles of the original facility of the licensed school. These facilities must bear the same name as the original licensed school and it is only approved for theory and/or practice rooms. No clinic services shall be provided in additional facilities.

(k) Schools must post a sign that contains the words "work done exclusively by students" or "all work performed by students under supervision of a licensed instructor" in the reception or clinic area.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

WAC 308-20-575 School license renewal process. Each school shall be renewed on a yearly basis. In addition to the site inspection, the renewal request shall be accompanied by:

(1) Certification of annual gross tuition and surety bond in an amount equal to ten percent of the annual gross tuition, but not less than ten thousand dollars or more than fifty thousand dollars.

(2) Changes in curriculum, catalogs, brochures.

(3) Current list of instructors on forms provided by the department.

(4) Verification of current student/instructor ratio.

(5) Licenses must be renewed on or before the expiration date. Failure to renew the license by the expiration date shall result in a penalty.

(6) Failure to receive a notice of license renewal from the department does not constitute cause for failure to renew.

WSR 10-06-095

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 10-33—Filed March 2, 2010, 10:28 a.m., effective April 2, 2010]

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

Purpose: These rule amendments establish trip (catch) limits for anchovy, establish incidental allowances for other baitfish, limit the use of anchovy for purposes other than human consumption or fishing bait, and require commercial purchasers to indicate on fish receiving tickets the quantity in pounds of anchovy purchased for purposes other than human consumption. The rules are also amended to be consistent with federal rule 50 C.F.R. 660 Subpart I for the incidental allowance of sardine in forage fish fisheries. Finally, the rules are amended to eliminate obsolete fishing gear or opportunities not consistent with other state rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish, 220-69-240 Duties of commercial purchasers and receivers, 220-36-03001 Grays Harbor—Seasons and lawful gear—Forage fish, 220-33-060 Herring and anchovy, 220-44-020 Ocean forage fish, and 220-40-030 Willapa Bay—Forage fish.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 09-23-116 on November 18, 2009.

Changes Other than Editing from Proposed to Adopted Version: The proposed text found under "Landing limitations" in WAC 220-36-03001, 220-44-020 and 220-40-030, and under "General" in WAC 220-33-060, used the word "or" in specifying the daily and weekly trip limits for anchovy. This created some confusion as to whether the intent was to allow either a daily limit or weekly limit. Since the intent is for both limits to apply, the word "or" was struck and replaced by "and."

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

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

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

Date Adopted: February 5, 2010.

Susan Yeager

for Miranda Wecker, Chair

Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 09-262, filed 12/23/09, effective 1/23/10)

WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish. (1) It shall be unlawful to take, fish for, possess or transport for any purpose fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the department.

(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.

(3) A person may fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	(*Hippoglossus stenolepis*)
Pacific herring (except as prescribed in WAC 220-49-020)	(*Clupea harengus pallasi*)
Anchovy (except as provided for in WAC 220-33-060, 220-36-03001, 220-44-020, and 220-40-030)	*(Engraulis mordax)*
Salmon	
Chinook	(*Oncorhynchus tshawytscha*)
Coho	(*Oncorhynchus kisutch*)
Chum	(*Oncorhynchus keta*)
Pink	(*Oncorhynchus gorbuscha*)
Sockeye	(*Oncorhynchus nerka*)
Masu	(*Oncorhynchus masu*)
((~~Pilchard~~)) Sardine	*(Sardinops sagax)*
Except as provided for in WAC 220-88C-040	

(4) It shall be unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(5) It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed, in a visible and legible manner, the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line, the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the cork line of the net, on which shall be marked in a visible, legible and permanent manner the name and gill-net license number of the fisher.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department. In addition, it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20', from August 15 through November 30, except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit such fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of fish or shellfish, whether taken within the jurisdiction of the state of Washington or beyond, or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for, possess, injure, kill, or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, injure, kill, destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun, any fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) A person may use a dip net or club in the landing of fish taken by personal-use angling, unless otherwise provided; and a person may use a gaff in the landing of tuna, halibut and dogfish, and a harpoon in the landing of halibut, in all catch record card areas.

(b)(i) A person may use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the fish or shellfish that are not going to be retained or are unlawful to possess.

(ii) It is unlawful under any circumstance to use a device that penetrates the body of a sturgeon whether legal to retain or not.

(c) A person may use a spear in underwater spear fishing, as provided for in WAC 220-56-160.

(d) A person may use a bow and arrow or spear to take carp, as provided for in WAC 220-56-280.

(e) A person may snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) A person may shoot halibut when landing them with a dip net, harpoon or gaff.

(12) It shall be unlawful to take or possess, for any purpose, any fish or shellfish smaller or larger than the lawful minimum or maximum size limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.

(13) It shall be unlawful to allow salmon or sturgeon or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

(14) Notwithstanding the exceptions listed in subsection (15) of this section, it shall be unlawful to possess, aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for said species.

(15) It is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species, except as follows:

(a) The food fish or shellfish have been legally taken for commercial purposes, are landed, and are properly accounted for on a completed fish receiving ticket.

(b) A person may possess, transport through the waters of the state, or land dressed sablefish as defined in WAC 220-16-330.

(c) A person may possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a legal commercial salmon troll fishery, provided that frozen Chinook salmon, dressed with the heads off, shall be 21 1/2 inches minimum; and frozen coho salmon, dressed with the heads off, shall be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.

(d) A person may possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements. All halibut must be landed with the heads on.

(e) A person may possess, transport through the waters of the Pacific Ocean, or land dressed lingcod as defined by WAC 220-16-330 when taken during a lawful commercial fishery.

(16) It shall be unlawful to possess for any purpose any fish or shellfish in excess of catch or possession limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.

(17) It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

(18) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

(19) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

(20) It shall be unlawful to test commercial fishing gear, except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances, in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts, and south of the international boundary, in waters 10 fathoms and deeper during times not under control of the Pacific Salmon Commission.

(c) San Juan Channel - within a 1-mile radius of Point Caution during times not under control of the Pacific Salmon Commission.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2-mile radius of the entrance to Everett breakwater, in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe, and Skiff Point to West Point, in waters 50 fathoms and deeper.

(g) East Pass - between lines from Point Robinson true east to the mainland, and from Dash Point to Point Piner, in waters 50 fathoms and deeper.

(h) Port Townsend - westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point, in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes, exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) Cod ends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

(21) It is unlawful for any person or corporation either licensed by the department or bringing fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

(22) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

(23) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

(24) The lower Columbia River, Grays Harbor and Willapa Bay are closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes as described by department rule.

AMENDATORY SECTION (Amending Order 03-26, filed 2/18/03, effective 3/21/03)

WAC 220-33-060 Herring and ((~~anchovies~~)) anchovy. It is unlawful to fish for herring or ((~~anchovies~~)) anchovy in the lower Columbia River for commercial purposes or to possess herring or ((~~anchovies~~)) anchovy taken from those waters for commercial purposes, except as provided in this section:

Gear

(1) Purse seine and lampara gear may be used to fish for ((~~anchovies~~)) anchovy if the cork line of the gear does not exceed 1,400 feet in length and the mesh size of the gear is not less than one-half inch stretch measure.

(2) Lampara gear may be used to fish for herring if the cork line of the gear does not exceed 1,400 feet in length and the mesh size of the gear is not less than one-half inch stretch measure.

(3) It is unlawful to fish with purse seine or lampara gear in the waters of the Columbia River if any part of the purse seine or lampara is in waters that are less than 20 feet deep.

