

**WSR 10-10-007**  
**PERMANENT RULES**  
**STATE BOARD OF EDUCATION**

[Filed April 22, 2010, 9:32 a.m., effective May 23, 2010]

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

Purpose: The proposed amendments to WAC 180-18-040 provide for the development and implementation of a waiver from the one hundred eighty day school year requirement by an eligible school district that does not require the state board of education's approval. The requirements for obtaining this type of waiver are set forth in the proposed amendments to WAC 180-18-050. Additionally, the amendments to WAC 180-18-050 provide for thirty days advance notice to the board of a school district's intent to implement a plan providing for a waiver; a report by the district to the board ninety days after completion of the district's plan; and the requirements for eligibility for a subsequent waiver. A school district that does not meet the requirements for the proposed waiver will continue to have the option of submitting a request to the board for approval of a waiver from the one hundred eighty day school year requirement under subsection (1) of WAC 180-18-040 and 180-18-050. The proposed amendments to subsection (2) of WAC 180-18-050 require that the application for a waiver to the board must now be received at least fifty days prior to the board's meeting at which it will be considered.

Citation of Existing Rules Affected by this Order: Amending WAC 180-18-040 and 180-18-050.

Statutory Authority for Adoption: RCW 28A.305.140 and 28A.655.180.

Adopted under notice filed as WSR 10-04-118 on February 3, 2010.

Changes Other than Editing from Proposed to Adopted Version: Two changes were made from the proposed to the adopted version of WAC 180-18-050. The first change added one more condition of ineligibility to subsection (3)(b). A district that has a current waiver from the minimum one hundred eighty day school year requirement approved by the board and in effect under WAC 180-18-040 would be ineligible. The reason for this change was to reflect the intention of the board. The board developed the new process as a separate and unique option. It was not intended to supplement any other use of waived days. The second change added the term "late-start" wherever "early-release" appeared in subsection (3). The term "late-start" was added to subsection (3)(j) and (3)(k)(iv) and (ix). The reason for this change was to reflect the intention of the board. The board equated the term "early-release" with a shorter school day. Some schools and districts, however, do not have early-release days but do have late-start days. In order to include all shorter days in the revised rules, the board added the term "late-start."

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 2, Repealed 0.

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

Date Adopted: March 18, 2010.

Edith W. Harding  
Executive Director

AMENDATORY SECTION (Amending WSR 07-20-030, filed 9/24/07, effective 10/25/07)

**WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement and student-to-teacher ratio requirement.** (1) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.150.220(5) and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The state board of education may grant said initial waiver requests for up to three school years.

(2) A district that is not otherwise ineligible as identified under WAC 180-18-050 (3)(b) may develop and implement a plan that meets the program requirements identified under WAC 180-18-050(3) to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.150.220(5) and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district.

(3) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the student-to-teacher ratio requirement pursuant to RCW 28A.150.250 and WAC 180-16-210, which requires the ratio of the FTE students to kindergarten through grade three FTE classroom teachers shall not be greater than the ratio of the FTE students to FTE classroom teachers in grades four through twelve. The state board of education may grant said initial waiver requests for up to three school years.

AMENDATORY SECTION (Amending WSR 07-20-030, filed 9/24/07, effective 10/25/07)

**WAC 180-18-050 Procedure to obtain waiver.** (1) State board of education approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 (1) and (3) shall occur at a state board meeting prior to implementation. A district's waiver application shall be in the form of a reso-

lution adopted by the district board of directors. The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution shall be accompanied by information detailed in the guidelines and application form available on the state board of education's web site.

(2) The application for a waiver and all supporting documentation must be received by the state board of education at least ~~((thirty))~~ fifty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.

(3)(a) Under this section, a district meeting the eligibility requirements may develop and implement a plan that meets the program requirements identified under this section and any additional guidelines developed by the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.150.220(5) and WAC 180-16-215. The plan must be designed to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. This section will remain in effect only through August 31, 2018. Any plans for the use of waived days authorized under this section may not extend beyond August 31, 2018.

(b) A district is not eligible to develop and implement a plan under this section if:

(i) The superintendent of public instruction has identified a school within the district as a persistently low achieving school; or

(ii) A district has a current waiver from the minimum one hundred eighty-day school year requirement approved by the board and in effect under WAC 180-18-040.

(c) A district shall involve staff, parents, and community members in the development of the plan.

(d) The plan can span a maximum of three school years.

(e) The plan shall be consistent with the district's improvement plan and the improvement plans of its schools.

(f) A district shall hold a public hearing and have the school board approve the final plan in resolution form.

(g) The maximum number of waived days that a district may use is dependent on the number of learning improvement days, or their equivalent, funded by the state for any given school year. For any school year, a district may use a maximum of three waived days if the state does not fund any learning improvement days. This maximum number of waived days will be reduced for each additional learning improvement day that is funded by the state. When the state funds three or more learning improvement days for a school year, then no days may be waived under this section.

Scenario	Number of learning improvement days funded by state for a given school year	Maximum number of waived days allowed under this section for the same school year
<u>A</u>	<u>0</u>	<u>3</u>
<u>B</u>	<u>1</u>	<u>2</u>
<u>C</u>	<u>2</u>	<u>1</u>
<u>D</u>	<u>3 or more</u>	<u>0</u>

(h) The plan shall include goals that can be measured through established data collection practices and assessments. At a minimum, the plan shall include goal benchmarks and results that address the following subjects or issues:

(i) Increasing student achievement on state assessments in reading, mathematics, and science for all grades tested;

(ii) Reducing the achievement gap for student subgroups;

(iii) Improving on-time and extended high school graduation rates (only for districts containing high schools).

(i) Under this section, a district shall only use one or more of the following strategies in its plan to use waived days:

(i) Use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance;

(ii) Use data from multiple measures to identify and implement comprehensive, research-based, instructional programs that are vertically aligned from one grade to the next as well as aligned with state academic standards;

(iii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students;

(iv) Implement strategies designed to recruit, place, and retain effective staff;

(v) Conduct periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(vi) Increase graduation rates through, for example, credit-recovery programs, smaller learning communities, and acceleration of basic reading and mathematics skills;

(vii) Establish schedules and strategies that increase instructional time for students and time for collaboration and professional development for staff;

(viii) Institute a system for measuring changes in instructional practices resulting from professional development;

(ix) Provide ongoing, high-quality, job-embedded professional development to staff to ensure that they are equipped to provide effective teaching;

(x) Develop teacher and school leader effectiveness;

(xi) Implement a school-wide "response-to-intervention" model;

(xii) Implement a new or revised instructional program;

(xiii) Improve student transition from middle to high school through transition programs or freshman academies;

(xiv) Develop comprehensive instructional strategies;

(xv) Extend learning time and community oriented schools.

(j) The plan must not duplicate activities and strategies that are otherwise provided by the district through the use of late-start and early-release days.

(k) A district shall provide notification to the state board of education thirty days prior to implementing a new plan. The notification shall include the approved plan in resolution form signed by the superintendent, the chair of the school board, and the president of the local education association; include a statement indicating the number of certificated employees in the district and that all such employees will be participating in the strategy or strategies implemented under the plan for a day that is subject to a waiver, and any other required information. The approved plan shall, at least, include the following:

(i) Members of the plan's development team;

(ii) Dates and locations of public hearings;

(iii) Number of school days to be waived and for which school years;

(iv) Number of late-start and early-release days to be eliminated, if applicable;

(v) Description of the measures and standards used to determine success and identification of expected benchmarks and results;

(vi) Description of how the plan aligns with the district and school improvement plans;

(vii) Description of the content and process of the strategies to be used to meet the goals of the waiver;

(viii) Description of the innovative nature of the proposed strategies;

(ix) Details about the collective bargaining agreements, including the number of professional development days (district-wide and individual teacher choice), full instruction days, late-start and early-release days, and the amount of other noninstruction time; and

(x) Include how all certificated staff will be engaged in the strategy or strategies for each day requested.

(l) Within ninety days of the conclusion of an implemented plan a school district shall report to the state board of education on the degree of attainment of the plan's expected benchmarks and results and the effectiveness of the implemented strategies. The district may also include additional information, such as investigative reports completed by the district or third-party organizations, or surveys of students, parents, and staff.

(m) A district is eligible to create a subsequent plan under this section if the summary report of the enacted plan shows improvement in, at least, the following plan's expected benchmarks and results:

(i) Increasing student achievement on state assessments in reading and mathematics for all grades tested;

(ii) Reducing the achievement gap for student sub-groups;

(iii) Improving on-time and extended high school graduation rates (only for districts containing high schools).

(n) A district eligible to create a subsequent plan shall follow the steps for creating a new plan under this section. The new plan shall not include strategies from the prior plan that were found to be ineffective in the summary report of the

prior plan. The summary report of the prior plan shall be provided to the new plan's development team and to the state board of education as a part of the district's notification to use a subsequent plan.

(o) A district that is ineligible to create a subsequent plan under this section may submit a request for a waiver to the state board of education under WAC 180-18-040(1) and subsections (1) and (2) of this section.

**WSR 10-10-011**  
**PERMANENT RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed April 22, 2010, 3:52 p.m., effective May 23, 2010]

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

Purpose: To establish official pay dates for state officers and employees for calendar year 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 82-50-021.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Adopted under notice filed as WSR 10-04-086 on February 2, 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 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: April 19, 2010.

Roselyn Marcus  
Director of Legal Affairs  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-008, filed 5/7/09, effective 6/7/09)

**WAC 82-50-021 Official lagged, semimonthly pay dates established.** Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years (~~2009 and~~) 2010 and 2011:

((CALENDAR YEAR 2009  
Friday, January 9, 2009

CALENDAR YEAR 2010  
Monday, January 11, 2010

((CALENDAR YEAR 2009  
 Monday, January 26, 2009  
 Tuesday, February 10, 2009  
 Wednesday, February 25, 2009  
 Tuesday, March 10, 2009  
 Wednesday, March 25, 2009  
 Friday, April 10, 2009  
 Friday, April 24, 2009  
 Monday, May 11, 2009  
 Friday, May 22, 2009  
 Wednesday, June 10, 2009  
 Thursday, June 25, 2009  
 Friday, July 10, 2009  
 Friday, July 24, 2009  
 Monday, August 10, 2009  
 Tuesday, August 25, 2009  
 Thursday, September 10, 2009  
 Friday, September 25, 2009  
 Friday, October 9, 2009  
 Monday, October 26, 2009  
 Tuesday, November 10, 2009  
 Wednesday, November 25, 2009  
 Thursday, December 10, 2009  
 Thursday, December 24, 2009

CALENDAR YEAR 2010  
 Monday, January 25, 2010  
 Wednesday, February 10, 2010  
 Thursday, February 25, 2010  
 Wednesday, March 10, 2010  
 Thursday, March 25, 2010  
 Friday, April 9, 2010  
 Monday, April 26, 2010  
 Monday, May 10, 2010  
 Tuesday, May 25, 2010  
 Thursday, June 10, 2010  
 Friday, June 25, 2010  
 Friday, July 9, 2010  
 Monday, July 26, 2010  
 Tuesday, August 10, 2010  
 Wednesday, August 25, 2010  
 Friday, September 10, 2010  
 Friday, September 24, 2010  
 Friday, October 8, 2010  
 Monday, October 25, 2010  
 Wednesday, November 10, 2010  
 Wednesday, November 24, 2010  
 Friday, December 10, 2010  
 Thursday, December 23, 2010))

CALENDAR YEAR 2010  
Monday, January 11, 2010  
Monday, January 25, 2010  
Wednesday, February 10, 2010  
Thursday, February 25, 2010  
Wednesday, March 10, 2010  
Thursday, March 25, 2010  
Friday, April 9, 2010  
Monday, April 26, 2010  
Monday, May 10, 2010  
Tuesday, May 25, 2010  
Thursday, June 10, 2010  
Friday, June 25, 2010  
Friday, July 9, 2010  
Monday, July 26, 2010  
Tuesday, August 10, 2010  
Wednesday, August 25, 2010  
Friday, September 10, 2010  
Friday, September 24, 2010  
Friday, October 8, 2010  
Monday, October 25, 2010  
Wednesday, November 10, 2010  
Wednesday, November 24, 2010  
Friday, December 10, 2010  
Thursday, December 23, 2010

CALENDAR YEAR 2011  
Monday, January 10, 2011  
Tuesday, January 25, 2011  
Thursday, February 10, 2011  
Friday, February 25, 2011  
Thursday, March 10, 2011  
Friday, March 25, 2011  
Monday, April 11, 2011  
Monday, April 25, 2011  
Tuesday, May 10, 2011  
Wednesday, May 25, 2011  
Friday, June 10, 2011  
Friday, June 24, 2011  
Monday, July 11, 2011  
Monday, July 25, 2011  
Wednesday, August 10, 2011  
Thursday, August 25, 2011  
Friday, September 9, 2011  
Monday, September 26, 2011  
Friday, October 7, 2011  
Tuesday, October 25, 2011  
Thursday, November 10, 2011  
Wednesday, November 23, 2011  
Friday, December 9, 2011  
Friday, December 23, 2011

**WSR 10-10-017**  
**PERMANENT RULES**  
**HORSE RACING COMMISSION**  
 [Filed April 26, 2010, 7:52 a.m., effective May 27, 2010]

Effective Date of Rule: Thirty-one days after filing.  
 Purpose: In an attempt to assist with field size which directly affect mutuel handle, the Washington horse racing commission is removing the requirement to couple common ownership interests.  
 Citation of Existing Rules Affected by this Order: Amending WAC 260-40-065.  
 Statutory Authority for Adoption: RCW 67.16.020.  
 Adopted under notice filed as WSR 10-05-094 on February 16, 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 1, Repealed 0.

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

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

Date Adopted: April 26, 2010.

Douglas L. Moore  
 Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

**WAC 260-40-065 ((Coupled and)) Multiple entries.**  
 (((1) Two or more horses owned or leased in whole or part by the same owner must be joined as a coupled entry and single betting interest when entered in the same race. Coupled entries may be uncoupled in stakes races. Common ownership entries may be uncoupled in stakes races with the approval of the board of stewards.

(2) A coupled entry may not exclude a single entry, except in a race where the conditions are specific as to preference.

(3) At the time of making a same ownership entry, the trainer, owner, or authorized agent must select which horse will run in the event the coupled entry is not allowed.

(4)) A trainer, owner, or authorized agent may not enter and start more than two horses of the same or separate ownership in a purse race or overnight event, except under the following conditions:

- ((a)) (1) Stake races;
- ((b)) (2) Races in which there are fees required to nominate or enter; and
- ((c)) (3) Allowance/optional claiming or maiden special weight races. In these races a trainer may not enter more than three horses.

(4) The third entry may not exclude a single entry, or be allowed if there are less than seven entries received prior to the entry of the trainer's third horse.

**WSR 10-10-022**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed April 26, 2010, 11:02 a.m., effective May 27, 2010]

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

Purpose: Revisions to this rule are necessary to: (1) Reorganize the contents for better understanding; (2) eliminate duplications and outdated information; (3) clarify the conditions under which a provider may bill a medical assistance client, or anyone on the client's behalf, for covered and noncovered services; (4) clarify that these rules apply to providers whether they serve fee-for-service or managed care clients; (5) standardize the form providers use when entering into agreements with clients to pay for covered and/or non-covered services; (6) clarify the conditions under which a provider does not need to execute the standardized form to bill a client; and (7) further clarify spenddown.