(4) A violation of subsections (1) through (3) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Licensing

(((~~(4)~~))) (5)(a) A baitfish purse seine fishery license is ((~~a license~~)) required to operate ((~~a~~)) gear as provided for in this section, and the license allows the operator to retain ((~~anchovies~~)) anchovy.

(b) A baitfish lampara fishery license is ((~~a license~~)) required to operate ((~~a~~)) gear as provided for in this section, and the license allows the operator to retain ((~~anchovies~~)) anchovy.

(c) A herring lampara ((~~fishery~~)) limited entry license is ((~~a license~~)) required to operate ((~~a~~)) gear as provided for in this section, and the license allows the operator to retain herring.

(6) A violation of any portion of subsection (5) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing periods

(((~~(5)~~))) (7)(a) Purse seine and lampara gear may be used to fish for ((~~anchovies~~)) anchovy in Salmon Management and Catch Reporting Area (SMCRA) 1A, 7 days per week, from January 1 through December 31 of each calendar year.

(b) Lampara gear may be used to fish for herring in SMCRA 1A, 7 days per week, from January 1 through December 31 of each calendar year.

(8) A violation of subsection (7) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

General

(((~~(6)~~))) (9) Species of fish other than herring ((~~or anchovies~~)), anchovy, ((~~except~~)) shad ((~~and pilchard~~)), or sardine, taken in the operation of ((~~the~~)) purse seine and lampara gear, shall be returned immediately to the water. ((~~Pilchard~~)) Sardine taken incidental to ((~~the~~)) herring ((~~and~~)) or anchovy fisheries as provided for in this section may not exceed ((~~twenty-five~~)) twenty percent of the weight of any landing. Herring taken incidental to an anchovy fishery as provided for in this section may not exceed five percent of the weight of any landing.

(10) It is unlawful for any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess, or deliver, to a place or port, regardless of catch area, anchovy in excess of 5 metric tons (11,023 pounds) in one day, and in excess of 10 metric tons (22,046 pounds) during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(11) It is unlawful to deliver anchovy, in excess of fifteen percent of the total landing weight, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products.

(12) A violation of subsections (9) through (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending Order 03-26, filed 2/18/03, effective 3/21/03)

WAC 220-36-03001 Grays Harbor—Seasons and lawful gear—((~~Varieties other than salmon and sturgeon~~)) Forage fish. (1) It is unlawful to fish for or possess anchovy, candlefish, herring, sardine, or smelt for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Area 60B ((~~to fish for food fish, other than sturgeon and salmon, with purse seine or lampara gear exceeding 900 feet in length or having meshes of less than one-half inch stretch measure, or with drag seine gear~~

~~exceeding 700 feet in length or having meshes less than 4-1/2 inches stretch measure, except as provided in WAC 220-36-03001(6). It is unlawful to fish for or possess salmon or sturgeon taken with purse seine, lampara, or drag seine gear.~~

~~(2) It is lawful to fish for and possess bottomfish in Marine Fish-Shellfish Management and Catch Reporting Area 60B at any time with set line and hand line jig gear.~~

~~(3) It is lawful to retain for commercial purposes bottomfish taken incidental to any lawful commercial salmon fishery in Grays Harbor Salmon Management and Catch Reporting Areas 2A, 2B, 2C, and 2D, and it is lawful to retain bottomfish taken incidental to any lawful sturgeon fishery in Marine Fish-Shellfish Management and Catch Reporting Area 60B.~~

~~(4) It is lawful to take, fish for and possess smelt taken for commercial purposes in all waters of Grays Harbor except it is unlawful to take smelt for commercial purposes during weekly closed periods extending from 8:00 a.m. Thursday to 8:00 p.m. Saturday.~~

~~(5) It is lawful to fish for and possess herring, anchovies, candlefish, or pilchards taken for commercial purposes with dip bag net gear at any time in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B.~~

~~(6)(a) June 1 through October 31 - It is lawful to fish for and possess anchovies, candlefish, or pilchards with purse seine or lampara in the waters of Grays Harbor, provided it is unlawful to use gear exceeding 1,400 feet in length or containing meshes of less than 1/2-inch stretch measure. It is lawful to fish for herring with lampara gear in the waters of Grays Harbor, provided it is unlawful to use gear exceeding 1,400 feet in length or containing mesh less than 1/2-inch stretch measure. All species of fish other than herring, pilchard, candlefish, and anchovy taken in operation of such purse seine or lampara gear must be immediately returned to the water.~~

~~(b) February 1 through April 15 - Closed to all commercial herring, anchovy, candlefish, or pilchard fishing except dip bag net.~~

~~(7) It is lawful to take, fish for and possess herring, candlefish, pilchards, or anchovies taken for commercial purposes with a herring weir from April 1 through September 30 in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B, provided that the lead shall not exceed 300 feet in length or extend into any navigation channel or customary gill net drifting lane. It shall be unlawful for any person to install or operate a herring weir without obtaining written permission from the director of fisheries.~~

~~(8) It is unlawful to fish with purse seine or lampara gear at all times in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B if any part of the purse seine or lampara is in waters that are less than 20 feet deep.~~)) except as provided for in this section.

General

(2) It is unlawful to fish for or possess salmon or sturgeon taken with purse seine or lampara gear.

(3) It is unlawful to fish with purse seine or lampara gear at all times in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B if any part of the purse seine or lampara is in waters that are less than 20 feet deep.

(4) It is unlawful to fail to immediately return to the water, unharmed, all species of fish other than herring, anchovy, candlefish, and sardine taken in operation of purse seine, lampara, dip bag net, or hand net gears.

(5) A violation of subsections (1) through (4) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty; and RCW 77.15.-550, Violation of commercial fishing area or time—Penalty.

Anchovy and candlefish

Licensing

(6) A baitfish purse seine fishery license is required to operate purse seine gear for anchovy or candlefish as provided for in this section.

(7) A baitfish lampara fishery license is required to operate lampara gear for anchovy or candlefish as provided for in this section.

(8) A smelt dip bag license is required to operate dip bag net gear for anchovy or candlefish as provided for in this section.

(9) A violation of subsections (6) through (8) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(10) It is unlawful to fish for or to possess anchovy, candlefish, sardine, or smelt with the use of purse seine or lampara gear at any time except January 1 through January 31, and April 16 through December 31, of any calendar year.

(11) Dip bag net gear may be used for anchovy or candlefish at all times.

(12) A violation of subsection (10) or (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Landing limitations

(13) It is unlawful to deliver anchovy, in excess of fifteen percent of the total landing weight, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products.

(14) It is unlawful for any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess, or deliver, to a place or port, regardless of catch area, anchovy in excess of 5 metric tons (11,023 pounds) in one day, and in excess of 10 metric tons (22,046 pounds) during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(15) A violation of subsection (13) or (14) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(16) It is unlawful to fish for anchovy or candlefish with purse seine or lampara gear with a mesh size of less than one-half inch stretch measure.

(17) It is unlawful to fish with purse seine or lampara gear for anchovy or candlefish if the cork line exceeds 900 feet in length, except: From June 1 through October 31, it is permissible to use gear in which the cork line does not exceed 1,400 feet in length.

(18) It is unlawful to fish for anchovy or candlefish with dip bag net gear that exceeds 18 square feet.

(19) A violation of subsections (16) through (18) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Incidental catch

(20) It is unlawful to retain sardine taken incidental to a lawful anchovy or candlefish fishery if the sardine exceeds twenty percent of the weight of the total landing.

(21) It is unlawful to retain smelt or herring taken incidental to a lawful anchovy or candlefish fishery if individual or combined weight of smelt and/or herring exceeds five percent of the weight of the total landing.

(22) A violation of subsections (20) through (21) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Herring

Licensing

(23) A herring lampara limited entry license is required to operate lampara gear for herring as provided for in this section.