Citation of Existing Rules Affected by this Order: Amending WAC 388-502-0160.

Statutory Authority for Adoption: RCW 74.08.090 and 42 C.F.R. 447.15.

Adopted under notice filed as WSR 10-04-108 on February 3, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-502-0160 (5)(b)(iv), the department added the following as a result of stakeholder comments:

(iv) Covered by the department or the client's department-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the department or MCO does not pay for and the specific type is not medically necessary for the client.

WAC 388-502-0160 (6)(g), the department added a subsection (2) in the cross-reference to be more definitive:

(g) The services were noncovered ambulance services (see WAC 388-546-0250(2));

A final cost-benefit analysis is available by contacting Gail Kreiger, Chief, Division of Healthcare Services, P.O. Box 45560, Olympia, WA 98504-5560, phone (360) 725-1681, fax (360) 586-9727, e-mail Gail.Kreiger@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 0, Amended 1, Repealed 0.

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

Date Adopted: April 26, 2010.

Susan N. Dreyfus  
Secretary

AMENDATORY SECTION (Amending WSR 02-12-070, filed 5/31/02, effective 7/1/02)

**WAC 388-502-0160 Billing a client.** (1) ~~((A provider may not bill, demand, collect, or accept payment from a client or anyone on the client's behalf for a covered service. The client is not responsible to pay for a covered service even if MAA does not pay the provider because the provider failed to satisfy the conditions of payment in MAA billing instructions, this chapter, and other chapters regulating the specific type of service provided.~~

(2) ~~The provider is responsible for verifying whether the client has medical coverage for the date of service and to check the limitations of the client's medical program.~~

(3) ~~A provider may bill a client only if one of the following situations apply:~~

(a) ~~The client is enrolled in medical assistance managed care and the client and provider comply with the requirements in WAC 388-538-095;~~

(b) ~~The client is not enrolled in medical assistance managed care, and the client and provider sign an agreement regarding payment for the service. The agreement must be translated or interpreted into the client's primary language and signed before the service is rendered. The provider must give the client a copy and maintain the original in the client's file for department review upon request. The agreement must include each of the following elements to be valid:~~

(i) ~~A statement listing the specific service to be provided;~~

(ii) ~~A statement that the service is not covered by MAA;~~

(iii) ~~A statement that the client chooses to receive and pay for the specific service; and~~

(iv) ~~The client is not obligated to pay for the service if it is later found that the service was covered by MAA at the time it was provided, even if MAA did not pay the provider for the service because the provider did not satisfy MAA's billing requirements.~~

(e) ~~The client or the client's legal guardian was reimbursed for the service directly by a third party (see WAC 388-501-0200);~~

(d) ~~The client refuses to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill insurance for the service. This provision does not apply to coverage provided by MAA;~~

(e) ~~The provider has documentation that the client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a MAA medical program. This documentation must be signed and dated by the client or the client's representative. The provider must give a copy to~~

the client and maintain the original documentation in the client's file for department review upon request. In this case, the provider may bill the client without fulfilling the requirements in subsection (3)(b) of this section regarding the agreement to pay. However, if the patient later becomes eligible for MAA coverage of a provided service, the provider must comply with subsection (4) of this section for that service;

(f) The bill counts toward a spenddown liability, emergency medical expense requirement, deductible, or copayment required by MAA; or

(g) The client received medical services in a hospital emergency room for a condition that was not an emergency medical condition. In such cases, a three-dollar copayment may be imposed on the client by the hospital, except when:

(i) Reasonable alternative access to care was not available;

(ii) The "indigent person" criteria in WAC 246-453-040(1) applies;

(iii) The client was eighteen years of age or younger;

(iv) The client was pregnant or within sixty days post-pregnancy;

(v) The client is an American Indian or Alaska Native;

(vi) The client was enrolled in a MAA managed care plan, including primary care case management (PCCM);

(vii) The client was in an institution such as a nursing facility or residing in an alternative living facility such as an adult family home, assisted living facility, or boarding home; or

(viii) The client receives waived services such as community options program entry system (COPES) and community alternatives program (CAP).

(4) If a client becomes eligible for a covered service that has already been provided because the client:

(a) Applied to the department for medical services later in the same month the service was provided (and is made eligible from the first day of the month), the provider must:

(i) Not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf, and then bill MAA for the service;

(b) Receives a delayed certification as defined in WAC 388-500-0005, the provider must:

(i) Not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf, and then bill MAA for the service; or

(c) Receives a retroactive certification as defined in WAC 388-500-0005, the provider:

(i) Must not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for any unpaid charges for the service; and

(ii) May refund any payment received from the client or anyone on the client's behalf, and after refunding the payment, the provider may bill MAA for the service.

(5) Hospitals may not bill, demand, collect, or accept payment from a medically indigent, GA-U, or ADATSA client, or anyone on the client's behalf, for inpatient or outpatient hospital services during a period of eligibility, except for

spenddown and under the circumstance described in subsection (3)(g) of this section.

(6) A provider may not bill, demand, collect, or accept payment from a client, anyone on the client's behalf, or MAA for copying or otherwise transferring health care information, as that term is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

(a) Medical charts;

(b) Radiological or imaging films; and

(c) Laboratory or other diagnostic test results)) The purpose of this section is to specify the limited circumstances in which:

(a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and

(b) Providers (as defined in WAC 388-500-0005) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.

(2) The provider is responsible for:

(a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;

(b) Verifying whether the client is enrolled with a department-contracted managed care organization (MCO);

(c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC 388-501-0050 (4)(a) and 388-501-0065);

(d) Informing the client of those limitations;

(e) Exhausting all applicable department or department-contracted MCO processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the department or department-contracted MCO for medical assistance services furnished to clients. See 42 CFR § 447.15.

(4) A provider must not bill a client, or anyone on the client's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in department's rules, the department's fee-for-service billing instructions, and the requirements for billing the department-contracted MCO in which the client is enrolled, and until the provider has then fully informed the client of his or her covered options. A provider must not bill a client for:

(a) Any services for which the provider failed to satisfy the conditions of payment described in department's rules, the department's fee-for-service billing instructions, and the requirements for billing the department-contracted MCO in which the client is enrolled.

(b) A covered service even if the provider has not received payment from the department or the client's MCO.

(c) A covered service when the department denies an authorization request for the service because the required information was not received from the provider or the prescriber under WAC 388-501-0165 (7)(c)(i).

(5) If the requirements of this section are satisfied, then a provider may bill a fee-for-service or a managed care client for a covered service, defined in WAC 388-501-0050(9), or a noncovered service, defined in WAC 388-501-0050(10) and 388-501-0070. The client and provider must sign and date the DSHS form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. DSHS form 13-879, including translated versions, is available to download at <http://www1.dshs.wa.gov/msa/forms/eforms.html>. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than ninety calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the department or department-contracted MCO;

(iv) Specify the total amount the client must pay for the service;

(v) Specify what items or services are included in this amount (such as pre-operative care and postoperative care). See WAC 388-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the client has been fully informed of all available medically appropriate treatment, including services that may be paid for by the department or department-contracted MCO, and that he or she chooses to get the specified service(s);

(vii) Specify that the client may request an exception to rule (ETR) in accordance with WAC 388-526-2610 when the department denies a request for a noncovered service and that the client may choose not to do so;

(viii) Specify that the client may request an administrative hearing in accordance with WAC 388-526-2610 to appeal the department's denial of a request for prior authorization of a covered service and that the client may choose not to do so;

(ix) Be completed only after the provider and the client have exhausted all applicable department or department-contracted MCO processes necessary to obtain authorization of the requested service, except that the client may choose not to request an ETR or an administrative hearing regarding department denials of authorization for requested service(s); and

(ix) Specify which reason in subsection (b) below applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the client is agreeing to be billed for the service(s). The service(s) is:

(i) Not covered by the department or the client's department-contracted MCO and the ETR process as described in WAC 388-501-0160 has been exhausted and the service(s) is denied;

(ii) Not covered by the department or the client's department-contracted MCO and the client has been informed of his or her right to an ETR and has chosen not to pursue an ETR as described in WAC 388-501-0160;

(iii) Covered by the department or the client's department-contracted MCO, requires authorization, and the provider completes all the necessary requirements; however the

department denied the service as not medically necessary (this includes services denied as a limitation extension under WAC 388-501-0169); or

(iv) Covered by the department or the client's department-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the department or MCO does not pay for and the specific type is not medically necessary for the client.

(c) For clients with limited English proficiency, the agreement must be the version translated in the client's primary language and interpreted if necessary. If the agreement is translated, the interpreter must also sign it;

(d) The provider must give the client a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the client's file for six years from the date of service. The agreement must be made available to the department for review upon request; and

(e) If the service is not provided within ninety calendar days of the signed agreement, a new agreement must be completed by the provider and signed by both the provider and the client.

(6) There are limited circumstances in which a provider may bill a client without executing DSHS form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section. The following are those circumstances:

(a) The client, the client's legal guardian, or the client's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC 388-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third party insurance carrier for the service.

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a medical assistance program. In this circumstance, the provider must:

(i) Keep documentation of the client's declaration of medical coverage. The client's declaration must be signed and dated by the client, the client's legal guardian, or the client's legal representative; and

(ii) Give a copy of the document to the client and maintain the original for six years from the date of service, for department review upon request.

(c) The bill counts toward the financial obligation of the client or applicant (such as spenddown liability, client participation as described in WAC 388-513-1380, emergency medical expense requirement, deductible, or copayment required by the department). See subsection (7) of this section for billing a medically needy client for spenddown liability;

(d) The client is under the department's or a department-contracted MCO's patient review and coordination (PRC) program (WAC 388-501-0135) and receives nonemergency services from providers or healthcare facilities other than those to whom the client is assigned or referred under the PRC program;

(e) The client is a dual-eligible client with medicare Part D coverage or similar creditable prescription drug coverage and the conditions of WAC 388-530-7700 (2)(a)(iii) are met:

(f) The services provided to a TAKE CHARGE or family planning only client are not within the scope of the client's benefit package:

(g) The services were noncovered ambulance services (see WAC 388-546-0250(2)):

(h) A fee-for-service client chooses to receive nonemergency services from a provider who is not contracted with the department after being informed by the provider that he or she is not contracted with the department and that the services offered will not be paid by the client's healthcare program; and

(i) A department-contracted MCO enrollee chooses to receive nonemergency services from providers outside of the MCO's network without authorization from the MCO, i.e., a nonparticipating provider.

(7) Under chapter 388-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on healthcare expenses to become eligible for coverage under the medically needy program. An individual must incur healthcare expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the department for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then accept as payment in full the amount paid by the department or managed care organization for medical assistance services furnished to clients. These situations are as follows:

(a) The individual was not receiving medical assistance on the day the service was furnished. The individual applies for medical assistance later in the same month in which the service was provided and the department makes the individual eligible for medical assistance from the first day of that month;

(b) The client receives a delayed certification for medical assistance as defined in WAC 388-500-0005; or

(c) The client receives a certification for medical assistance for a retroactive period according to 42 CFR § 435.914(a) and defined in WAC 388-500-0005.

(9) Regardless of any written, signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from a client, anyone on the client's behalf, or the department for:

(a) Copying, printing, or otherwise transferring healthcare information, as the term healthcare information is defined in chapter 70.02 RCW, to another healthcare provider. This includes, but is not limited to:

(i) Medical/dental charts;

(ii) Radiological or imaging films; and

(iii) Laboratory or other diagnostic test results.

(b) Missed, cancelled, or late appointments;

(c) Shipping and/or postage charges;

(d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

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

## WSR 10-10-030

### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed April 26, 2010, 3:44 p.m., effective May 27, 2010]

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

Purpose: WAC 458-20-190 explains the tax reporting responsibilities of persons:

- Making sales to the United States and to foreign governments;
- Engaging in business activities within federal reservations; and
- Cleaning up radioactive waste and other by-products of weapons production for the United States.

The department amended this rule to recognize ESSB 6170 (chapter 469, Laws of 2009). This legislation amended RCW 82.04.263, which provides a preferential B&O tax rate for "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development."

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-190 Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 10-05-075 on February 12, 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 1, Repealed 0.

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

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

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

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

Date Adopted: April 26, 2010.

Alan R. Lynn  
Rules Coordinator



AMENDATORY SECTION (Amending WSR 05-03-002, filed 1/5/05, effective 2/5/05)

**WAC 458-20-190 Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments.** (1) **Introduction.** Federal law prohibits Washington from directly imposing taxes upon the United States. Persons doing business with the United States are nonetheless subject to the taxes imposed by the state of Washington, unless specifically exempt. This rule explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. The rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.

Persons engaged in construction, installation, or improvement to real property of or for the United States should also refer to WAC 458-20-17001 (Government contracting, etc.). Persons building, repairing, or improving streets, roads, and other transportation facilities, which are owned by the United States should also refer to WAC 458-20-171 (Building, repairing or improving streets, roads, etc.). Persons selling cigarettes to the United States or any other federal entity should also refer to WAC 458-20-186 (Tax on cigarettes).

(2) **"United States" defined.**

(a) For the purposes of this rule, the term "United States" means the federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity and whether or not the entity is required to collect and remit retail sales/use tax depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(3) **Prohibition against taxing the United States.** The state of Washington is prohibited from imposing taxes directly upon the United States.

(a) This prohibition applies to taxes imposed for the privilege of engaging in business such as the business and occupation (chapter 82.04 RCW) and the public utility (chapter 82.16 RCW) taxes.

It also applies to taxes imposed on a buyer or user of goods or services, including, but not limited to, the:

(i) State and local retail sales and car rental taxes (chapters 82.08 and 82.14 RCW);

(ii) State and local use tax (chapters 82.12 and 82.14 RCW);

(iii) Solid waste collection tax (chapter 82.18 RCW); and

(iv) Local government taxes such as the special hotel/motel (chapter 67.28 RCW) and convention and trade center (chapter 67.40 RCW) taxes.

(b) The state is also prohibited from requiring the United States to collect taxes imposed on the buyer (e.g., the retail sales tax) as an agent for the state. However, buyers must pay use tax on retail purchases from the United States, unless specifically exempt by law.

(c) In addition, federal law exempts certain nongovernmental entities from state taxes (for which Congress has given specific federal statutory tax exemptions). These specific federal statutory exemptions given by Congress may not be absolute and may be limited to specific activities of an entity.

(d) The American Red Cross is an instrumentality of the United States. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and business and occupation taxes under state law. RCW 82.08.0258, 82.12.-0259, and 82.04.380.

(4) **Persons doing business with the United States.** Persons selling goods or services to the United States are subject to taxes imposed on the seller, such as the business and occupation (B&O) and public utility taxes, unless a specific tax exemption applies. Persons receiving income from contracting with the United States government to administer its programs, either in whole or in part, are also subject to tax, unless a specific tax exemption applies.

(a) **Certain invoiced amounts not included in gross income.** Persons who contract with the United States may, for federal accounting purposes, be contractually required to invoice goods or services provided to the United States by third parties. The purpose of the invoices is to match the expenditures with the appropriate category of congressional funding. These amounts should be excluded from the person's gross income when reporting on the combined excise tax return if all of the following conditions exist with respect to the goods or services:

(i) The third party directly invoices the United States;

(ii) The United States directly pays the third party; and

(iii) The person has no liability, either primarily or secondarily, for making payment to the third party or for remitting payment to the third party.

(b) **Tax obligation with respect to the use of tangible personal property.** Persons performing services for the United States are also subject to the retail sales or use tax on property they use or consume when performing services for the United States, unless specifically exempt.

(i) **Manufacturing articles for commercial or industrial use.** In the case of products manufactured or produced by the person using the products as a consumer, the measure of the use tax is generally the value of the products as explained in WAC 458-20-112 (Value of products). However, if the articles manufactured or produced by the user are used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of articles used is the value of the ingredients of such articles. The manufacturing B&O tax also applies to the value of articles manufactured for commercial or industrial use.

(ii) **Use of government provided property.** When articles or goods used are acquired by bailment, the measure of

the use tax to the bailee is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. See WAC 458-20-211 (Leases or rental of tangible personal property, bailments). Thus, if a person has a contract to provide services for the United States and uses government supplied tangible personal property to perform the services, then the person must pay use tax on the fair market rental value of the government supplied tangible personal property.

Persons who incorporate government provided articles into construction projects or improvements made to real property of or for the United States should refer to WAC 458-20-17001 (Government contracting, etc.) for more specific tax-reporting information.

**(c) Exemption for certain machinery and equipment.** Manufacturers or processors for hire may be eligible for the retail sales or use tax exemption provided by RCW 82.08.02565 and 82.12.02565 on machinery and equipment used directly in a manufacturing or research and development operation. See WAC 458-20-13601 (Manufacturers and processor for hire—Sales and use tax exemption for machinery and equipment).

**(5) Documenting exempt sales to the United States.** Only those sales made directly to the United States are exempt from retail sales tax or other tax imposed on the buyer. To be entitled to the exemption, the purchase must be paid for using a qualified U.S. government credit card, a check from the United States payable to the seller, a United States voucher, or with cash accompanied by the federal SF (Standard Form) 1165.

Sales to employees or representatives of the United States are subject to tax, even though the United States may reimburse the employee or representative for all or a part of the expense. Purchases by any other person, whether with federal funds or through a reimbursement arrangement, are subject to tax unless specifically exempt by law.

**(a) Documenting tax-exempt sales.** Sellers document the tax-exempt nature of sales made to the United States by keeping a copy of the United States credit card receipt, a copy of the check from the United States, a copy of the federal government voucher, or a signed copy of federal SF 1165.

**(b) Payment occurring via government contracted credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Sole responsibility for payment of these purchases may rest with the United States government or with the employee. The United States government's system of issuing government contracted credit cards is subject to change. For specific information about determining when payment is the direct responsibility of the United States government or the employee, contact the department's taxpayer services division at:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's web site at <http://dor.wa.gov>.

**(6) Doing business on federal reservations.** The state of Washington has jurisdiction and authority to levy and collect taxes upon persons residing within, or with respect to business transactions conducted upon, federal reservations. 4 U.S.C. §§ 105-110. The term "federal reservation," as used in this rule, means any land or premises within the exterior boundaries of the state of Washington that are held or acquired by and for the use of the United States, its departments, institutions or entities. This means that a concessionaire operating within a federal reservation under a grant or permit issued by the United States or by a department or entity of the United States is taxable to the same extent as any private operator engaging in a similar business outside a federal reservation and without specific authority from the United States.

**(a) Sales tax collection requirements.** Persons making retail sales to members of the armed forces or others residing within or conducting business upon federal reservations are required to collect and remit retail sales tax from the buyer.

**(b) Cigarette tax stamps.** Washington cigarette tax stamps must generally be affixed to all cigarettes sold to persons residing within or conducting business upon federal reservations. However, such stamps need not be affixed to cigarettes sold to the United States or any of its entities including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any of its entities to authorized purchasers, for use on such reservation. See WAC 458-20-186 (Tax on cigarettes).

**(7) Sales made to authorized purchasers of the United States.** As explained in subsection (3)(b) of this rule, while sales by the United States are exempt of retail sales tax the purchaser is generally responsible for remitting use tax directly to the department of revenue. Federal law prohibits the imposition of use tax on tangible personal property sold to authorized purchasers by the United States, its entities, or voluntary unincorporated organization of armed forces personnel. 4 U.S.C. § 107(a).

**(a) Who is an "authorized purchaser"?** A person is an "authorized purchaser" only with respect to purchases he or she is permitted to make from commissaries, ships' stores, or voluntary unincorporated organizations of personnel of any branch of the armed forces of the United States, under regulations promulgated by the departmental secretary having jurisdiction over such branch. 4 U.S.C. § 107(b).

**(b) What is a "voluntary unincorporated organization"?** "Voluntary unincorporated organizations" are those organizations comprised of armed forces personnel operated under regulations promulgated by the departmental secretary having jurisdiction over such branch. Examples of voluntary unincorporated organizations are post flying clubs, officers or noncommissioned officers open messes, and recreation associations.

**(8) Purchases by persons using federal funds.** Retail sales or use tax is applicable to retail purchases made by any buyer, other than the United States, including the state of Washington and all of its political subdivisions, irrespective

of whether or not the buyer uses or is reimbursed with federal funds.

(9) **Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** RCW 82.04.263 provides a preferential tax rate for the gross income derived from cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. This tax rate applies whether the person performing these activities is a general contractor or subcontractor.

(a) **What activities are entitled to the preferential tax rate?** Only those activities that meet the definition of "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" are entitled to the preferential tax rate. The statute defines "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" to mean:

(i) The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(ii) Conditioning of spent nuclear fuel;

(iii) Removing contamination in soils and ground water;

(iv) Decontaminating and decommissioning of facilities; and

(v) ~~(Performing activities integral and necessary to the direct performance of cleanup.~~

~~(b) **What does it mean to be integral and necessary to the direct performance of cleanup?** To be considered an activity integral and necessary to the direct performance of cleanup, the activity must be directly connected to and essential for the furtherance of activities described in subsection (9)(a)(i) through (iv) above. "Directly connected to and essential for" means that there is both a sequential relationship and a necessity relationship between activities eligible for the tax treatment under subsection (9)(a)(v) above and those activities described in subsection (9)(a)(i) through (iv) above.~~

(i) **Sequential relationship.** The sequential relationship means that the activity directly precedes, directly follows, or is concurrent with the activity in question.

(ii) **Necessity relationship.** The necessity relationship means that the activity under subsection (9)(a)(v) above must take place in order for the direct cleanup to take place. In other words, the activity under subsection (9)(a)(v) above must be more than just highly desirable; the activity under subsection (9)(a)(v) above must be indispensable to the direct cleanup. As used in this subsection (9)(b)(ii), the phrase "direct cleanup" refers to those activities described in subsection (9)(a)(i) through (iv) above.

(e)) Services supporting the performance of cleanup. A service supports the performance of cleanup if it:

(A) Is within the scope of work under a clean-up contract with the United States Department of Energy; or

(B) Assists in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy under a subcontract entered into with the prime contractor or another subcontractor in furtherance of a clean-

up contract between the United States Department of Energy and a prime contractor.

(b) **When does a service not assist in the accomplishment of a requirement of a clean-up project?** Subject to specific exceptions provided by law, a service does not assist in the accomplishment of a clean-up project when the same services are routinely provided to businesses not engaged in clean-up activities.

The following exceptions are always deemed to contribute to the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy:

- Information technology and computer support services;
- Services rendered in respect to infrastructure; and
- Security, safety, and health services.

(c) **Guideline examples.** The following examples are to be used as a guideline when determining whether a service is "routinely provided to businesses not engaged in clean-up activities."

(i) **Accounting services.** The classification does not apply to general accounting services but does apply to performance audits performed for persons cleaning up radioactive waste.

(ii) **Legal services.** The classification does not apply to general legal services but does apply to those legal services that assist in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy. Thus, legal services provided to contest any local, state, or federal tax liability or to defend a company against worker's compensation claim arising from a worksite injury do not qualify for the classification. However, legal services related to the resolution of contractual dispute between the parties to a clean-up contract between the United States Department of Energy and a prime contractor do qualify.

(iii) **General office janitorial.** General office janitorial services do not qualify for the radioactive waste clean-up classification, but the specialized cleaning of equipment exposed to radioactive waste does qualify.

(d) **Clean-up examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) Company C is a land excavation contractor who contracts with Prime Contractor to dig trenches where waste will be reburied after processing. Company C's contract for digging trenches qualifies for the preferential tax rate under RCW 82.04.263 because the activity of digging trenches is one of the physical acts of cleaning up. ~~(Later Company C contracts with Prime Contractor to grade land for a general-purpose road that is not used for any cleanup purposes. The contract to grade the road does not qualify for the rate under RCW 82.04.263 because road grading is not an activity involving the physical act of cleaning up.)~~

(ii) Company D contracts with Company C from the previous example to provide payroll and accounting services. Company D's activity does not qualify for the preferential tax rate under RCW 82.04.263 because the activity of general accounting is not an activity involving the physical act of cleaning up, nor is it ~~(directly connected to and essential for~~

any of the cleanup activities listed in subsection (9)(a)(i) through (iv) above)) a service supporting the performance of cleanup as defined in (a)(v) of this subsection.

(iii) Company E is an environmental engineering company which contracts with Prime Contractor to develop a plan on how best to decontaminate the soil at a tank farm and will monitor the cleanup/decontamination as it progresses. Company E's activities qualify for the preferential tax rate under RCW 82.04.263 because the activities are ~~((directly connected to and essential for removing contamination in soils))~~ services supporting the performance of cleanup.

(iv) Company F is a security company that contracts with Prime Contractor to provide overall security to the federal reservation, including providing security at clean-up sites. Security services at clean-up sites are ~~((directly connected to and essential for clean-up services. If the attribution of income to security services performed at the clean-up sites was negotiated and reflected in Company F's contract with the Prime Contractor, before the provision of those services, that income is eligible for the preferential tax rate under RCW 82.04.263. If Company F cannot identify in the contract the income attributable to security services performed at the clean-up sites, but can substantiate that security services performed at clean-up sites is the predominant activity/services performed under the contract, the income attributable to the entire contract qualifies for the preferential tax rate))~~ services that support the performance of cleanup.

~~((c))~~ **(c) Taxability of tangible personal property used or consumed in cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** Persons cleaning up radioactive waste and other by-products of weapons production and nuclear research and development for the United States, or its instrumentalities, are consumers of any property they use or consume when performing these services. RCW 82.04.190. Therefore, tangible personal property used or consumed in the cleanup is subject to retail sales or use tax. If the seller does not collect retail sales tax on a retail sale, the buyer is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. The "combined 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 combined excise tax return. Refer to WAC 458-20-178 for detailed information regarding use tax.

**(10) Sales to foreign governments or foreign diplomats.** For specific details concerning the taxability of sales of goods and services to foreign missions and diplomats, contact the department's taxpayer services division at:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's web site at <http://dor.wa.gov>.

**WSR 10-10-031**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed April 26, 2010, 3:45 p.m., effective May 27, 2010]

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

Purpose: WAC 458-20-121 provides tax reporting information for persons who sell heat and/or steam. It also provides information on the use tax liability of persons that produce fuel used to produce heat or steam. WAC 458-20-134 discusses the taxability of manufacturers and extractors that are consumers of products or by-products that they themselves have manufactured or extracted.

The department amended these rules to recognize provisions of chapter 469, Laws of 2009 (ESSB 6170). These provisions provide a sales and use tax exemption for hog fuel sold or used to produce electricity, steam, heat, or biofuel. WAC 458-20-134 was also amended to include language providing information regarding the "value of article used" in the case of prototypes, RCW 82.12.010 (2)(e). This rule did not previously recognize these provisions.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-121 Sales of heat or steam—Including production by cogeneration and 458-20-134 Commercial or industrial use.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 10-05-074 on February 12, 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 2, Repealed 0.

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

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

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

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

Date Adopted: April 26, 2010.

Alan R. Lynn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 94-13-033, filed 6/6/94, effective 7/7/94)

**WAC 458-20-121 Sales of heat or steam—Including production by cogeneration. (1) Introduction.** This section provides tax reporting information to persons who sell heat and/or steam. Because heat and steam are often the product of a cogeneration facility, this section also provides tax information for persons operating cogeneration facilities. Persons generating electrical power should also refer to WAC 458-20-179 ~~((and 458-20-17901))~~ (Public utility tax).

(2) **Sale of heat or steam - business and occupation (B&O) tax.** Persons engaging in the business of operating a plant for the production, extraction, or storage of heat or steam for distribution, for hire or sale, are taxable under the service and other business activities classification. This includes heat or steam produced by a biomass system, cogeneration, geothermal sources, fossil fuels, or any other method.

(3) **Sale or production of electricity - cogeneration.** The production of steam, heat, or electricity is not a manufacturing activity within the definition of RCW 82.04.120. Persons who operate a plant or system for the generation, production or distribution of electrical energy for hire or sale are subject to the provisions of the public utility tax under the light and power tax classification. Persons who generate electrical energy should refer to WAC 458-20-179 (Public utility tax). A deduction may be taken for:

(a) Power generated in Washington and delivered out-of-state. (See RCW 82.16.050(6).)

(b) Amounts derived from the sale of electricity to persons who are in the business of selling electricity and are purchasing the electricity for resale. (See RCW 82.16.050(2).)

(4) **Tax incentive programs - cogeneration.** There were tax incentive programs available for cogeneration projects begun before January 1, 1990. (~~(See WAC 458-20-17901 for the requirements which applied.)~~) Sales and use tax deferrals may apply under certain conditions for power generation facilities, even though the production of power is not specifically subject to a manufacturing tax. For example, if the cogeneration facilities are part of a manufacturing plant for the production of new articles of tangible personal property and the requirements for tax deferral are met, the business may apply for tax deferral programs. These incentive programs are discussed in WAC 458-20-240 (Manufacturer's new employee tax credits), 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed after March 31, 2004), and 458-20-24002 (Sales and use tax deferral—New manufacturing and research/development facilities).

(5) **Fuel.** Persons who produce their own fuel to generate heat, steam, or electricity are subject to the manufacturing B&O tax on the value of the fuel. This includes the value of fuel which is created at the same site as a by-product of another manufacturing process, such as production of hog fuel. The taxable value should be determined based on comparable sales, or on the basis of all costs in the absence of comparable sales. Refer to WAC 458-20-112 (Value of products).

~~(The)~~ (a) Fuel does not become an ingredient or component of power, steam, or electricity. The sale of fuel to be used by the purchaser to generate heat, steam, or electricity is a retail sale. In most cases, the purchase of fuel for such purposes is subject to payment of retail sales tax to the supplier. (See (b) of this subsection for discussion of a sales and use tax exemption specific to hog fuel.)