(24) A herring dip bag net limited entry license is required to operate dip bag net gear for herring as provided for in this section.

(25) A violation of subsection (23) or (24) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(26) It is unlawful to fish for or possess herring with lampara gear at any time except January 1 through January 31, and April 16 through December 31, of any calendar year.

(27) Dip bag net gear may be used for herring at all times.

(28) A violation of subsection (26) or (27) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Incidental catch

(29) It is unlawful to retain anchovy, candlefish, smelt, or sardine incidental to a lawful herring fishery if the individual or combined weight of anchovy, candlefish, smelt, or sardine exceeds five percent of the total landing. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(30) It is unlawful to fish for or to possess herring taken for commercial purposes with lampara gear with a cork line that exceeds 1,400 feet in length and a mesh size of less than one-half inch stretch measure.

(31) It is unlawful to fish for herring with dip bag net gear that exceeds 18 square feet.

(32) A violation of subsection (30) or (31) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Sardine

Licensing

(33) A smelt dip bag net fishery license is required to operate the dip bag net gear for sardine as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(34) Dip bag net gear may be used for sardine at all times. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(35) It is unlawful to fish for sardine with dip bag net gear that exceeds 18 square feet. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Smelt

Licensing

(36) A smelt dip bag net fishery license is required to operate the hand dip net gear for smelt as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(37) It is unlawful to take smelt with hand dip net gear for commercial purposes during weekly closed periods extending from 8:00 a.m. Thursdays to 8:00 p.m. Saturdays. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(38) It is unlawful to take, fish for, and possess smelt taken with hand dip nets exceeding 72 inches maximum frame width. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending Order 03-26, filed 2/18/03, effective 3/21/03)

WAC 220-40-030 Willapa Bay—((~~Seasons and lawful gear—Varieties other than salmon and sturgeon~~)) Forage fish. ((~~(1) It is unlawful in Marine Fish-Shellfish Management and Catch Reporting Area 60C to fish for food fish, other than sturgeon and salmon, with purse seine or lampara gear exceeding 900 feet in length or having meshes of less than one-half inch stretch measure, or with drag seine gear exceeding 700 feet in length or having meshes of less than 4-1/2 inches stretch measure, except as provided in WAC 220-40-030(3). It is unlawful to fish for or possess salmon or sturgeon taken with purse seine, lampara, or drag seine gear.~~

~~(2) It is lawful to fish for and possess bottomfish taken for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Area 60C, at anytime with set line and hand line jig gear.~~

~~(3)(a) June 1 through October 31 - It is lawful to fish for and possess anchovy, candlefish, or pilchards taken for commercial purposes with purse seine or lampara in the waters of Willapa Bay, provided it is unlawful to use gear exceeding 1,400 feet in length or containing meshes less than one-half inch stretch measure. It is lawful to fish for and possess herring taken for commercial purposes with lampara gear from the waters of Willapa Bay, except it is unlawful to use lampara gear exceeding 1,400 feet in length or containing mesh less than 1/2-inch stretch measure. All species of fish other~~

~~than herring, anchovy, candlefish and pilchard taken in operation with such purse seine or lampara gear must be immediately, with care, returned to the water.~~

~~(b) February 1 through March 15 - Closed to all commercial herring, anchovy, candlefish or pilchard fishing except dip bag net.~~

~~(c) It is lawful to fish for, take and possess herring, anchovy, candlefish, or pilchards with dip bag net gear at any time in the waters of Willapa Bay.~~

~~(4) It is lawful to retain for commercial purposes bottomfish taken incidental to any lawful commercial salmon fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2G, 2H, 2J, 2K, and 2M, and it shall be lawful to retain bottomfish taken incidental to any lawful sturgeon fishery in Marine Fish-Shellfish Management and Catch Reporting Area 60C.~~

~~(5) It is lawful to take, fish for and possess smelt taken with hand dip nets in any of the waters of Willapa Bay except it is unlawful to take smelt for commercial purposes during weekly closed periods extending from 8:00 a.m. Thursday to 8:00 p.m. Saturday.~~

~~(6) It is lawful to take bottom fish with drag seine in Marine Fish-Shellfish Management and Catch Reporting Area 60C from March 1 through June 30.~~

~~(7) It is unlawful to fish with purse seine or lampara gear at all times in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60C if any part of the purse seine or lampara is in waters that are less than 20 feet deep.~~)) (1) It is unlawful to fish for or possess anchovy, candlefish, herring, sardine, or smelt taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Area 60C except as provided for in this section.

General

(2) It is unlawful to fish for or possess salmon or sturgeon taken with purse seine or lampara gear.

(3) It is unlawful to fish with purse seine or lampara gear at all times in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60C if any part of the purse seine or lampara is in waters that are less than 20 feet deep.

(4) It is unlawful to fail to immediately return to the water, unharmed, all species of fish other than herring, anchovy, candlefish, and sardine taken in the operation of purse seine, lampara, dip bag net, or hand net gears.

(5) A violation of subsections (1) through (4) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty; and RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

Anchovy and candlefish

Licensing

(6) A baitfish purse seine fishery license is required to operate purse seine gear for anchovy and candlefish as provided for in this section.

(7) A baitfish lampara fishery license is required to operate lampara gear for anchovy and candlefish as provided for in this section.

(8) A smelt dip bag license is required to operate dip bag net gear for anchovy and candlefish as provided for in this section.

(9) A violation of subsections (6) through (8) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(10) It is unlawful to fish for or possess anchovy, candlefish, sardine, or smelt with the use of purse seine or lampara gear during any time, except January 1 through January 31, and March 16 through December 31, of any calendar year.

(11) Dip bag net gear may be used for anchovy and candlefish at all times.

(12) A violation of subsection (10) or (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Landing limitations

(13) It is unlawful to deliver anchovy, in excess of fifteen percent of the total landing weight, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products.

(14) It is unlawful for any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver, to a place or port, regardless of catch area, anchovy in excess of 5 metric tons (11,023 pounds) in one day, and in excess of 10 metric tons (22,046 pounds) during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(15) A violation of subsection (13) or (14) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(16) It is unlawful to fish for anchovy or candlefish with purse seine or lampara gear with mesh size less than one-half inch stretch measure.

(17) It is unlawful to fish with purse seine or lampara gear if the cork line exceeds 900 feet in length, except: From June 1 through October 31, it is permissible to use gear in which the cork line does not exceed 1,400 feet in length.

(18) It is unlawful to fish for or possess anchovy or candlefish with dip bag net gear that exceeds 18 square feet.

(19) A violation of subsections (16) through (18) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Incidental catch

(20) It is unlawful to retain sardines taken incidental to a lawful anchovy or candlefish fishery that exceeds twenty percent of the weight of the total landing.

(21) It is unlawful to retain smelt or herring incidental to a lawful anchovy or candlefish fishery if the individual or combined weight of smelt and/or herring exceeds five percent of the total landing.

(22) A violation of subsection (20) or (21) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Herring

Licensing

(23) A herring/lampara limited entry license is required to operate lampara gear for herring as provided for in this section.

(24) A herring dip bag net limited entry license is required to operate dip bag net gear for herring as provided for in this section.

(25) A violation of subsection (23) or (24) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(26) It is unlawful to fish for or possess herring with lampara gear during any time except January 1 through January 31, and March 16 through December 31, of any calendar year.

(27) Dip bag net gear may be used for herring at all times.

(28) A violation of subsection (26) or (27) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Incidental catch

(29) It is unlawful to retain anchovy, candlefish, smelt, or sardine incidental to a lawful herring fishery if the individual or combined weight of anchovy, candlefish, smelt, or sardine exceeds five percent of the total landing. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(30) It is unlawful to fish for and possess herring taken for commercial purposes with lampara gear with a cork line that exceeds 1,400 feet in length and a mesh size less than one-half inch stretch measure.

(31) It is unlawful to fish with dip bag net gear that exceeds 18 square feet.

(32) A violation of subsection (30) or (31) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Sardine

Licensing

(33) A smelt dip bag net fishery license is required to operate dip bag net gear for sardine as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(34) Dip bag net gear may be used for sardine at all times.

Gear

(35) It is unlawful to fish with dip bag net gear that exceeds 18 square feet. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Smelt

Licensing

(36) A smelt dip bag net fishery license is required to operate dip bag net gear for smelt as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(37) It is unlawful to take smelt for commercial purposes during weekly closed periods extending from 8:00 a.m. Thursday to 8:00 p.m. Saturday. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(38) It is unlawful to take, fish for, and possess smelt taken with hand dip nets exceeding 72 inches maximum frame width. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending Order 07-279, filed 11/7/07, effective 12/8/07)

WAC 220-44-020 ((~~Coastal baitfish gear.~~)) Ocean forage fish. (1) It is unlawful to fish for or possess smelt, ((~~anchovies~~)) anchovy, candlefish, herring, or ((~~pilchard~~)) sardine taken for commercial purposes from ((~~Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 59B, 60A-1, or 60A-2~~)) offshore waters, except as provided for in this section.

(((~~(1)(a) It is unlawful to fish for or possess smelt taken for commercial purposes except by hand net gear not exceeding 72 inches maximum frame width. It is unlawful to take smelt for commercial purposes during weekly closed periods from 8:00 a.m. Friday to 8:00 a.m. Sunday.~~

~~(b) Licensing: A smelt dip bag net fishery license is the license required to operate the gear provided for in this section.~~

~~(c) Incidental catch:~~)) **General**

(2) It is unlawful to fail to immediately return to the water, unharmed, all species of fish other than herring, anchovy, candlefish, shad, and sardine taken in operation of purse seine, lampara, dip bag net, or hand net gears.

(3) A violation of subsection (1) or (2) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Smelt

Licensing

(4) A smelt dip bag net fishery license is required to operate hand net gear as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Fishing period

(5) It is unlawful to take smelt for commercial purposes during weekly closed periods from 8:00 a.m. Friday to 8:00 a.m. Sunday. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(6) It is unlawful to fish for or possess smelt taken for commercial purposes except by hand net gear not exceeding 72 inches maximum frame width. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Incidental catch

(7) It is ((~~lawful~~)) permissible to retain only ((~~anchovies~~)) anchovy and candlefish taken incidental to a lawful smelt fishery.

(((~~(2)(a)~~))) **Anchovy and Candlefish**

Licensing

(8) A baitfish lampara fishery license is required to operate the lampara gear for anchovy and candlefish as provided for in this section.

(9) A baitfish purse seine fishery license is required to operate the purse seine gear for anchovy and candlefish as provided for in this section.

(10) A smelt dip bag net fishery license is required to operate the hand dip net gear for anchovy and candlefish as provided for in this section.

(11) A violation of subsections (8) through (10) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Landing limitations

(12) It is unlawful to deliver anchovy, in excess of fifteen percent of the total landing weight, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products.

(13) It is unlawful for any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver, to a place or port, regardless of catch area, anchovy in excess of 5 metric tons (11,023 pounds) in one day, and in excess of 10 metric tons (22,046 pounds) during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(14) A violation of subsection (12) or (13) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(15) It is unlawful to take, fish for, or possess anchovy or candlefish ((~~or anchovies~~)) taken ((~~for commercial purposes~~)) with ((~~any gear except~~)) purse seine or lampara ((~~not exceeding 1,400 feet in length nor having~~)) gear with mesh size less than ((~~1/2~~)) one-half inch((~~, or dip bag net not exceeding 72 inches maximum frame width.~~

~~(b) Licensing:~~

~~(i) A baitfish lampara fishery license is the license required to operate the lampara gear provided for in this section.~~

~~(ii) A baitfish purse seine fishery license is the license required to operate the purse seine gear provided for in this section.~~

~~(iii) A smelt dip bag net fishery license is the license required to operate the hand dip net gear provided for in this section.~~

~~(c) Incidental catch: It is lawful to retain only shad and pilchard taken incidental to a lawful anchovy or candlefish fishery. Pilchard may not exceed twenty-five percent of the weight of the landing. Any sturgeon must be released unharmed.~~

~~(3)(a) It is unlawful to fish for or possess herring or pilchard taken for commercial purposes except as authorized by permit issued by the director, except pilchard taken incidental to candlefish and anchovy.~~

~~(b) Licensing:~~

~~(i) An emerging commercial fishery license is the license required for a permittee to fish for or retain pilchard.~~

~~(ii) Herring dip bag net, herring drag seine, herring gill net, herring lampara, or herring purse seine are the licenses required for a permittee to fish for or to retain herring.~~

~~(4)(a) Violation of licensing requirements under this section is punishable pursuant to RCW 77.15.500.~~

~~(b) Violation of gear requirements under this section is punishable pursuant to RCW 77.15.520.~~

~~(c) Violation of catch requirements under this section is punishable pursuant to RCW 77.15.550~~)) stretch measure.

(16) It is unlawful to fish for or possess candlefish or anchovy with purse seine or lampara gear if the cork line exceeds 1,400 feet in length.

(17) It is unlawful to take, fish for, or possess anchovy or candlefish with dip bag net gear that exceeds 18 square feet.

(18) A violation of subsections (15) through (17) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Incidental catch

(19) It is unlawful to retain sardine taken incidental to a lawful anchovy or candlefish fishery that exceeds twenty percent of the weight of the total landing.

(20) It is unlawful to retain herring taken incidental to a lawful anchovy or candlefish fishery that exceeds five percent of the weight of the total landing.

(21) It is permissible to retain shad incidental to a lawful anchovy or candlefish fishery.

(22) A violation of subsection (19) or (20) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Herring

Licensing and permit

(23) It is unlawful to fish for or to possess herring taken for commercial purposes except as authorized by permit issued by the director. A violation of this subsection is punishable under section 14, chapter 333, Laws of 2009 (SHB 1778).

(24) Herring dip bag net, herring drag seine, herring gill net, herring lampara, or herring purse seine are the limited entry licenses required for a permittee to fish for or to retain herring. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending Order 07-278, filed 11/7/07, effective 12/8/07)

WAC 220-69-240 Duties of commercial purchasers and receivers. (1) It is unlawful for any person originally receiving fresh or iced fish or shellfish or frozen fish or shellfish that have not been previously delivered in another state, territory, or country, except purchases or receipts made by individuals or consumers at retail, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. Each delivery must be recorded on a separate fish receiving ticket. Failure to be licensed under this subsection is punishable under RCW 77.15.620.

(2) It is unlawful for any person originally receiving fresh or iced fish or shellfish previously delivered in another state, territory, or country, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

(3) It is unlawful for any original receiver of crab or spot shrimp to fail to record all crab or spot shrimp aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish deemed to be unmarketable, discards, or weigh backs must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for such fish or shellfish. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

(4) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its plant locations as declared on the license application, shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business, firm, and/or licensed wholesale fish dealer who the buyers are operating under shall be responsible for the accuracy and legibility of all such documents initiated in its name.

(5) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. Should the delivery of the catch take more than one day, the date that the delivery is completed must be entered on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the current date on the fish receiving ticket. Violation of this subsection is punishable under RCW 77.15.630.