In the event retail sales tax is not paid to the supplier, and no exemption from retail sales tax is available, deferred sales or use tax must be paid. However, the law provides a specific exemption from the use tax for fuel which is used in the same manufacturing plant which produced the fuel. For example, if a lumber manufacturer produces wood waste which is used in

the same plant to produce heat for drying lumber and also electricity which is sold to a public utility district, the wood waste is not subject to use tax even though the manufacturing tax will apply. (See RCW 82.12.0263.)

(b) Effective July 1, 2009:

• Sales of hog fuel used to produce electricity, steam, heat, or biofuel are exempt from retail sales tax when the purchaser provides the seller with a properly filled out "buyer's retail sales tax exemption certificate." RCW 82.08.956.

• The use of hog fuel for production of electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For these exemptions, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" has the same meaning as provided in RCW 43.325.010.

(6) **Equipment and supplies.** Persons who are in the business of producing heat, steam, or electricity are required to pay retail sales tax to suppliers of all equipment and supplies. If the supplier fails to collect retail sales tax, deferred sales or use tax must be paid.

AMENDATORY SECTION (Amending Order 86-17, filed 9/23/86)

**WAC 458-20-134 Commercial or industrial use. (1)**

**Introduction.** "The term 'commercial or industrial use' means the following uses of products, including by-products, by the ~~((extractor))~~ same person that extracted or ~~((manufacturer thereof))~~ manufactured them:

(a) Any use as a consumer; and

(b) The manufacturing of articles, substances or commodities." (RCW 82.04.130.)

(2) **Examples of commercial or industrial use.** The following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer ~~((thereof))~~ of that lumber to build a shed for its own use.

(b) The use of a motor truck by the manufacturer ~~((thereof))~~ of that truck as a service truck for itself.

(c) The use by a boat manufacturer of patterns, jigs and dies which it has manufactured.

(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel which it has extracted.

(3) **Business and occupation tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to tax under the manufacturing or extracting B&O tax classifications ~~((manufacturing or extracting))~~, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. (See WAC 458-20-112 for definition and explanation of value of products.)

(4) **Use tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to use tax on the value of the articles used, unless a specific exemption is provided. (See WAC 458-20-178 for further explanation of the use tax and definition of value of the article used.)

(5) **Exemptions.** The following uses of articles produced for commercial or industrial use are expressly exempt of use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of fuel by the ~~((extractor))~~ same person that extracted or ((manufacturer thereof)) manufactured that fuel when it is used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. ~~((Example: The use of hog fuel to produce heat or power in the same plant which produced it.))~~

(b) ~~((Effective April 3, 1986, (chapter 231, Laws of 1986))~~) Property produced for use in manufacturing ferrosilicon which is subsequently used to make magnesium for sale is exempt of use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon. (RCW 82.04.190(1).)

(c) Effective July 1, 2009, hog fuel used to produce electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For the purposes of this exemption, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" has the same meaning as provided in RCW 43.325.010.

~~(6) ((RCW 82.12.010 provides that in the case of articles manufactured for commercial or industrial use by manufacturers selling to the United States Department of Defense, the value of the articles used shall be determined according to the value of the ingredients of such articles, rather than the full value of the manufactured articles as is normally the case.))~~ Special provisions regarding value of article used. RCW 82.12.010 provides the following special valuation provisions to persons manufacturing products for commercial or industrial use:

(a) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the United States Department of Defense, the value of the articles used is determined according to the value of the ingredients of those articles.

(b) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by:

- The retail selling price of such new or improved product when first offered for sale; or
- The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

### WSR 10-10-032

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed April 26, 2010, 4:02 p.m., effective May 27, 2010]

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

Purpose: WAC 458-20-185 explains the tax liabilities of persons engaged in business as retailers or distributors of tobacco products other than cigarettes.

The department amended this rule to recognize SHB 1435 (chapter 154, Laws of 2009); which provides authority for the Washington state liquor control board to issue and enforce the licensing requirements under RCW 82.26.060, 82.26.150, 82.26.180, 82.26.190, 82.26.210, and 82.26.220.

This rule action does not include changes from the recently concluded 2010 legislative session, to be incorporated into the rule in a future rule making.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-185 Tax on tobacco products.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 10-05-112 on February 17, 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 1, Repealed 0.

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

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

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

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

Date Adopted: April 26, 2010.

Alan R. Lynn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-04-119, filed 2/7/07, effective 3/10/07)

**WAC 458-20-185 Tax on tobacco products. (1) Introduction.** This rule explains the tax liabilities of persons engaged in business as retailers or distributors of tobacco products other than cigarettes. The tax on tobacco products (also called "other tobacco products tax," "tobacco tax," or "OTP tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, sales tax, and litter tax. See WAC 458-20-186 for tax liabilities associated with taxes that apply exclusively to cigarettes.

**(2) Licensing requirements and responsibilities.** The Washington state liquor control board assumed the licensing responsibilities for cigarettes on July 1, 2009. Please see chapters 314-33 and 314-34 WAC.

**(3) Organization of rule.** The information provided in this rule is divided into five parts:

(a) Part I provides definitions and explains the tax liabilities of persons engaged in the business of selling or distributing tobacco products (excluding cigarettes) in this state.

~~(b) ((Part II explains the licensing requirements and responsibilities for persons making wholesale or retail sales of tobacco products in this state.~~

~~(c))~~ Part ~~((III))~~ II explains the requirements and responsibilities for persons transporting tobacco products in Washington.

~~((d))~~ (c) Part ~~((IV))~~ III explains the recordkeeping requirements and enforcement of the tobacco tax.

~~((e))~~ (d) Part ~~((V))~~ IV describes the credits for tax paid and the procedures that must be followed to qualify for credit.

**Part I - Tax on Tobacco Products (excluding Cigarettes)**

(101) **In general.** The Washington state tobacco products tax is due and payable by the first distributor who possesses tobacco products in this state. The measure of the tax in most instances is based on the actual price paid by the distributor for the tobacco product, unless the distributor is affiliated with the seller.

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Actual price"** means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(b) **"Affiliated"** means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(c) **"Board"** means the liquor control board.

(d) **"Business"** means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(e) **"Cigar"** means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(f) **"Cigarette"** has the same meaning as in RCW 82.24.010.

(g) **"Department"** means the department of revenue.

(h) **"Distributor"** means:

(i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(ii) Any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state;

(iii) Any person engaged in the business of selling tobacco products from outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.010 (3)(a) through (d). (For example, Sunshine Tobacco Shop ("Sunshine") buys cigars from an out-of-state manufacturer for resale to consumers in this state. The cigars are shipped to Sunshine via common carrier. In this instance, Sunshine is a distributor, must have both a retailer's and a distributor's license, and must pay the tobacco products tax on the products it brings into the state. However, if Sunshine bought its merchandise exclusively from in-state distributors that have paid the tobacco products tax on that merchandise, Sunshine would not be considered a distributor, and would need only a retailer's license.)

(i) **"Indian," "Indian country,"** and **"Indian tribe"** have the same meaning as defined in chapter 82.24 RCW and WAC 458-20-192.

(j) **"Manufacture"** means the production, assembly, or creation of new tobacco products. For the purposes of this

rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

(k) **"Manufacturer"** means a person who manufactures and sells tobacco products.

(l) **"Manufacturer's representative"** means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(m) **"Person"** 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, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(n) **"Place of business"** means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(o) **"Retailer"** means any person engaged in the business of selling tobacco products to ultimate consumers.

(p) **"Retail outlet"** means each place of business from which tobacco products are sold to consumers.

(q) **"Sale"** means:

(i) Any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(ii) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(r) **"Sample"** and **"sampling"** have the same meaning as in RCW 70.155.010.

(s) **"Store," "stores,"** or **"storing"** means the holding of tobacco products for later sale or delivery inside or outside this state. For example:

(i) Wilderness Enterprises ships products from out-of-state to its Kent warehouse. All products are intended for future sale to Alaska. Wilderness Enterprises is a distributor that stores tobacco products in this state. Wilderness Enterprises is liable for tobacco products tax on the products stored in this state. (However, see subsection (501) of this section for credits that may be available to Wilderness Enterprises for out-of-state sales.)

(ii) Cooper Enterprises brings tobacco products into this state for sale. It rents storage space from a third party, Easy Storage. Cooper Enterprises (the distributor), not Easy Storage, is responsible for the tax and reporting requirements on the stored tobacco products.

(t) **"Taxable sales price"** means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products. For purposes of this subsection, "person" includes both persons as

defined in (m) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

For purposes of this subsection, "person" includes both persons as defined in (m) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price for which other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in (q)(ii) of this subsection, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (t)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(u) **"Taxpayer"** means a person liable for the tax imposed by chapter 82.26 RCW.

(v) **"Tobacco products"** means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, including wrapping papers or tubes that contain any amount of tobacco (such as "blunts"), prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010.

(w) **"Unaffiliated distributor"** means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(x) **"Unaffiliated retailer"** means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

(103) **Imposition of tax.** RCW 82.26.030 as amended effective July 1, 2005, states: "It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state shall be the distributor liable for the tax and that in most instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller." The tax is imposed at the time the first distributor possesses the product in this state for sale. RCW 82.26.020(2).

**Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which the tax is imposed. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) BET Wholesalers sells and ships tobacco products from Kentucky via common carrier to Surprise Enterprises in Washington. The tax is due from Surprise Enterprises a licensed distributor, because it is the first possessor in Washington that holds the product for sale. However, BET Distributors must give the liquor control board (LCB) notice of its intent to ship tobacco products into this state.

(b) BET Wholesalers sells and ships tobacco products in its own trucks from Kentucky to Jamie's Enterprises, a licensed distributor in Washington. The tax is due from BET Wholesalers, because it is the first possessor in Washington that holds the product for sale.

(c) Garden State Cigars is located in New Jersey. It ships its products to Washington retailers via National Common Carrier. The retailers must be licensed as distributors and are liable for the tax. However, Garden State Cigars must give the liquor control board (LCB) notice of its intent to ship tobacco products into this state.

(104) **Rates.** The Washington state tobacco tax is an excise tax levied on the taxable sales price as defined in RCW 82.26.010. The rate is a combination of statutory rates found in RCW 82.26.020.

(105) **Promotions.**

(a) Tobacco products sold, provided at a reduced cost, or given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state. RCW 82.26.010 (5)(b). The taxable sales price for the tobacco products is the actual price for which the taxpayer or other distributors sell the same tobacco products, or a maximum of 67 cents each for cigars. RCW 82.26.010(18).

For example, Etta's (an out-of-state manufacturer) gives Joe's Distributing 500 cigars and 200 cans of snuff as a promotion. Etta's and Joe's Distributing are unaffiliated. Joe's Distributing normally sells this brand of cigars for \$1.00 each and the snuff for \$2.50 each to unaffiliated distributors and/or retailers. Joe's Distributing owes tobacco products tax on this merchandise. Because Joe's Distributing normally sells each cigar for more than 67 cents, the tobacco products tax is calculated on the cigars at 50 cents each (500 x 0.50 = \$250). The tobacco products tax on the snuff is calculated at 75% of Joe's normal selling price to unaffiliated buyers



( $200 \times \$2.50 = \$500 \times 75\% = \$375$ ) for a total tobacco products tax of \$625.

(b) If a product is purchased or sold at a discount in a promotion characterized as a "2 for 1" or similar sale, the tax is calculated on the actual prorated consideration the buyer paid to the unaffiliated distributor, or a maximum of 67 cents a cigar.

For example:

(i) Duke Distributing (an out-of-state wholesaler) ships tobacco products via common carrier to Lem's Tobacco Shop (an unaffiliated Washington retailer). Duke invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at \$1,300. Lem's Tobacco Shop is liable for the tax. The tax on the chewing tobacco is \$975 ( $\$1,300 \times 75\%$ ). Each cigar costs Lem's Tobacco Shop \$1 ( $\$200/200$  cigars = \$1 per cigar). Because each cigar costs more than 67 cents, the tax on the cigars is capped at \$0.50 each. The tax on the cigars is \$100 ( $200 \text{ cigars} \times \$0.50 = \$100$ ). Total tobacco tax due on the invoice is \$1,075.

(ii) Shasta Distributing (an out-of-state wholesaler) ships OTP in its own trucks to Lem's Tobacco Shop (an unaffiliated Washington retailer). Shasta invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at \$1,300. Shasta Distributing owes the tax. Shasta originally purchased the products from an unaffiliated manufacturer for \$300 ( $\$100$  for the cigars and  $\$200$  for the chewing tobacco). The tax on the chewing tobacco is \$150 ( $\$200 \times 75\%$ ). The tax on the cigars is \$75 ( $\$100 \times 75\% = \$75$ ), because the cigars cost less than 67 cents each ( $\$100/200$  cigars = 50 cents per cigar). Total tobacco tax due on the invoice is \$225.

(iii) Wind Blown Distributing (an out-of-state wholesaler) ships tobacco products in its own trucks to Lem's Tobacco Shop (an unaffiliated retailer located in this state). Wind Blown invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at \$1,300. Wind Blown Distributing owes the tax. Wind Blown originally purchased the products from an affiliated manufacturer for \$100 ( $\$25$  for the cigars and  $\$75$  for the chewing tobacco). The measure of the tax is the actual price for which Wind Blown sells these products to unaffiliated buyers, i.e., Lem's. The tax due on the chewing tobacco is \$975 ( $\$1,300 \times 75\%$ ). The tax on the cigars is \$100 ( $200 \text{ cigars} \times 50 \text{ cents}$ ). The tax on the cigars is capped at \$0.50 each, because each cigar costs more than 67 cents ( $\$200/200$  cigars = \$1 per cigar). Total tobacco tax due on the invoice is \$1,075.

#### **~~(Part II - Wholesale and Retail Tobacco Products Vendor Licensing Requirements and Responsibilities)~~**

~~(201) License required.~~ No person may engage in the retail or wholesale distribution of tobacco products in this state without a license.

~~(202) Distributor's license.~~ Prior to selling or distributing tobacco products from a stock of goods in Washington or to retailers in Washington, each distributor must first obtain a tobacco distributor's license from the department of licensing.

~~(a) Background check.~~ Each distributor must undergo a criminal background check before a license will be issued. Chapter 82.26 RCW. The background check must be completed to the satisfaction of the liquor control board and the department. Failure to provide information sufficient to complete the background check may result in denial of the license. A background check will not be required if the applicant has had a background check for a license issued under chapter 66.24 or 82.24 RCW.

~~(b) Application.~~ Application for license or renewal of license is made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A distributor's license is valid for one year from the date it is issued. The annual fees will not apply if the licensee pays the corresponding annual distributor cigarette fees under RCW 82.24.510.

~~(c) Multiple locations.~~ If the distributor sells, intends to sell, or stores tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

#### ~~(203) Duties and responsibilities of licensed distributors.~~

~~(a) Sales restricted.~~ Wholesalers selling tobacco products in this state may sell tobacco products only to Washington retailers or wholesalers who have a current tobacco license, to other licensed wholesalers, the federal government or its instrumentalities, or to Indian tribal entities authorized to possess untaxed tobacco products.

~~(b) Manufacturer's representatives.~~ Manufacturers selling tobacco products through manufacturer's representatives must provide the department a current list of the names, addresses and telephone numbers of all such representatives. The list is mailed to: Washington State Department of Revenue, P.O. Box 47477, Olympia, WA 98504. The manufacturer must have a distributor's license and its representatives must carry a copy of the manufacturer's distributor license at all times when selling or distributing the manufacturer's tobacco products.

~~(204) Retail license.~~ Prior to the retail sale or distribution of tobacco products, each retailer must first be issued a retail tobacco license from the department of licensing. A license is required for each location at which tobacco products are sold at retail. Each license must be exhibited at the place of business for which it is issued.

~~Application.~~ Applications for license or renewals of license are made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A retail tobacco license is valid for one year from the date it is issued. The annual fees will not apply if the licensee pays the corresponding annual retailer cigarette fees under RCW 82.24.510.

~~(205) Duties and responsibilities of retailers.~~ A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed

person that are held for sale, handling, or distribution in this state. For example, if a retailer buys tobacco products from an Indian smoke shop or an out-of-state wholesaler who does not have a tobacco distributor license, the retailer must obtain a distributor license and pay the tobacco tax due.

~~(206)~~ **Suspension or revocation of wholesale or retail tobacco licenses.**

(a) The department has full power and authority to suspend or revoke the license of any wholesale or retail tobacco dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.26 RCW or this rule. See RCW 82.26.220 and WAC 458-20-10001 for information on the procedures pertaining to suspension or revocation of cigarette licenses.

(b) Any person possessing both a tobacco products license and a cigarette license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW. For example, if a person has both a cigarette license and a tobacco license, revocation of the tobacco license will also result in revocation of the cigarette license.

(c) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes on premises occupied or controlled by that person during the period of the suspension or revocation.

(d) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.)

~~(HH)~~ **II - Transporting Tobacco Products in Washington**

~~(301)~~ **(201) Transportation of tobacco products restricted.**

(a) Only licensed distributors or retailers in their own vehicles, or manufacturer's representatives authorized to sell or distribute tobacco products in this state, can transport tobacco products in this state. Individuals transporting the product must have a copy of a valid retailer's or distributor's license in their possession and evidence that they are representatives of the licensees. Individuals transporting tobacco products for sale must also have in their possession invoices or delivery tickets for the tobacco products that show the name and address of the consignor or seller, the name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported. It is the duty of the distributor, retailer, or manufacturer responsible for the delivery or transportation of the tobacco products to ensure that all drivers, agents, representatives, or employees have the delivery tickets or invoices in their possession for all such shipments.

(b) All other persons must give notice to the board in advance of transporting or causing tobacco products to be transported in this state for sale. This includes those transporting tobacco products in this state via common carrier. For example: Peg's Primo Cigars (PPC), a small out-of-state distributor, sells tobacco products to retailers in Washington. PPC ships the products via National Common Carrier. Before placing the product in shipment to Washington, PPC must give notice to the board of the pending shipment. The notice must include the name and address of the consignor or seller,

the name and address of the consignee or purchaser, the quantity and brands of the tobacco products being transported, and the shipment date.

~~(IV)~~ **III - Recordkeeping and Enforcement**

~~(401)~~ **(301) Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of tobacco products must be retained. RCW 82.26.060, 82.26.070 and 82.26.080. All records must be preserved for five years from the date of the transaction.

(a) **Distributors.** Distributors must keep at each place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) **Retailers.** Retailers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale. Retailers are responsible for the tax on any tobacco products for which they do not have invoices.

~~(402)~~ **(302) Reports and returns.** The department may require any person dealing in tobacco products in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, shipments, and other data required by the department to maintain control over trade in tobacco.

(a) **Tax returns.** The tax is reported on the combined excise tax return that must be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be obtained from the department.

(b) **Reports.** Retailers and distributors may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products (e.g., "roll your own tobacco") from certain manufacturers. Please see WAC 458-20-264 and chapter 70.157 RCW.

**(c) Access to premises and records.** Retailers and distributors must allow department personnel free access to their premises to inspect the tobacco products on the premises and to examine the books and records for the business. For further details, please see subsection (305) of this section.

~~(403)~~ **(303) Criminal provisions.** Chapter 82.26 RCW prohibits certain activities with respect to tobacco products. Persons handling tobacco within this state must refer to these statutes.

~~(404)~~ **(304) Search, seizure, and forfeiture.** Any tobacco products in the possession of a person selling tobacco in this state without a license or transporting tobacco products without the proper invoices or delivery tickets may be seized without a warrant by any agent of the department,

agent of the board, or law enforcement officer of this state. In addition, all conveyances, including aircraft, vehicles, or vessels used to transport the illegal tobacco product may be seized and forfeited.

~~((405))~~ **(305) Enforcement.** Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the liquor control board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers and distributors must allow department personnel and enforcement officers of the liquor control board free access to their premises to inspect the tobacco products on the premises and to examine the books and records of the business. If a retailer fails to allow free access, or hinders, or interferes with department personnel and/or enforcement officers of the liquor control board, that retailer's registration certificate issued under RCW 82.32.030 is subject to revocation. Additionally, any licenses issued under chapter 82.26 or 82.24 RCW are subject to suspension or revocation by the department or board.

~~((406))~~ **(306) Penalties.** Penalties and interest may be assessed in accordance with chapter 82.32 RCW for nonpayment of tobacco tax.

**Part ~~(V)~~ IV - Credits**

~~((501))~~ **(401) Credits.**

(a) **Interstate and foreign sales.** A credit is available to distributors for tobacco products sold to retailers and wholesalers outside the state for resale. This credit may be taken only for the amount of tobacco products tax reported and previously paid on such products. RCW 82.26.110. No credit may be taken for a sale of tobacco products from a stock of goods in this state to a consumer outside the state.

(b) **Returned or destroyed goods.** A credit may be taken for tax previously paid when tobacco products are destroyed or returned to the manufacturer. Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation.

(c) **Documentation.** Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation. Affidavits or certificates are required, and must substantially conform to those illustrated below. The affidavits or certificates must be completed by the taxpayer prior to claiming the credit, and must be retained with the taxpayer's records as set forth in Part VI of this rule.

**Claim for Credit on Tobacco Products Sold for Resale Outside Washington**

The undersigned distributor under penalty of perjury under the laws of the state of Washington certifies that the following is true and correct to the best of his/her knowledge:

(Business name), (tax reporting number), purchased the tobacco products specified below for resale outside this state. Tobacco products tax has been paid on such tobacco products as set forth below.

Products were purchased from: (name of business)

.....

Date

Products were sold to: (name of out-of-state buyer)

.....  
Address

.....  
Date

Product	Taxable sales price	Quantity	Tax paid
Cigars exceeding \$0.67 per cigar	N/A		
Cigars not exceeding \$0.67 per cigar		N/A	
All tobacco products that are not cigars		N/A	

Signature of Taxpayer or Authorized Representative: .....

Name .....

Title: .....

**Claim for Credit on Tobacco Products Destroyed Merchandise**

**(i) Certificate of taxpayer.**

Product	Taxable sales price	Quantity	Tax paid
Cigars exceeding \$0.67 per cigar	N/A		
Cigars not exceeding \$0.67 per cigar		N/A	
All tobacco products that are not cigars		N/A	

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

(Business name), (tax reporting number), a dealer in tobacco products, has destroyed tobacco products unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above. The tobacco products were destroyed in the manner set forth below. The destruction occurred either:

(A) In the presence of an authorized agent of the department of revenue; or

(B) With prior authorization from the department to destroy the product without an agent of the department present.

Date, manner, and place of destruction: .....

Signature of Taxpayer or Authorized Representative: .....

Name: .....

Title: .....

Witnessed or approved: .....

Authorized Agent, Department of Revenue

**Claim for Credit on Tobacco Products Returned Merchandise**

**(ii) Certificate of manufacturer.**

Product	Taxable sales price	Quantity	Tax paid
Cigars exceeding \$0.67 per cigar	N/A		
Cigars not exceeding \$0.67 per cigar		N/A	
All tobacco products that are not cigars		N/A	

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

(Business name), (tax reporting number), a dealer in tobacco products, has returned merchandise unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above.

Returned to: .....

Date: .....

Method of transport: .....

Manufacturer's credit issued on: .....

Credit memo number: .....

Signature of Taxpayer or Authorized Representative: .....

Name: .....

Title: .....

**WSR 10-10-033  
PERMANENT RULES  
DEPARTMENT OF REVENUE**

[Filed April 26, 2010, 4:11 p.m., effective May 27, 2010]

Effective Date of Rule: Thirty-one days after filing.  
Purpose: WAC 458-20-186 explains the tax liabilities of persons engaged in business as retailers or distributors of cig-

arettes. The department amended this rule to recognize HB 2542 (chapter 226, Laws of 2008); which amends the quantity which is unlawful to possess or transport from six thousand unstamped cigarettes to ten thousand unstamped cigarettes, and SHB 1435 (chapter 154, Laws of 2009); which provides for the Washington state liquor control board authority to issue and enforce the licensing requirements under RCW 82.24.510 and 82.24.550.

This rule action does not include changes from the recently concluded 2010 legislative session, to be incorporated into the rule in a future rule making.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-186 Tax on cigarettes.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 10-05-113 on February 17, 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 1, Repealed 0.

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

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

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

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

Date Adopted: April 26, 2010.

Alan R. Lynn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 07-04-119, filed 2/7/07, effective 3/10/07)

**WAC 458-20-186 Tax on cigarettes. (1) Introduction.** This rule addresses those taxes (~~and licensing~~) activities that apply exclusively to cigarettes as defined by RCW 82.24.010. See WAC 458-20-185 for tax liabilities (~~and registration requirements~~) associated with tobacco products other than cigarettes. The tax on cigarettes is in addition to all other taxes owed. For example, retailers and wholesalers are liable for business and occupation tax on their retailing or wholesaling activities, and must collect and remit sales tax on retail sales of cigarettes. Consumers pay the cigarette tax in addition to sales or use tax on purchases of cigarettes for consumption within this state. (Wholesalers not licensed in the state of Washington who are making sales of cigarettes to Indians in accordance with a cigarette tax contract authorized by RCW 43.06.455 must comply with the specific terms of their individual contracts. See also WAC 458-20-192 regarding sales in Indian country.)

**(2) Licensing requirements and responsibilities.** The Washington state liquor control board assumed the licensing

responsibilities for cigarettes on July 1, 2009. Please see chapters 314-33 and 314-34 WAC.

**(3) Organization of rule.** The information provided in this rule is divided into ~~((seven))~~ six parts:

(a) Part I explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in this state.

~~(b) ((Part II explains the licensing requirements and responsibilities for persons making wholesale or retail sales of cigarettes in this state.~~

~~((c))~~ Part ~~((III))~~ II explains the stamping requirements and how the cigarette tax rates are calculated.

~~((d))~~ ~~(c)~~ Part ~~((IV))~~ III describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.

~~((e))~~ ~~(d)~~ Part ~~((V))~~ IV explains the requirements and responsibilities for persons transporting cigarettes in Washington.

~~((f))~~ ~~(e)~~ Part ~~((VI))~~ V explains the requirements and responsibilities for persons engaged in making delivery sales of cigarettes into this state.

~~((g))~~ ~~(f)~~ Part ~~((VII))~~ VI explains the enforcement and administration of the cigarette tax.

### Part I - Tax on Cigarettes

(101) **In general.** The Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.

(a) **Possession.** For the purpose of this rule, a "possessor" of cigarettes is anyone who personally or through an agent, employee, or designee, has possession of cigarettes in this state.

(b) **Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department of revenue (department) to sell the stamps. Only licensed wholesalers may purchase or obtain cigarette stamps. Except as specifically provided in Part ~~((IV))~~ III of this rule, it is unlawful for any person other than a licensed wholesaler to possess unstamped cigarettes in this state. However, as explained in subsection (102)(b) of this rule, certain consumers may possess unstamped cigarettes for personal consumption if they pay the tax as provided in this rule.

(c) **Imposition of tax.** Ordinarily, the tax obligation is imposed on and collected from the first possessor of unstamped cigarettes. However, failure of an exempt entity with an obligation to collect and remit the tax does not relieve a subsequent nonexempt possessor of unstamped cigarettes from liability for the tax.

(d) **Promotions.** Cigarettes given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state, but are not required to have the stamp affixed. Instead, the manufacturer of the cigarettes must pay the tax on a monthly return filed with the department. See subsection ~~((702))~~ (602) of this rule.

(102) **Possession of cigarettes in Washington state.**

(a) Every person who is (i) in possession of unstamped cigarettes in this state, and (ii) is not specifically exempt by

law, is liable for payment of the cigarette tax as provided in chapter 82.24 RCW and this rule.

(b) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the cigarette tax as provided in subsection ~~((702))~~ (602) of this rule when they first bring the cigarettes into this state or first possess them in this state. This requirement includes, but is not limited to, delivery sales as described in Part VI of this rule.

(c) **Cigarettes purchased from Indian retailers.** Special rules apply to cigarettes purchased from Indian retailers.

(i) Indians purchasing cigarettes in Indian country are exempt from the state cigarette tax; however, these sales must comply with WAC 458-20-192. Other consumers may purchase cigarettes for their personal consumption from "qualified Indian retailers" without incurring liability for state cigarette tax. A "qualified Indian retailer" is one who is subject to the terms of a valid cigarette tax contract with the state pursuant to RCW 43.06.455.

(ii) Consumers who purchase cigarettes from Indian retailers who are not subject to a cigarette tax contract with the state must comply with the reporting requirements and remit the cigarette tax as explained in subsection ~~((702))~~ (602) of this rule. These consumers are also liable for the use tax on their purchases. See WAC 458-20-178.

(iii) It is the duty of the consumer in each instance to ascertain his or her responsibilities with respect to such purchases.

(d) **Cigarettes purchased on military reservations.** Active duty or retired military personnel, and their dependants, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see Part ~~((IV))~~ III). However, such persons are not permitted to give or resell those cigarettes to others.

(e) **Counterfeit cigarettes.** It is unlawful for any person to manufacture, sell, or possess counterfeit cigarettes. A cigarette is counterfeit if (i) it or its packaging bears any logo or marking used by a manufacturer to identify its own cigarettes, and (ii) the cigarette was not manufactured by the owner of that logo or trademark or by any authorized licensee of the manufacturer. RCW 82.24.570.

(f) Possession of unstamped and untaxed cigarettes, and possession of counterfeit cigarettes, are criminal offenses in this state. See Part ~~((VII))~~ VI.

### ~~((Part II Wholesale and Retail Cigarette Vendor Licensing Requirements and Responsibilities~~

~~(201) License required.~~ No person, other than a government instrumentality or an Indian retailer as set forth in Part IV of this rule, may engage in the retail or wholesale distribution of cigarettes in this state without a license. No person may engage in the business of sampling within this state unless that person has first obtained a sampler's license. Failure to obtain the required license prior to sampling or selling cigarettes at wholesale or retail is a criminal act. RCW 70.155.050.

~~(202) Definitions.~~ For the purposes of this rule, the following definitions apply:

~~(a) "Place of business" means any location where business is transacted with, or sales are made to, customers. The~~

term includes, but is not limited to, any vehicle, truck, vessel, or the like at which sales are made.