(6) Forage fish: It is unlawful for any person receiving forage fish to fail to report the forage fish on fish receiving tickets initiated and completed on the day the forage fish are delivered. Herring are also required to be reported on herring harvest logs. The harvested amount of forage fish must be entered upon the fish ticket when the forage fish are offloaded from the catcher vessel. An estimate of herring, candlefish, anchovy, or ((~~pilchards~~)) sardine caught but not sold due to mortality must be included on the fish ticket as "loss estimate." In the coastal ((~~pilchard~~)) sardine fishery, the amount of ((~~pilchards~~)) sardine, by weight, purchased for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by-products for purposes other than human consumption or fishing bait, must be included on the fish ticket as "reduction." In any forage fish fishery, the amount of anchovy, by weight, purchased for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by-products for purposes other than human consumption or fishing bait, must be included on the fish ticket as "reduction."

Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(7) Geoduck: It is unlawful for any person receiving geoducks, regardless of whether or not the receiver holds a license as required under Title 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual delivery of geoducks from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoducks from the department of natural resources harvest tract to the point of delivery. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(8) Pacific whiting: It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the delivery. The exact weights of whiting, by grade, and all incidental species in the delivery must be entered on the fish receiving ticket within twenty-four hours of the landing. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(9) Puget Sound shrimp - Pot gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, plus the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(a) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 23A, to fail to record either 23A-C, 23A-E, 23A-W, or 23A-S on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(b) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26A, to fail to record either 26A-E or 26A-W on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(c) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26B, to fail to record either 26B-1 or 26B-2 on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(d) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, to fail to record either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(10) Puget Sound shrimp - Trawl gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by

phone at 360-466-4345, extension 245, or by fax at 360-466-0515. For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area, and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(11) Puget Sound crab: It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by nontreaty fishers, from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made to the Point Whitney Shellfish Laboratory by fax at 360-586-8408 or by phone at 1-866-859-8439, option 5, and must specify the dealer name; dealer phone number; date of delivery of crab to the original receiver; and the total number of pounds of crab caught by nontreaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(12) Salmon and sturgeon:

(a) During any Puget Sound fishery opening that is designated as "quick reporting required," per WAC 220-47-001:

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Puget Sound reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be submitted via fax at 360-902-2949; via e-mail at psfishtickets@dfw.wa.gov; or via phone at 1-866-791-1279. In fisheries under Fraser Panel Control within Fraser Panel Area Waters (area defined under Art. XV, Annex II, Pacific Salmon Treaty 1985), other reporting requirements not listed in this subsection may be necessary under Subpart F of the International Fisheries Regulations, 50 CFR Ch. III § 300.93.

(b) During any coastal troll fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, coastal troll reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-902-2949; via e-mail at trollfishtickets@dfw.wa.gov; or via phone at 1-866-791-1279.

(c) During any Grays Harbor or Willapa Bay fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Grays Harbor and Willapa Bay reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-664-0689; e-mail at harborfishtickets@dfw.wa.gov; or phone at 1-866-791-1280.

(d) During any Columbia River fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered, for retail sale.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Columbia River reports must be submitted within 5, 8, 12, or 24 hours of closure of the designated fishery. The time frame for submitting reports will be established by the department at the time of adoption of the quick reporting fishery. Adoption and communication of the quick reporting regulations for a given fishery will occur in conjunction with the adoption of said

fishery through the Columbia River Compact. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-906-6776 or 360-906-6777; via e-mail at crfishtickets@dfw.wa.gov; or via phone at 1-866-791-1281.

(e) Faxing a copy of each fish receiving ticket used, within the previously indicated time frames specified per area, satisfies the reporting requirement.

(f) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(13)(a) Sea urchins and sea cucumbers: It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day. For red sea urchins, the report must specify the number of pounds received from each sea urchin district. For green sea urchins and sea cucumbers, the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area. For sea cucumbers, the report must specify whether the landings were "whole-live" or "split-drained." The report must be made by fax at 360-902-2943, or by toll-free telephone at 866-207-8223.

(b) It is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken, and it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket the name of the port of landing where the sea urchins were landed ashore.

(c) It is unlawful for the original receiver of sea cucumbers to fail to record on the fish receiving ticket whether the sea cucumbers were delivered "whole-live" or "split-drained."

(d) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(14) Coastal spot shrimp: It is unlawful for any original receiver of spot shrimp taken from Marine Fish Management and Catch Reporting Area 60A-1 to fail to record separately on the fish receiving ticket spot shrimp taken north or south of 47°04.00' north latitude. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

WSR 10-06-112
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed March 3, 2010, 8:59 a.m., effective April 3, 2010]

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

Purpose: The department is amending rules in accordance with chapter 571, Laws of 2009 (SHB 2361). The law prohibits the department from paying a home care agency licensed under chapter 70.127 RCW for medicaid funded in-home personal care or respite services if the care is provided to a client by a family member. The department may authorize exceptions based on the client's health and safety. These rules will not affect the amount, duration, or scope of the personal care or respite services benefit to which the client may be entitled.

Citation of Existing Rules Affected by this Order: Amending WAC 388-71-0515, 388-71-0540, and 388-106-1303.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, chapter 571, Laws of 2009 (SHB 2361).

Other Authority: Washington state 2009-11 budget, section 206(17) (ESHB 1244).

Adopted under notice filed as WSR 10-02-097 on January 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: February 26, 2010.

Don Goldsby, Manager
Rules and Policies Assistance Unit

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

WAC 388-71-0515 What are the responsibilities of an individual provider or home care agency provider when employed to provide care to a client? An individual provider or home care agency provider must:

(1) Understand the client's plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's plan of care, as defined in WAC 388-106-0010;

(3) Accommodate client's individual preferences and differences in providing care;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the plan of care;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department or AAA immediately when unable to staff/serve the client; and

(9) Notify the department/AAA when the individual provider or home care agency will no longer provide services. Notification to the client/legal guardian must:

(a) Give at least two weeks' notice, and

(b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

(12) A home care agency must not bill the department for in-home medicaid funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

WAC 388-71-0540 When will the department, AAA, or ((~~managed care entity~~)) department designee deny payment for services of an individual provider or home care agency provider? The department, AAA, or department designee will deny payment for the services of a home care agency provider if the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client.

The department, AAA, or ((~~managed care entity~~)) department designee will deny payment for the services of an individual provider or home care agency provider who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(3) Is a foster parent providing personal care to a child residing in their licensed foster home;

(4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(7) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;

(8) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(9) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

In addition, the department, AAA, or ((~~managed care entity~~)) department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

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

WAC 388-106-1303 What responsibilities do I have as a client of the department? As a client of the department, you have a responsibility to:

(1) Give us enough information to assess your needs;

(2) Let the social services worker into your home so that your needs can be assessed;

(3) Follow your care plan;

(4) Not act in a way that puts anyone in danger;

(5) Provide a safe work place;

(6) Tell your social services worker if there is a change in:

(a) Your medical condition;

(b) The help you get from family or other agencies;

(c) Where you live; or

(d) Your financial situation.

(7) Tell your social services worker if someone else makes medical or financial decision for you;

(8) Choose a qualified provider;

(9) Inform the department and your home care agency if an employee assigned by the home care agency is related to you by blood, marriage, adoption, or registered domestic partnership.

(10) Keep provider background checks private;

(((~~10~~))) (11) Tell your social services worker if you are having problems with your provider; and

(((~~11~~))) (12) Choose your own health care. Tell your social services worker when you do not do what your doctor says.