(b) **"Retailer"** means every person, other than a wholesaler, who purchases, sells, offers for sale, or distributes cigarettes, regardless of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(c) **"Retail selling price"** means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, less the tax levied by the state.

(d) **"Sample"** and **"sampling"** have the same meaning as in RCW 70.155.010.

(e) **"Wholesaler"** means every person who purchases, sells, or distributes cigarettes, as defined in chapter 82.24 RCW, to retailers for the purpose of resale only.

(203) **Wholesale license.** Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a wholesale cigarette license from the department of licensing.

(a) **Background check.** Each wholesaler must undergo a criminal background check before a license will be issued. RCW 82.24.510. The background check must be completed to the satisfaction of the liquor control board and the department. Failure to provide information sufficient to complete the background check may, in the department's discretion, result in denial of the license.

(b) **Application.** Application for license or renewal of license is made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A wholesale cigarette license is valid for one year from the date it is issued.

(c) **Multiple locations.** If the wholesaler sells, or intends to sell, cigarettes at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(d) **Bond required.** Each licensed wholesaler must file a bond with the department in an amount determined by the department, but not less than \$5,000.00. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department of licensing and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the wholesaler's license.

(204) **Duties and responsibilities of licensed wholesalers:**

(a) **Stamps.** Only licensed wholesalers may purchase or obtain cigarette stamps. Wholesalers are prohibited by law from selling or providing stamps to any other wholesaler or person.

(b) **Numbering.** Each roll of stamps, or group of sheets, has a separate serial number. The department keeps records of which wholesaler purchases each roll or group of sheets. Wholesalers are prohibited from possessing stamps other than those specifically issued to them.

(c) **Sales restricted.** Wholesalers selling cigarettes in this state may sell cigarettes only to Washington retailers who have a current retail cigarette license, to other licensed wholesalers, or to Indian tribal entities authorized to possess cigarettes that are not taxed by the state.

(d) **Unstamped cigarettes.** Except as explained in Part IV of this rule, no person other than a licensed wholesaler may possess unstamped cigarettes in this state. (For the purpose of this rule, the term "unstamped cigarette" means any cigarette that does not bear a Washington state cigarette stamp as described in Part III of this rule.) Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to 72 hours after receipt; however, the cigarettes must be stamped on or before sale or transfer to any other party other than another licensed wholesaler. Licensed wholesalers may possess unstamped cigarettes for more than 72 hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers who have furnished a surety bond in an amount determined by the department may set aside, without stamping, that portion of their stock reasonably necessary for conducting sales to persons outside this state or to instrumentalities of the federal government. All unstamped stock must be kept separate and apart from stamped stock.

(e) **Transfers.** Wholesalers in possession of unstamped cigarettes under subsection (204)(d) of this rule that are transferred by the wholesaler to another facility within this state must be transferred in compliance with RCW 82.24.250.

(205) **Retail license.** Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a retail cigarette license from the department of licensing. A license is required for each location at which cigarettes are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) **Application.** Applications for license or renewal of license are made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A retail cigarette license is valid for one year from the date it is issued.

(b) **Vending machines.** Retailers operating cigarette vending machines are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(206) **Duties and responsibilities of retailers:**

(a) No retailer in this state may possess unstamped cigarettes unless he or she is also a licensed wholesaler.

(b) Retailers may obtain cigarettes only from cigarette wholesalers licensed by this state.

(207) **Additional requirements for manufacturers, wholesalers, retailers, and samplers.** Persons making wholesale or retail sales or engaged in the business of sampling of cigarettes in this state must comply with all the provisions of chapters 70.155 and 70.158 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.

(208) **Suspension or revocation of wholesale or retail cigarette licenses:**

(a) The department has full power and authority to revoke or suspend the license of any wholesale or retail cigarette dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.24

RCW or this rule. See RCW 82.24.550 and WAC 458-20-10001 for information on the procedures pertaining to suspension or revocation of cigarette licenses.

~~(b) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW. For example, if a person has both a cigarette license and a tobacco license, revocation of the cigarette license will also result in revocation of the tobacco license.~~

~~(c) A person whose license has been suspended or revoked must not sell or permit the sale of cigarettes or tobacco products on premises occupied or controlled by that person during the period of the suspension or revocation.~~

~~(d) For the purposes of this rule, "tobacco products" has the same meaning as in RCW 82.26.010.~~

~~(e) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.)~~

### Part ((HH)) II - Stamping and Rates

#### ~~((301)) (201) Cigarette stamps.~~

(a) Stamps indicating payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession, or distribution of all cigarettes other than those specifically exempted as explained in Part ((IV)) III of this rule. The stamp must be applied to the smallest container or package, unless the department, in its sole discretion, determines that it is impractical to do so. Stamps must be of the type authorized by the department and affixed in such a manner that they cannot be removed from the package or container without being mutilated or destroyed.

(b) Licensed wholesalers may purchase state-approved cigarette stamps from authorized banks. Payment for stamps must be made at the time of purchase unless the wholesaler has prior approval of the department to defer payment and furnishes a surety bond equal to the proposed monthly credit limit. Payments under a deferred plan are due within thirty days following purchase. Licensed wholesalers are compensated for affixing the stamps at the rate of \$6.00 per thousand stamps affixed ("stamping allowance"). ~~((The stamping allowance is subject to business and occupation tax under the service and other business activities classification.))~~

#### ~~(302)) (202) Rates.~~

(a) The Washington state cigarette tax is imposed on a per cigarette basis. The rate of the tax is a combination of statutory rates found in RCW 82.24.020, 82.24.027, and 82.-24.028.

(b) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax.

~~((303)) (203) Refunds.~~ Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. Documentation supporting the claim must be provided at the time the claim for refund is made.

(a) Refunds for stamped untaxed cigarettes sold to Indian tribal members or tribal entities in the full value of the stamps affixed will be approved by an agent of the department.

(b) Refunds for stamped cigarettes will not include the stamping allowance if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor; or

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improperly removed from the stamp roll.

(c) The claim for refund must be filed on a form provided by the department. An affidavit or a certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.

### Part ((IV)) III - Exemptions

~~((401)) (301) In general.~~ There are limited exemptions from the cigarette tax provided by law. This part discusses exemptions and the procedures that must be followed to qualify for an exemption.

~~((402)) (302) Government sales.~~ The cigarette tax does not apply to the sale of cigarettes to:

(a) The United States Army, Navy, Air Force, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores;

(b) The United States Veteran's Administration; or

(c) Any person authorized to purchase from the federal instrumentalities named in (a) or (b) above, if the cigarettes are purchased from the instrumentality for personal consumption.

#### ~~((403)) (303) Sales in Indian country.~~

(a) The definitions of "Indian," "Indian country," and "Indian tribe," in WAC 458-20-192 apply to this rule. "Cigarette contract" means an agreement under RCW 43.06.450 through 43.06.460.

(b) The cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette contract under RCW 43.06.450 through 43.06.460.

(c) The cigarette tax does not apply to cigarettes sold to an Indian in Indian country for personal consumption; however, those sales must comply with the allocation provisions of WAC 458-20-192. Sales made by an Indian cigarette outlet to nontribal members are subject to the tax, except as provided in (b) above.

(d) See WAC 458-20-192 for information on making wholesale sales of cigarettes to Indians and Indian tribes.

~~((404)) (304) Interstate commerce.~~ The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette distributors in other states when, as a condition of the sale, the seller either delivers the cigarettes to the buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to the buyer at a location outside this state. Any person engaged in making sales to licensed distributors in other states or making export sales or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette stamps. The unstamped stock must be kept separate and apart from any stamped stock.

**Part ~~(V)~~ IV - Transporting Cigarettes in Washington**

~~((501))~~ (401) **Transportation of cigarettes restricted.** No person other than a licensed wholesaler may transport unstamped cigarettes in this state except as specifically set forth in RCW 82.24.250 and this rule, or as may be allowed under a cigarette tax contract subject to the provisions of RCW 43.06.455. Licensed wholesalers transporting unstamped cigarettes in this state must do so only in their own vehicles unless they have given prior notice to the liquor control board of their intent to transport unstamped cigarettes in a vehicle belonging to another person.

~~((502))~~ (402) **Notice required.** Persons other than licensed wholesalers intending to transport unstamped cigarettes in this state must first give notice to the liquor control board of their intent to do so.

~~((503))~~ (403) **Transportation of unstamped cigarettes.** All persons transporting unstamped cigarettes must have in their actual possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes transported. It is the duty of the person responsible for the delivery or transport of the cigarettes to ensure that all drivers, agents, or employees have the delivery tickets or invoices in their actual possession for all such shipments.

~~((504))~~ (404) **Consignment.** If the cigarettes transported pursuant to subsection ~~((501), (502),)~~ (401), (402), or ~~((503))~~ (403) of this rule are consigned to or purchased by any person in this state, that purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state.

~~((505))~~ (405) **Out-of-state shipments.** Licensed wholesalers shipping cigarettes to a point outside Washington or to a federal instrumentality must, at the time of shipping or delivery, report the transaction to the department. The report must show both (a) complete details of the sale or delivery, and (b) whether stamps have been affixed to the cigarettes.

The report may be made either by submitting a duplicate invoice or by completing a form provided by the department, and must be filed with the department as set forth in subsection ~~((702))~~ (602) of this rule.

~~((506))~~ (406) **Compliance required.** No person may possess or transport cigarettes in this state unless the cigarettes have been properly stamped or that person has fully complied with the requirements of RCW 82.24.250 and this rule. Failure to comply with the requirements of RCW 82.24.250 is a criminal act. Cigarettes in the possession of persons who have failed to comply are deemed contraband and are subject to seizure and forfeiture under RCW 82.24.130.

**Part ~~(VI)~~ V - Delivery Sales of Cigarettes**

~~((601))~~ (501) **Definitions.** The definitions in this subsection apply throughout this rule.

(a) **"Delivery sale"** means any sale of cigarettes to a consumer in the state where either: (i) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery ser-

vice, or the internet or other online service; or (ii) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes made in this manner is a delivery sale regardless of whether the seller is located within or outside the state. (For example, "Royal Tax-free Smokes," located in the state of Vermont, offers sales via the internet and a toll-free telephone number, and ships its products to consumers in this state. These transactions are delivery sales.) A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed under chapter 82.24 RCW or a retailer licensed under chapter 82.24 RCW is not a delivery sale.

(b) **"Delivery service"** means any private carrier engaged in the commercial delivery of letters, packages, or other containers, that requires the recipient of that letter, package, or container to sign to accept delivery.

~~((602))~~ (502) **Tax liability.** Cigarettes delivered in this state pursuant to a delivery sale are subject to tax as provided in Part I of this rule. Persons making delivery sales in this state are required to provide prospective consumers with notice that the sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to such sales.

~~((603))~~ (503) **Additional requirements.** Persons making delivery sales of cigarettes in this state must comply with all the provisions of chapter 70.155 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.

**Part ~~(VII)~~ VI - Enforcement and Administration**

~~((701))~~ (601) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of cigarettes must be retained. RCW 82.24.090. These records may be combined with those required in connection with the tobacco products tax (see WAC 458-20-185), if there is a segregation therein of the amounts involved. All records must be preserved for five years from the date of the transaction.

~~((702))~~ (602) **Reports and returns.** The department may require any person dealing with cigarettes in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, and other data required by the department to maintain control over trade in cigarettes.

(a) Manufacturers and wholesalers selling stamped, unstamped, or untaxed cigarettes must submit a complete record of sales of cigarettes in this state monthly. This report is due no later than the fifteenth day of the calendar month and must include all transactions occurring in the previous month.

(b) Persons making sales of tax-exempt cigarettes to Indian tribes or Indian retailers pursuant to WAC 458-20-192 (9)(a) must transmit a copy of the invoice for each such sale to the special programs division of the department prior to shipment.

(c) Wholesalers selling stamped cigarettes manufactured by nonparticipating manufacturers as defined in WAC 458-20-264 must report all such sales to the special programs division no later than the twenty-fifth day of the calendar



month and must include all transactions occurring in the previous month.

(d) Persons making sales of cigarettes into this state to other than a licensed wholesaler or retailer must file a report as required under Title 15, Chapter 10A, section 376 of the U.S. Code (commonly referred to as the "Jenkins Act" report). This report is due no later than the 10th day of each calendar month and must include all transactions occurring in the previous month.

(e) Persons shipping or delivering any cigarettes to a point outside of this state must submit a report showing full and complete details of the interstate sale or delivery as set forth in Part V of this rule. This report is due no later than the fifteenth day of the calendar month immediately following the shipment or delivery.

(f) Persons giving away unstamped cigarettes for advertising, promotional, or any other purpose, must report and pay the tax on the number of cigarettes distributed in this state.

(g) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the tax when they first bring the cigarettes into this state or first possess them in this state. The tax is paid with a "Tax Declaration for Cigarettes," which may be obtained from the department.

~~((703))~~ **(603) Criminal provisions.** Chapter 82.24 RCW prohibits certain activities with respect to cigarettes. Persons handling cigarettes within this state must refer to these statutes. The prohibited activities include, but are not limited to, the following:

(a) **Transportation ~~((€))~~, possession ~~((€ 60,000))~~, or receiving 10,000 or fewer cigarettes.** Transportation ~~((€))~~, possession ~~((€ 60,000))~~ or receiving 10,000 or fewer unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a gross misdemeanor. RCW 82.24.110 (1)~~((m))~~ (n).

(b) **Transportation ~~((€))~~, possession ~~((€))~~, or receiving ~~more than ((60,000))~~ 10,000 cigarettes.** Transportation ~~((€))~~, possession ~~((€))~~, or receiving more than ~~((60,000))~~ 10,000 unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a felony. RCW 82.24.110(2).

(c) **Forgery or counterfeiting of stamps.** Alteration, fabrication, forgery, and counterfeiting of stamps are felonies. RCW 82.24.100.

(d) **Counterfeit cigarettes.** The manufacture, sale, or possession of counterfeit cigarettes in this state is a felony. RCW 82.24.570.

~~((704))~~ **(604) Search, seizure, and forfeiture.** The department or the liquor control board may search for, seize, and subsequently dispose of unstamped cigarette packages and containers, counterfeit cigarettes, conveyances of all kinds (including aircraft, vehicles, and vessels) used for the transportation of unstamped and/or counterfeit cigarettes, and vending machines used for the sale of unstamped and/or counterfeit cigarettes. See RCW 82.24.130, et seq., for provisions relating to search, seizure, and forfeiture of property,

possible redemption of property, and for treatment of such property in the absence of redemption.

~~((705))~~ **(605) Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause the stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax deemed due, a penalty equal to the greater of \$10.00 per package of unstamped cigarettes or \$250.00 will be assessed. Interest is also assessed on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment. The department may, in its sole discretion, cancel all or part of the penalty for good cause.

## WSR 10-10-037

### PERMANENT RULES

### DEPARTMENT OF REVENUE

[Filed April 27, 2010, 10:12 a.m., effective May 28, 2010]

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

Purpose: WAC 458-20-267 (Rule 267) in order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the department of revenue detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site.

Rule 267 explains how to file reports and what information must be included in the reports by persons claiming tax adjustments for the following:

- Aerospace manufacturing;
- Electrolytic processing;
- Solar electric manufacturing; and
- The aluminum smelter industry.

The department amended this rule to recognize provisions of SSB 6828 (chapter 81, Laws of 2008). These provisions include requiring that an annual report be filed FAR 145 Part certified repair stations claiming the tax adjustment provided in RCW 82.04.250(3). FAR 145 Part certified repair stations were previously required to file an annual survey (WAC 458-20-268). This legislation also authorized persons manufacturing commercial airplanes or components of such airplanes to report required information on a per manufacturing job site basis.

This rule action does not include changes from the recently concluded 2010 legislative session, to be incorporated into the rule in a future rule making.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-267 (Rule 267) Annual reports for certain tax adjustments.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 10-05-110 on February 17, 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 1, Repealed 0.

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

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

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

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

Date Adopted: April 27, 2010.

Alan R. Lynn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-20-004, filed 9/21/06, effective 10/22/06)

**WAC 458-20-267 Annual reports for certain tax adjustments.** (1) **Introduction.** In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the department of revenue (the "department") detailing employment, wages, and employer-provided health and retirement benefits (~~(per job at the manufacturing site)~~). This section explains the reporting requirements for tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, electrolytic processing, and solar electric manufacturing industries. This section explains who is required to file annual reports, how to file reports, and what information must be included in the reports.

This section contains a number of examples. These examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Who is required to file the report?** A recipient of the benefit of the following tax adjustments must complete and file an annual report with the department:

(a) **Tax adjustments for the aerospace manufacturing industry:**

(i) The B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes (~~(and)~~ component parts, and tooling specially designed for use in manufacturing commercial airplanes or components of such airplanes;

(ii) The B&O tax credit provided by RCW 82.04.4461 for qualified (~~(preproduction)~~) development expenditures (~~(for manufacturers and processors for hire of commercial airplanes and component parts)~~);

(iii) The B&O tax rate for FAR 145 Part certified repair stations under RCW 82.04.250(3);

(iv) The retail sales and use tax exemption provided by RCW 82.08.980 and 82.12.980 for constructing new buildings used for manufacturing superefficient airplanes;

~~((+))~~ (v) The leasehold excise tax exemption provided by RCW 82.29A.137 for facilities used for manufacturing superefficient airplanes;

~~((+))~~ (vi) The property tax exemption provided by RCW 84.36.655 for property used for manufacturing superefficient airplanes; and

~~((+))~~ (vii) The B&O tax credit for property taxes and leasehold excise taxes paid on property used for manufacturing of commercial airplanes as provided by RCW 82.04.4463 (~~(for manufacturers and processors for hire of commercial airplanes and component parts)~~).

(viii) An annual report must be filed with the department for any person who takes any of the above tax adjustments of this subsection for employment positions in Washington; however, persons engaged in manufacturing commercial airplanes or components of such airplanes may report per manufacturing job site.

(b) **Tax adjustments for the aluminum smelter industry:**

(i) The B&O tax rate provided by RCW 82.04.2909 for aluminum smelters;

(ii) The B&O tax credit for property taxes provided by RCW 82.04.4481 for aluminum smelter property;

(iii) The retail sales and use tax exemption provided by RCW 82.08.805 and 82.12.805 for property used at aluminum smelters; and

(iv) The use tax exemption provided by RCW 82.12.-022(5) for the use of natural gas;

(c) **Tax adjustment for the electrolytic processing industry.** The public utility tax exemption provided by RCW 82.16.0421 for sales of electricity to electrolytic processing businesses.

(d) **Tax adjustment for the solar electric manufacturing industry.** The B&O tax rate for manufacturers of solar energy systems using photovoltaic modules, or silicon components of such systems provided by RCW 82.04.294.

(3) **How to file annual reports.**

(a) ~~((Forms and formats. A person must use forms or the on-line filing format developed by the department to complete the annual report unless a person obtains prior approval from the department to file the annual report in an alternative format. The department has developed a form that taxpayers may use to complete the report. Report forms may be obtained by downloading from the department's web site (www.dor.wa.gov). A report form may also be obtained at department district offices, 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)

**Required form.** The department has developed a report form that must be used to complete the annual report unless a person obtains prior written approval from the department to file the annual report in an alternative format.

(b) **Electronic filing.** A report is filed electronically when the department receives the report in an electronic format. The department may waive the electronic filing requirement for good cause shown. Any person not statutorily required to electronically file the report has the option of filing the annual report electronically. Persons that claim the following tax adjustments must file the report electronically with the department: Tax adjustments for the aerospace man-

ufacturing industry under RCW 82.04.260(11), 82.04.4461, 82.04.250(3), 82.04.290, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 (subsection (2)(a) of this section).

**(c) How to obtain the form.** The form may be filed electronically on-line or obtained by downloading it from the department's web site ([www.dor.wa.gov](http://www.dor.wa.gov)). It may also be obtained from the department's district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue  
Special Programs Division  
Post Office Box 47477  
Olympia, WA 98504-7477  
Fax: 360-586-2163

**(d) First report.** The first report filed under this subsection must also include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax adjustment, unless a report covering this twelve-month period as filed as required by a statute repealed by chapter 81, Laws of 2008. In order to meet this requirement, a person must complete a report for the calendar year immediately preceding the first use of a tax adjustment.

**(e) Due date.** The report must be filed by March 31st following any calendar year in which any tax adjustment is taken against taxes due.

**(f) Examples.**

(i) An aerospace firm begins taking the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on October 1, 2005. By March 31, 2006, the aerospace firm must provide two annual reports, one covering calendar year 2004 and another covering calendar year 2005. If the aerospace firm continues to take the B&O tax rate provided by RCW 82.04.260(11) during calendar year 2006, a single annual report is due on March 31, 2007, covering calendar year 2006.

(ii) An aluminum smelter begins taking the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 1, 2004. By March 31, 2005, the aluminum smelter must provide two annual reports, one covering calendar year 2003 and another covering calendar year 2004. If the aluminum smelter continues to take the B&O tax rate provided by RCW 82.04.2909 during calendar year 2005, a single annual report is due on March 31, 2006, covering calendar year 2005.

**(4) What manufacturing site(s) are included in the annual report?**

(a) There must be a separate annual report filed for each manufacturing site at which activities are conducted that qualifies for a tax adjustment in the aluminum smelter industry per RCW 82.04.2909, electrolytic processing industry per RCW 82.16.0421, and the solar electric manufacturing industry per RCW 82.04.294.

(b) For tax adjustments involving the aerospace manufacturing industry, an annual report must be filed for employment positions in Washington; however, the annual report may be filed per job at the manufacturing site for persons engaged in manufacturing commercial airplanes or their components as described in this section.

**(c) What is a "manufacturing site"?** For purposes of the annual report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax adjustment. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports nonqualifying activities such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities.

**(i) If the person files per job at the manufacturing site, which manufacturing site is included in the annual report for the aerospace manufacturing industry tax adjustments?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration ("FAA") for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

**(ii) Which manufacturing site is included in the annual report for the aluminum industry tax adjustments?** The location(s) where a person who is an aluminum smelter engaging in the business of manufacturing aluminum within this state is the manufacturing site(s) included in the annual report. An "aluminum smelter" means the manufacturing facility of any direct service industrial customer that processes alumina into aluminum. A "direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than 50% owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

**(iii) Which manufacturing site is included in the annual report for the electrolytic processing industry tax adjustments?** The location(s) where a person is engaged in a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process within this state is the manufacturing site(s) included in the annual report. A "chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "chlor-alkali electrolytic processing business" and "sodium chlorate electrolytic processing business" do not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville Power Administration as of June 10, 2004.

(iv) **Which manufacturing site is included in the annual report for the solar electric manufacturing industry tax adjustments?** The location(s) where a person who is manufacturing solar energy systems using photovoltaic modules, or silicon components of such systems, within this state is the manufacturing site(s) included in the annual report. A "solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity. A "photovoltaic cell" means a device that converts light directly into electricity without moving parts. A "module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. A "silicon component" is an ingredient or component part comprised of fifty percent or more solar grade silicon that is used in a solar energy system using photovoltaic modules.

~~((e))~~ **(d) Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the department's special programs division at:

Department of Revenue  
Special Programs Division  
Post Office Box 47477  
Olympia, WA 98504-7477  
Fax: 360-586-2163

~~((e))~~ **(e) Examples.**

(i) ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(ii) Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. When filing per manufacturing site, Acme Engines must file an annual report for

employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iii) Tacoma Rivets, located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iv) Dynamic Aerospace Composites is a company that only manufactures FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites. ~~((Dynamic Aerospace Composites can make a request to the department to consolidate its employment positions into a single annual report if the jobs located at the three manufacturing sites have equivalent employment, wages, and employer-provided health and retirement benefits.))~~

(v) Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. ~~((Because))~~ Worldwide Aerospace ~~((has no manufacturing sites in Washington state, it))~~ is ~~((not))~~ required to complete the annual report for any employment positions in Washington that are directly related to the qualifying activity.

**(5) What jobs are included in the annual report?**

(a) The annual report covers all full-time, part-time, and temporary jobs at the manufacturing site as of December 31st of the calendar year for which an applicable tax adjustment is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax adjustment are included in the report if the job is located at the manufacturing site, or in the case of tax adjustment for the aerospace industry, in the state of Washington.

**(b) Examples.**

(i) XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. Its management and human resources divisions are located in an administrative

office across the street from its Tacoma, WA aluminum smelter. XYZ Aluminum's annual report for its Tacoma, WA location will include the employment positions in its administrative offices because those jobs are located at the Tacoma, WA manufacturing site.

(ii) AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

**(6) How is employment detailed in the annual report?**

The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

- (a) Major group;
- (b) Minor group;
- (c) Broad occupation; and
- (d) Detailed occupation.

All occupations are clustered into one of twenty-three major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by contacting the department's special programs division or by consulting the United States Department of Labor, Bureau of Labor Statistics online at [www.bls.gov/soc](http://www.bls.gov/soc). The annual report does not require names of employees.

**(7) What is total employment at the manufacturing site?** The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax adjustment is taken. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

**(8) What are full-time, part-time and temporary employment positions?** An employer must provide information on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time or temporary employment positions on December 31st of the calendar year for which an applicable tax adjustment is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(a) **Full-time and part-time employment positions.** In order for a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A

full-time position is a position that satisfies any one of the following minimum thresholds:

- (i) Works thirty-five hours per week for fifty-two consecutive weeks;
- (ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or
- (iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual report.

(c) **Examples.** Assume these facts for the following examples. National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday thru Friday. The

second shift works six hours from 6:00 p.m. to midnight Monday thru Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

(iv) On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

**(9) What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

**(10) How are wages detailed for the annual report?**

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

- Up to \$10.00 an hour;
- \$10.01 an hour to \$15.00 an hour;
- \$15.01 an hour to \$20.00 an hour;
- \$20.01 an hour to \$30.00 an hour; and
- \$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax adjustment is claimed.

**(b) Examples.** Assume these facts for the following examples. Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs five hundred people at the manufacturing site. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) One hundred employees classified as SOC Production Occupations are paid \$12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid \$17.00 an hour. One hundred employees classified as SOC Production Occupations are paid \$25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid \$10.01 an hour to \$15.00 an hour; 50% are paid \$15.01 an hour to \$20.00 an hour; and 25% are paid \$20.01 an hour to \$30.00 an hour.

(ii) Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of \$42,000; another ten employees are paid \$50,000 annually; and the remaining employees are all paid over \$70,000 annually. In order to report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid \$20.01 an hour to \$30.00 an hour and 60% are paid \$30.00 an hour or more.

(iii) All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive \$10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a \$10,000 bonus for exceeding company's sales goals. In order to report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid \$10.01

an hour to \$15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid \$15.01 an hour to \$20.00 an hour.

(iv) Ten of the employees classified as SOC Office and Administrative Support Occupations earn \$9.50 an hour. The remaining ten employees classified as SOC Office and Administrative Support Occupations earn wages between \$10.01 an hour to \$15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least \$10.50 an hour, but no more than \$15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour.

**(11) Reporting workers furnished by staffing companies.** For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual report must provide the following information:

(a) Total number of staffing company employees furnished by staffing companies;

(b) Top three occupational codes of all staffing company employees; and

(c) Average duration of all staffing company employees.

**(12) What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.

(c) "Health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.

(d) "Medical care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.

**(13) How are employer-provided health benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medical care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(b) **Examples.**

(i) On December 31st, Acme Engines has one hundred employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working ninety days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.

(ii) Apex Aluminum has fifty employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Aluminum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires ten new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.

(c) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in (c)(i) of this subsection, the person may consolidate the detail required in (c) through (e) of this subsection by using ranges to describe the information. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the

manufacturing site or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site or as otherwise reported. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. In those instances where the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses, state registered domestic partners, and unmarried (~~(dependant)~~) dependent children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

(d) **Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities by enrolled employees in the form of copayments, co-insurance, or deductibles. Copayments and co-insurance mean an amount specified in a medical care plan which is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an

enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means nonemergency medical care services provided in an office setting by the employee's primary care provider.

(e) **Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

(f) **Examples.**

(i) Assume the following facts for the following examples. Mosaic Aerospace employs one hundred employees and offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.

(A) Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace \$750 a month for each employee covered by Plan A. Enrolled employees must pay \$150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a \$10.00 copayment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a \$200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a \$500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a \$10.00 copayment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, copayment for prescription drug benefits is not required.

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a \$10.00 copayment for primary care provider services and a \$200 deductible for hospital services because this is the lowest cost option within Plan A. Mosaic Aerospace will report that employees have a \$10.00 copayment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit copayment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.



(B) Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace \$1,000 a month for each employee covered by Plan B. Enrolled employees must pay \$300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a \$200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a \$250 annual deductible.

Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a \$200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a \$250 annual deductible and 20% co-insurance obligation.

(C) On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had fifty employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is offering employees two managed care plans. Mosaic Aerospace may report each managed care plan separately or may consolidate the detail required in (c) through (e) of this subsection for this type of medical care plan by using ranges to report the information.

(ii) Aero Turbines employs one hundred employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits \$500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services. The high deductible medical care plan has an annual deductible of \$2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of \$500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not

include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of \$2,000 and employees have 25% co-insurance obligation.

**(14) What are employer-provided retirement benefits?** For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. Retirement plans include pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

**(15) How are employer-provided retirement benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

**(a) Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

**(b) Examples.**

(i) Lincoln Airplane has one hundred employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligible to participate in a 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked

for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

(c) **Detail by retirement plan.** The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site, or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

(d) **Examples.**

(i) General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs one hundred employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of \$10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

(A) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a 401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.

(B) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(C) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of \$10,000 or 7% of an employee's annual compensation.

(D) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.

(ii) Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs two hundred employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, seventy-five have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

(A) Washington Alloys can report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys can report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.

(B)(I) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 66.6% are enrolled.