WSR 10-06-122
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed March 3, 2010, 11:59 a.m., effective April 3, 2010]

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

Purpose: The proposed rules implement 2006 and 2007 legislation as it pertains to advertising, board policies, and guidelines. The proposed rules were also revised to reflect the agency's focus on public safety and minimizing youth access and exposure to alcohol advertising and marketing.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-52-020 and 314-52-114; and amending WAC 314-52-005, 314-52-010, 314-52-015, 314-52-030, 314-52-040, 314-52-070, 314-52-085, 314-52-090, 314-52-110, 314-52-113, and 314-52-115.

Statutory Authority for Adoption: RCW 66.08.030, 66.08.060, 66.28.010.

Adopted under notice filed as WSR 10-03-051 on January 15, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 314-52-010, removed the word "number" to clarify the street address may be omitted.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 11, Repealed 2.

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

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

Date Adopted: March 3, 2010.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-005 Purpose and application of rules. (1) ((~~PREAMBLE: The purpose of this title is to~~)) The liquor control board regulates alcohol advertising to promote public safety, prevent the misuse of alcohol and reduce youth exposure to alcohol advertising and marketing. These rules provide reasonable regulations as to the kind, character, size, and location of advertising of liquor, as authorized by RCW 66.08.060.

(2) No person engaged in business as a ((~~producer,~~)) manufacturer, ((~~bottler,~~)) importer, distributor, or retailer of liquor((~~, directly or indirectly, or through an affiliate,~~)) shall publish or disseminate ((~~or cause to be published or disseminated~~)) in any media any advertisement of liquor, unless such advertisement is in conformance with these rules((~~: Provided, That these provisions shall not apply to the publisher of any newspaper, magazine or similar publication, nor to the operator of any radio or television station unless such publisher or operator is engaged in business as a producer, manufacturer, bottler, importer, distributor, or retailer of liquor, directly or indirectly, or through an affiliate~~)).

(3) The board holds each ((~~producer,~~)) manufacturer, ((~~bottler,~~)) importer, distributor, or retailer of liquor responsible for complying with the advertising rules of the Washington state liquor control board in any advertising material placed by them or on their behalf by their agents. If desired, advertising may be submitted prior to publication for an advisory opinion by the ((~~advertising coordinator of the~~)) Washington state liquor control board, but advisory opinions will be restricted to advertising material submitted by ((~~said producers,~~)) manufacturers, ((~~bottlers,~~)) importers, distributors, or retailers of liquor, or their agents.

(4) Liquor advertising materials, defined as institutional or educational advertising in WAC 314-52-015, intended for placement in retail outlets of the Washington state liquor control board shall be presented to the ((~~advertising coordinator of the~~)) Washington state liquor control board for prior approval before placement((~~: Provided, however, That~~)). All other forms of advertising approved and accepted by the board ((~~advertising coordinator and which are acceptable to the board merchandising committee under the provisions of WAC 314-52-040~~)) shall not be prohibited under this rule.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-010 Mandatory statements. (1) Brand advertising of spirituous liquor by any manufacturer shall contain the following information:

(a) The name and address of the manufacturer responsible for its publication. (Street ((~~number~~)) may be omitted.)

(b) A conspicuous statement of the class to which the product belongs and the type ((~~thereof~~)) corresponding with the statement of class and type which is required by federal regulations to appear on the label of the product.

(c) A statement of the alcoholic content ((~~by proof, except that for cordials and liqueurs, gin fizzes, cocktails, highballs, bitters and other specialties, the alcoholic content may~~)) for distilled spirits shall be stated in ((~~percent age by volume or by proof~~)) percent alcohol by volume.

(d) In the case of distilled spirits (((~~other than cordials, liqueurs and specialties~~))) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled.

(e) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled.

(2) Brand advertising of wine by any manufacturer or distributor shall contain the following information:

(a) The name and address of the manufacturer or distributor responsible for its publication. (Street ((~~number~~)) may be omitted.)

(b) A conspicuous statement of the class, type or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required by federal regulation to appear on the label of the product.

(3) Brand advertising of malt beverages by any manufacturer, importer, or distributor shall contain the following information:

(a) The name and address of the manufacturer, importer or distributor responsible for publication of the advertisement. (Street ((~~number~~)) may be omitted.)

(b) A conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required by federal regulations to appear on the label of the product.

(((~~(4) Alcoholic content of beer. Retail licensees who choose to offer beer for sale at both less than four percent by weight and more than four percent by weight, alcoholic content, packaged in identical packages, shall be required to separate the two strengths of beer in their displays, and shall be required to identify by point-of-sale advertising which is the higher strength and which is the lower strength beer. Manufacturers, importers and distributors of such beer shall supply~~

~~such shelf tickets free of charge to retail licensees: Provided, however, That no promotion of the higher alcoholic content shall be included in such advertising.~~))

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

WAC 314-52-015 General. (1) Institutional advertising shall mean advertising which promotes company or brand name identification, but does not directly solicit purchase or consumption of liquor. Educational advertising shall mean factual information on liquor, its manufacture, history, consumption and methods of ascertaining the quality of various types of liquors ((~~such as German wines, French cognacs, or other classifiable types of product. All liquor advertising shall be modest, dignified and in good taste and shall not contain:~~

~~(1) Any statement or illustration that~~)). All liquor advertising on products sold in the state of Washington may not contain any statement, picture, or illustration that:

(a) Is false or misleading ((~~in any material particular.~~

~~(2) Any statement, picture, or illustration which~~));

(b) Promotes over consumption((~~.~~

~~(3) Any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.~~

~~(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.~~

~~(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.~~

~~Nothing in this section shall prohibit the use of any enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."~~

~~(6) Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law, or regulation of any municipality, county, or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.~~

~~(7) Any statement, design or device representing that~~));

(c) Uses the Washington state liquor control board's seal or refers to Washington state liquor control board, except where required by law;

(d) Represents the use of liquor has curative or therapeutic effects, if such statement is untrue ((~~in any particular,~~)) or tends to create a misleading impression((~~.~~

~~(8) Any statement, picture, or illustration implying that~~));

(e) Implies the consumption of liquor enhances athletic prowess, or any statement, picture, or illustration ((~~referring~~)) that refers to any known athlete, if such statement, picture, or illustration implies, or if the reader may reasonably infer, that the use of liquor contributed to ((~~such~~)) any known athlete's athletic achievements((~~.~~

~~(9) Any depiction of~~));

(f) Depicts a child or other person under legal age to consume liquor((~~, any depiction of~~)), or includes:

(i) Objects, such as toys or characters, ((~~suggestive of~~)) suggesting the presence of a child, ((~~nor~~)) or any other depiction designed in any manner ((~~as~~)) to be especially appealing to children or other persons under legal age to consume liquor((~~.~~

~~(10) Any reference to any religious character, sign or symbol, except in relation to kosher wines or where such are a part of an approved label~~)); or

(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(g) Is targeted principally to minors by implying that the consumption of alcoholic beverages is fashionable or the accepted course of behavior for persons under twenty-one years of age; or

(h) Uses subliminal or similar techniques. "Subliminal or similar techniques" as used in this section, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

(2) If advertising claims the alcohol product has a curative or therapeutic effect or enhances health or performance, the licensee must:

(a) Cite the name of the author and date of the research or study supporting the claim; and

(b) Provide a copy of this research or study to the board.

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

WAC 314-52-030 Liquor advertising prohibited in school publications. No liquor advertising shall:

(1) Be carried in any publication connected or affiliated with any elementary or secondary schools; ((~~nor shall any liquor advertising~~)) or

(2) Be connected with such schools ((~~when broadcast over radio or television: Provided, That institutional advertising, as defined in WAC 314-52-015, may be carried, if the board advertising coordinator interposes no objection~~)) in any media.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-040 Contests, competitive events, premiums and coupons. (1) Liquor advertisements may offer consumers premiums or prizes, upon completion of any coupon, contest, or competitive event, which may or may not require proof of purchase of the advertised product((~~:~~)). Provided, ((~~however,~~)) that:

(a) No one under twenty-one years of age is allowed to participate, and no premiums, prizes, coupons, contests, or competitive events are targeted to persons under twenty-one years of age;

(b) Contests or sweepstakes that offer prizes or premiums to consumers through a game of chance or random drawing, shall not require proof of purchase, and must comply with the requirements of RCW ((~~9.46.020(14)~~)) 9.46.0356

regarding ((~~lotteries: And provided further, That no~~)) gambling.

(2) Liquor advertisements are prohibited by manufacturers, importers, or distributors ((~~may~~)) that:

(a) Offer any premium or prize redeemable through a Washington state liquor store or any retail liquor outlet licensed by the state of Washington, such as "instant" or "in-store" redeemable offers;

(b) Offer an "instant rebate" on either liquor or nonliquor items; or

(c) Offer any premium redeemable through retail outlets prohibited by the advancement of "money or money's worth" from a nonretail licensee to a retail licensee in chapter 66.28 RCW.

(3) A retailer may have its own coupon offers, provided the "after rebate" price does not put the product below cost, and provided there is no undue influence by a nonretail licensee, the coupon is at the retailer's free initiative and the retailer is covering the entire cost.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-070 Outdoor advertising. (1) "Outdoor advertising" by manufacturers, importers, distributors, and retail licensees for these purposes shall include all signs affixed or hanging in the windows and on the outside of the premises visible to the general public((~~, whether permanent or temporary~~)) from the public right of way, advertising the sale and/or service of liquor (((~~excluding point-of-sale brand signs, which are defined and governed as otherwise provided in WAC 314-52-113) as well as~~)), excluding trade name and room name signs.

(2) The board limits each retail licensed premises to a total of four signs referring to alcoholic beverages, brand names, or manufacturers that are affixed or hanging in the windows and on the outside of the premises that are visible to the general public from the public right of way. The board also limits the size of a sign advertising alcohol, brand names, or manufacturers that are affixed or hanging in the windows and on the outside of the premises that are visible to the general public from the public right of way to sixteen hundred square inches.

"Sign" is defined as a board, poster, neon, or placard displayed to advertise.

A local jurisdiction has the option to exempt liquor licenses in their jurisdiction from the outdoor advertising restrictions in this section through a local ordinance.

(3) Outdoor signs shall be designed, installed, and ((~~used in a manner not offensive to the public, and shall comply~~)) in compliance with all liquor advertising rules. These rules include, but are not limited to:

(a) WAC 314-52-015(((~~1), which:~~

~~(i) Prohibits any statement or illustration that is false or misleading in any material particular;~~

~~(ii) Prohibits any statement, picture or illustration which promotes overconsumption;~~

~~(iii) Prohibits any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.~~)) which contains advertising prohibitions; and

(b) WAC 314-52-110(((~~1), which requires that every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall mean the "licensed trade name" as it appears on the issued license~~)) which contains advertising requirements by a retail licensee.

(((~~3~~))) (4) Prior board approval is not required before installation and use of outdoor ((~~signs/~~))advertising; however, outdoor ((~~signs/~~))advertising (((~~excluding outdoor readerboard messages and/or interior signs visible through a window of a premises~~))) not in compliance with board rules will be required to be altered or removed at the licensee's expense. If prior approval is desired, the licensee, applicant or their agent may submit ((~~three copies~~)) a copy to the board ((~~advertising coordinator~~)) for approval.

(((~~4~~))) (5) No outdoor advertising of liquor except in subsection (2) of this section, shall be placed ((~~in proximity to~~)) within five hundred feet of schools, ((~~churches~~)) places of worship, ((~~or playfields~~)) public playgrounds, or athletic fields used primarily by minors((~~,~~)) where the administrative body of said schools, churches, ((~~playfields, object to such placement, nor~~)) public playgrounds or athletic fields object to such placement, or any place which the board in its discretion finds contrary to the public interest. "Tourist Oriented Directional Signs" per RCW 47.36.320, are exempt from this requirement.

The five hundred foot distance for outdoor advertising is measured from the property line of the school, place of worship, public playground or athletic field to the outdoor advertising.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-085 Programs and program folders. Programs and program folders, for the purpose of this section, shall mean brochures for use at sporting arenas which have, as a part of their operations, whether directly or indirectly, a retail licensed premises. No manufacturer, importer, distributor, or their agent, shall provide, without cost, directly or indirectly, programs or program folders for retail licensees((~~: Provided, however, That sporting arenas as described above, or their agents~~)), however:

(1) A premises holding a sports entertainment facility liquor license may accept bona fide liquor advertising from manufacturers, importers, distributors or their agents, for publication in the program or program folder of the ((~~sporting arena: Provided further, That such~~)) sports entertainment facility liquor licensee; and

(2) Advertising is paid for by said manufacturer, importer, distributor or their agent at the published advertising rate for all program or program folder advertisers, including nonliquor advertisers((~~: And also provided, That such advertising shall carry with it no express or implied offer on the part of the manufacturer, importer, distributor or their agent, or promise on the part of the retail licensee whose operation is directly or indirectly part of the sporting arena, to~~

~~stock or list any particular brand of liquor to the total or partial exclusion of any other brand~~)).

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors((~~, prohibited~~)). (1) The name of a retail licensee shall not appear in, or as a part of, or supplementary to, any advertising of a manufacturer, importer or distributor((~~.~~)), except:

(a) To produce brochures and materials promoting tourism in Washington state;

(b) A manufacturer, importer, or distributor may list on their web sites information related to retailers who sell or promote their products.

(2) The brand name of liquor may appear in or as a part of advertising by a retail licensee: Provided, ((~~That~~)) such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered ((~~the retail licensee~~)) or solicited as an inducement to secure such mention ((~~by~~)) of any manufacturer, importer, or ((~~distributor or their agent, or solicited by the retail licensee or his agent.~~

~~(2) RCW 66.28.010 shall also apply to joint advertising insofar as it is relevant~~)) distributor's product.

(3) A professional sports team who holds a liquor license may accept liquor advertisements from manufacturers, importers, or distributors for use in sports entertainment facilities and may allow a manufacturer, importer, or distributor to use the name and trademark of the professional sports team in their advertising and promotions, if such advertising:

(a) Is paid for by the manufacturer, importer, or distributor at reasonable fair market value; and

(b) Carries no express or implied offer by the manufacturer, importer, or distributor on the part of the retail licensee to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

NEW SECTION

WAC 314-52-097 Financial arrangements between sports entertainment facility licensees and liquor manufacturers, importers, and distributors. A sports entertainment facility licensee and affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising or promotional events at the sports entertainment facility under the following conditions:

(1) The facility has a capacity of five thousand or more;

(2) Entities required by WAC 314-12-030 placed on the sports entertainment facility license due to financial interest, may receive advertising from liquor manufacturers, importers, or distributors;

(3) The advertising agreement under the provisions of this section must be made by written agreement;

(4) The license must stock and offer for sale other competitive brands of liquor in addition to those of the advertising manufacturer, importer, or distributor;

(5) The agreement may not contain credit or money's worth to be provided by the manufacturer, importer, distributor, or sports entertainment facility licensee;

(6) There will be no exclusionary contracts between a sports entertainment facility licensee and manufacturer, importer, or distributor; and

(7) The advertising manufacturer, importer, or distributor may not exercise undue influence in any manner over the sports entertainment facility licensee's liquor purchasing and sales operations.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-110 Advertising by retail licensees. (1) Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall be defined as the ((~~"licensed trade~~)) name((~~"~~)) as it appears on the license issued to the licensee: ((~~Provided, however, That such~~))

(a) Words such as tavern, cafe, grocery, market, ((~~food store, food center, delicatessen,~~)) wine shop, ((~~beer parlor~~)) and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees ((~~of the same trade name~~)), shall neither be required nor prohibited as part of the trade name in advertisements((~~: And provided further, That~~)).

(b) Advertisements by ((~~public~~)) a spirit, beer and wine restaurant licensee((~~s~~)) may also refer to cocktails, bar, lounge and/or the "room name." The term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room ((~~if both are in the same room~~)).

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," ((~~"two for one drinks,"~~)) "buy one—get one free," or "two for $_____((~~," nor any similar phrase or slogan where the express or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink or quantity of liquor at one time~~)).""

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product or disposing of seasonal goods after the season has passed;

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court; or

(d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade.

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-113 Brand signs and point-of-sale displays on retail licensed premises. Manufacturers, importers or distributors may furnish brand signs and point-of-sale material to retailers under the following conditions:

(1) The brand signs and point-of-sale material shall have no value to the retailer except as brand advertisement; such signs as those ((~~which~~)) that provide illumination for cash registers, pool tables, and other parts of the premises, have a functional value and are not authorized. The brand signs and point-of-sale material shall remain the property of, and be the responsibility of, the manufacturers, importers or distributors.

(2) ((~~The term "point-of-sale material" as used herein, shall include such manufacturer, importer or distributor-supplied items as display cards, placards, table tents, recipes, display bins, decalcomanias, price cards, shelf strips, product information pamphlets, bottle hangers, matches, scorecards, calendars, and other such brand advertising material for display at the point of sale.~~

~~(3)~~)) Giant inflatables, such as inflated beer cans, bottles, ((~~animals,~~)) and banners may be provided as point-of-sale ((~~by manufacturers, importers, or distributors~~)) to retailers for display purposes ((~~on their property~~)) inside the licensed premises, provided the following conditions are met:

(a) ((~~All retail licensees are afforded equal opportunity to display item;~~

~~(b)~~)) Novelty items as defined in WAC 314-52-080 are not provided by manufacturers, importers, or distributors to customers in conjunction with the display;

(b) Inflatables are not targeted or appeal principally to youth; and

(c) The display shall be removed if objected to by local officials, or if the board((~~, in its discretion,~~)) finds it contrary to the public interest.

(((~~(4) Animal mascots and~~)) (3) Costumed individuals representing beer, wine, or liquor manufacturers may be provided as point-of-sale ((~~by manufacturers, importers, or distributors~~)) to retailers for display and promotion purposes on their property, provided the following conditions are met:

(a) The costumed individual is limited to the manufacturer, importer, distributor, or employee thereof and the costumed individual's activities on-premises are limited to socializing with customers and not conducting any activity that the retail licensee would otherwise have to assign employees to;

(b) ((~~All retail licensees are afforded equal opportunity for such displays;~~

~~(c)~~)) Novelty items as defined in WAC 314-52-080 and ((~~including~~)) the purchase of drinks, are not to be provided to customers by the costumed individual in conjunction with such displays;

(((~~(d)~~)) (c) The costumed individual must comply with the regulations regarding lewd and obscene conduct (WAC ((~~314-16-125~~)) 314-11-050);

(d) The costumed individual may not be targeted or appeal principally to youth; and

(e) ((~~If the board finds it contrary to the public interest, it may prohibit the use of the above-mentioned activities.~~)) The board may prohibit the use of costumed individuals if the use is contrary to the public interest.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-115 Advertising by clubs—Signs. (1) Clubs shall not engage in any form of soliciting or advertising which may be construed as implying that the club operates a ((~~public spirit, beer and wine restaurant~~)) premises((~~, a tavern~~)) open to the public, or that social functions at which club liquor may be consumed, are open to the public((~~: Provided, however, Circularizing membership shall not be considered advertising, and where~~)). Clubs that provide lunch or dinner to the public((~~, this~~)) may ((~~be advertised: Provided further, Such advertising~~)) advertise but must specify no liquor service is available.

(2) Clubs and/or their auxiliary organizations may advertise social or other club events to their membership through the public media under the following conditions: ((~~Provided, Such~~))

(a) Advertising ((~~is~~)) must be clearly directed to their membership only ((~~and~~));

(b) Advertising cannot be construed as implying that the general public is welcome to attend((~~.~~

~~(3) Advertising of the club functions by means of placards placed for public viewing shall be governed by the provisions of subsection (2) of this section.~~

~~(4)~~)); and

(c) Advertising club functions with placards placed for public viewing shall be governed by (a) and (b) of this subsection.

(3) Advertising may be directed to the public generally in connection with events of special public interest ((~~such as Flag Day, Memorial Day, Veterans Day or such other occasions,~~)) under provisions set forth in WAC 314-40-080(3).

(((~~(5)~~)) (4) A private club may hold a public membership function as outlined in WAC 314-40-040(6). The function must be advertised as a membership drive.

(5) Clubs shall not advertise the events held with the nonclub event endorsement per RCW 66.24.425(3).

(6) Clubs desiring to have radio or television broadcasts originating from their licensed premises may do so((~~:~~)) provided((~~, That~~)):

(a) Such broadcasts consist only of entertainment or other matter which is in the public interest and may not contain:

(i) Any announcement of opening or closing hours((~~,~~));

(ii) Any invitation to visit the club((~~,~~)); or

(iii) Any statement which may be construed as advertising or any implication that the club is operated as a public place.

(b) The only reference to the club during such broadcasts shall be limited to a statement at the opening and closing of the program as originating from the club quarters.

NEW SECTION

WAC 314-52-130 Public and civic events. (1) Industry members may sponsor public and civic events and provide the following:

(a) Signage with the industry members name or brand name of their products; and

(b) Programs or flyers to be disseminated at the event.

(2) Acknowledgment of the sponsor, either by name, brand, or both, is allowed in any media advertisement where the function recognizes the sponsors of the event. The size of the alcohol industry sponsor acknowledgment may not exceed the size of the event name.

(3) Inflatables are not allowed inside the event areas.

(4) There may be no giveaways of alcohol promotional items of any kind to persons under twenty-one years of age at events held in public areas including, but not limited to, street fairs, parks, and government buildings.

(5) Industry members may not sponsor a special occasion license at public and civic events. Money may not be given directly to the special occasion licensee, or employees thereof, but industry members may provide the following advertising for a special occasion licensed event:

(a) Signage with the industry members name or brand name of their products;

(b) Media coverage of the event; and

(c) Programs or flyers to be disseminated at the event.

(6) Inflatables are not allowed inside special occasion license areas unless the area is completely enclosed with no view to the inside from the public right of way.

(7) There may be no giveaways of alcohol promotional items of any kind in special occasion license areas.

(8) The board limits each special occasion licensed premises to a total of four signs referring to alcoholic beverages, brand names, or manufacturers that are affixed or hanging in the windows and on the outside of the special occasion licensed premises that are visible to the general public from the public right of way. The board also limits the size of a sign advertising alcohol, brand names, or manufacturers that are affixed or hanging in the windows and on the outside of the special occasion premises that are visible to the general public from the public right of way to sixteen hundred square inches.

(9) Brand advertising is allowed inside the special occasion license event area where alcohol sales and consumption occur.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-52-020	Use of insignia or reference to liquor control board prohibited—Exception.
WAC 314-52-114	Advertising by retail licensees, offering for sale, or selling beer, wine or spirituous liquor at less than cost—Prohibited—Exceptions.