(II) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in 401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

(16) **Additional reporting for aluminum smelters and electrolytic processing businesses.** Annual reports must include data for actual levels of employment for each quarter of the calendar year covered by the report. In addition, the report must identify the number of jobs affected by any employment reductions that have been publicly announced within sixty days of the date the report is submitted to the

department. For an aluminum smelter, the annual report must indicate the quantity of aluminum smelted at the plant during the time period covered by the report. For an electrolytic processing business, the annual report must indicate the quantity of product produced at the plant during the time period covered by the report.

(17) **Are annual reports confidential?** Annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(18) **What are the consequences for failing to file a complete annual report?**

(a) If a person fails to submit a complete annual report by March 31st, the department will declare the amount of taxes against which the tax adjustment was taken during the previous calendar year to be immediately due and payable. Interest, but not penalties, will be assessed retroactively to the date the tax adjustment was taken and accrues until taxes for which the tax adjustment was taken are repaid. Interest will be assessed at the rate provided for delinquent excise taxes as provided under chapter 82.32 RCW.

(b) **Complete annual report.** An annual report is complete if:

(i) The annual report is filed on the form required by this section; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this section.

The answer "varied," "various," or "please contact for information" is not a good faith response to a question.

### WSR 10-10-038

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed April 27, 2010, 10:14 a.m., effective May 28, 2010]

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

Purpose: In order to take certain tax credits, deferrals, and exemptions ("tax adjustments"), taxpayers must file an annual survey with the department of revenue (the department) containing information about their business activities and employment. WAC 458-20-268 explains these survey requirements. This rule also explains who is required to file an annual survey, how to file a survey, and what information must be included in the survey.

The department amended the rule to recognize SSB 6828 (chapter 81, Laws of 2008). This legislation provides that persons claiming tax adjustments for FAR 145 Part repair stations now file an annual report (WAC 458-20-267). These persons were previously required to file an annual survey.

This rule action does not include changes from the recently concluded 2010 legislative session, to be incorporated into the rule in a future rule making.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-268 Annual surveys for certain tax adjustments.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 10-05-111 on February 17, 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 1, Repealed 0.

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

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

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

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

Date Adopted: April 27, 2010.

Alan R. Lynn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-02-074, filed 12/29/06, effective 1/29/07)

**WAC 458-20-268 Annual surveys for certain tax adjustments.** (1) **Introduction.** In order to take certain tax credits, deferrals, and exemptions ("tax adjustments"), taxpayers must file an annual survey with the department of revenue (the "department") containing information about their business activities and employment. This section explains the survey requirements for the various tax adjustments. This section also explains who is required to file an annual survey, how to file a survey, and what information must be included in the survey.

Refer to WAC 458-20-267 (Annual reports for certain tax adjustments) for more information on the annual report requirements for certain tax incentive programs.

This section provides examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Who is required to file the annual survey?** The following persons must file an annual survey:

(a) A person claiming the B&O tax credit provided by RCW 82.04.4452 for engaging in qualified research and development. A separate annual survey must be filed for each tax reporting account. If the person has assigned its entire B&O tax credit provided by RCW 82.04.4452 to another person, the assignor is not required to file an annual survey. In such an instance, the assignee of the B&O tax credit is required to file an annual survey. If the person has assigned a portion of its B&O tax credit to another person, both the assignor and the assignee are required to file an annual survey. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information about this tax adjustment.

(b) An applicant for deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in rural counties. Refer to WAC 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development

activities in rural counties—Applications filed after March 31, 2004) for more specific information about this tax adjustment.

(c) An applicant for deferral of taxes under chapter 82.63 RCW for sales and use taxes on an eligible investment project in high technology. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information about this tax adjustment.

(d) An applicant for deferral of taxes under chapter 82.75 RCW for sales and use taxes on an eligible investment project in biotechnology products.

(e) A lessee of an eligible investment project under chapters 82.60, 82.63, and 82.75 RCW (as defined in RCW 82.60.020 (4)(b)(ii), 82.63.010 (7)(b), or 82.75.010 (5)(b)(ii)) who receives the economic benefit of the deferral and agrees in writing with the department to complete the annual survey. A lessor, by written contract, must agree to pass the economic benefit of the deferral to its lessee. The economic benefit of the deferral to the lessee must be no less than the amount of tax deferred by the lessor as evidenced by written documentation of any type, whether by payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapters 82.60, 82.63, and 82.75 RCW and who meets these requirements is not required to complete and file an annual survey.

(f) A person claiming the B&O tax exemption provided by RCW 82.04.4268 for dairy products, RCW 82.04.4269 for seafood products, and RCW 82.04.4266 for fruits and vegetables.

The first survey filed under this subsection must also include employment, wage, and benefit information for the twelve-month period immediately before first use of the B&O tax exemption. In order to meet this requirement, a person must complete a survey for the calendar year immediately preceding the first use of the B&O tax exemption.

(g) An applicant for deferral of taxes under chapter 82.74 RCW for sales and use taxes on an eligible investment project for dairy product manufacturing, seafood product manufacturing, or fresh fruit and vegetable processing. This tax adjustment is effective July 1, 2007.

(h) A lessee of an eligible investment project under chapters 82.74 RCW (as defined in RCW 82.74.010 (4)(b)) who receives the economic benefit of the deferral and agrees in writing with the department to complete the annual survey. A lessor, by written contract, must agree to pass the economic benefit of the deferral to its lessee. The economic benefit of the deferral to the lessee must be no less than the amount of tax deferred by the lessor as evidenced by written documentation of any type, whether by payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapter 82.74 RCW and who meets these requirements is not required to complete and file an annual survey. This tax adjustment is effective July 1, 2007.

~~(i) ((A person claiming the B&O tax credit provided by RCW 82.04.4487 for persons engaged in qualified preproduction development in the field of aeronautics. A separate~~

~~annual survey must be filed for each tax reporting account. If the person has assigned its entire B&O tax credit provided by RCW 82.04.4487 to another person, the assignor is not required to file an annual survey. In such an instance, the assignee of the B&O tax credit is required to file an annual survey. If the person has assigned a portion of its B&O tax credit to another person, both the assignor and the assignee are required to file an annual survey.~~

~~(j) A person claiming the B&O tax rate provided by RCW 82.04.250(3) for FAR part 145 certificated repair stations.~~

~~(k)) A person claiming the B&O tax credit provided by RCW 82.04.449 for customized employment training.~~

The first survey filed under this subsection must also include employment, wage, and benefit information for the twelve-month period immediately before first use of the B&O tax credit. In order to meet this requirement, a person must complete a survey for the calendar year immediately preceding the first use of the B&O tax credit.

~~((H)) (j) A person claiming the B&O tax rate provided by RCW 82.04.260(12) for timber products.~~

The first survey filed under this subsection must also include employment, wage, and benefit information for the twelve-month period immediately before first use of the B&O tax rate. In order to meet this requirement, a person must complete a survey for the calendar year immediately preceding the first use of the B&O tax rate.

### (3) How to file annual surveys.

(a) **Required form.** The department has developed a survey form that must be used to complete the annual survey unless a person obtains prior written approval from the department to file the annual survey in an alternative format.

(b) **Electronic filing.** A survey is filed electronically when the department receives the survey in an electronic format. The department may waive the electronic filing requirement for good cause shown. Any person not statutorily required to electronically file the survey has the option of filing the annual survey electronically.

Persons that claim the following tax adjustments must file the survey electronically with the department:

(i) B&O tax credit for qualified research and development under RCW 82.04.4452 (subsection (2)(a) of this section);

(ii) B&O tax exemptions for dairy products, seafood products or fruits and vegetables under RCW 82.04.4268, 82.04.4269, and 82.04.4266 (subsection (2)(f) of this section);

(iii) Sales and use tax deferral for dairy product manufacturing, seafood product manufacturing, or fresh fruit and vegetable processing under chapter 82.74 RCW (subsection (2)(g) and (h) of this section);

~~(iv) ((B&O tax credit for qualified preproduction development in the field of aeronautics under RCW 82.04.4487 (subsection (2)(i) of this section);~~

~~(v) B&O tax rate for FAR part 145 certificated repair stations under RCW 82.04.250(3) (subsection (2)(j) of this section); and~~

~~(vi)) B&O tax rate for timber products under RCW 82.04.260(12) (subsection (2)((H)) (j) of this section).~~

(c) **How to obtain the form.** The form may be filed electronically online or obtained by downloading it from the department's web site ([www.dor.wa.gov](http://www.dor.wa.gov)). It may also be obtained from the department's district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue  
Special Programs Division  
Post Office Box 47477  
Olympia, WA 98504-7477  
Fax: 360-586-2163

(d) **Due date.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under this section, the survey must be filed or postmarked by March 31st following any calendar year in which the tax credit, tax exemption, or tax rate is claimed.

For applicants of any sales tax deferrals listed under this section, the survey must be filed or postmarked by March 31st of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(e) **Examples.**

(i) Advanced Computing, Inc. qualifies for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2006. Advanced Computing, Inc. must electronically file an annual survey with the department by March 31, 2007.

(ii) In 1999, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The investment project was certified by the department as being operationally complete in 2001. Biotechnology, Inc. must file its annual survey with the department for the 2005 calendar year by March 31, 2006. A survey is due from Biotechnology, Inc. by March 31st each following year, with its last survey due March 31, 2008.

(iii) Advanced Materials, Inc. has been conducting manufacturing activities in a building leased from Property Management Services since 2002. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the building was certified by the department as operationally complete in 2002. In order to pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials, Inc. \$5,000 less in rent each year. Prior to the 2004 calendar year, Advanced Materials, Inc. is not required under chapter 82.60 RCW to file an annual survey. Advanced Materials, Inc., however, must file its annual survey with the department for the 2004 calendar year by March 31, 2005, assuming all the requirements of RCW 82.60.020 (4)(b)(ii) are met. A survey is due from Advanced Materials, Inc. by March 31st each following year, with its last survey due by March 31, 2009.

(iv) Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the gross proceeds of sales derived from the canning of fruit for the first time in 2006. Fruit Canning, Inc. must file two annual surveys with the department by March 31, 2007, one covering calendar year 2005 and one covering calendar year 2006. If Fruit Canning,

Inc. claims the B&O tax exemption during subsequent years, it must file an annual survey for each of those years by March 31 of each following year.

(4) **What information does the annual survey require?** The annual survey requests information about the following:

(a) Amount of tax deferred, the amount of B&O tax exempted, the amount of B&O tax credit taken, or the amount of B&O tax reduced under the preferential rate;

(b) The number of new products or research projects by general classification;

(c) The number of trademarks, patents, and copyrights associated with activities at the investment project.

(d) The following information for employment positions in Washington:

(i) The total number of employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment. Refer to subsection (7) of this section for information about full-time, part-time, and temporary employment positions;

(iii) The number of employment positions according to the wage bands of less than \$30,000; \$30,000 or greater, but less than \$60,000; and \$60,000 or greater. A wage band containing fewer than three individuals may be combined with the next lowest wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands; and

(e) Additional information the department requests that is necessary to measure the results of the tax adjustments.

(i) The department is required to report to the state legislature summary descriptive statistics by category and the effectiveness of the tax adjustments, such as job creation, company growth, and such other factors as the department selects or as the statutes identify. The department has included questions related to measuring these effects.

(ii) In addition, the department has included questions related to:

(A) The person's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.02565 and 82.12.02565; and

(B) The Unified Business Identifier used with the Washington state employment security department and all employment security department reference numbers used on quarterly tax reports that cover the employment positions reported in the annual survey.

(5) **What is total employment in the annual survey?**

(a) The annual survey requires information on all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the ~~(report)~~ survey. Total employment includes persons who are on leaves of absence such as sick leave, vacation, disability leave, jury duty, military leave, and workers compensation leave, regardless of whether those persons are receiving wages. Total employment does not include separation from employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(b) **Examples.** Assume these facts for the following examples. National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equip-

ment in Ridgefield, WA and Kennewick, WA. NCE received a deferral of taxes under chapter 82.60 RCW for sales and use taxes on its new manufacturing site in Kennewick, WA.

(i) NCE employs two hundred workers in Ridgefield manufacturing construction cranes. NCE employs two hundred fifty workers in Kennewick manufacturing bulldozers and other earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax adjustments, NCE's annual survey must report a total of four hundred fifty employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax adjustments.

(ii) On November 20th, NCE lays off seventy-five workers. NCE notifies ten of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The seventy-five employment positions are excluded from NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire ten employees, those employment positions are vacant on December 31st.

(iii) On December 31st, NCE has one hundred employees on vacation leave, five employees on sick leave, two employees on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of employees on vacation, sick leave, and military leave must be included in NCE's annual survey. The one employee scheduled to retire must be included in the annual survey because the employment position is filled on December 31st. The three vacant positions are not included in the annual survey.

(iv) In June, NCE hires two employees from a local college to intern in its engineering department. When the academic year begins in September, one employee ends the internship. The other employee's internship continues until the following June. NCE must report one employment position on the annual survey, representing the one intern employed on December 31st.

**(6) When is an employment position located in Washington state?** The annual survey seeks information about Washington employment positions only. An employment position is located in Washington state if:

(a) The service of the employee is performed entirely within the state;

(b) The service of the employee is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

(c) The service of the employee is performed both within and without the state, and the employee's base of operations is within the state;

(d) The service of the employee is performed both within and without the state, but the service is directed or controlled in this state; or

(e) The service of the employee is performed both within and without the state and the service is not directed or controlled in this state, but the employee's individual residence is in this state.

(f) **Examples.** Assume these facts for the following examples. Acme Computer, Inc. develops computer software and claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Acme Computer,

headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee services within Washington state.

(ii) John is an Acme Computer salesperson. John travels throughout Washington, Oregon, and Idaho promoting sales of new Acme Computer products. John's activities are directed by his manager in Acme Computer's Spokane office. John's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) Jane, vice-president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position must not be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Although Jane regularly performs services within Washington state, her activities are directed or controlled in Oregon.

(iv) Roberta, a service technician, travels throughout the United States servicing Acme Computer products. Her activities are directed from Acme Computer's corporate offices in California, but she works from her home office in Tacoma. Roberta's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Roberta performs services both within and without the state and the service is not directed or controlled in this state, but her residence is in Washington state.

**(7) What are full-time, part-time and temporary employment positions?** The survey must separately identify the number of full-time, part-time, and temporary employment positions as a percent of total employment.

(a) **Full-time and part-time employment positions.** A position is considered full-time or part-time if the employer intends for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months, excluding any leaves of absence.

(i) A full-time position is a position that requires the employee to work, excluding overtime hours, thirty-five hours per week for fifty-two consecutive weeks, four hundred fifty-five hours a quarter for four consecutive quarters, or one thousand eight hundred twenty hours during a period of twelve consecutive months.

(ii) A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) In some instances, an employee may not be required to work the hours required for full-time employment because

of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive their current wage, the position must be reported as a full-time employment position.

(b) **Temporary positions.** There are two types of temporary positions.

(i) **Employees of the person required to complete the survey.** In the case of a temporary employee directly employed by the person required to complete the survey, a temporary position is a position intended to be filled for a period of less than fifty-two consecutive weeks or twelve consecutive months. For example, seasonal employment positions are temporary positions. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this section.

(ii) **Workers furnished by staffing companies.** A temporary position also includes a position filled by a worker furnished by a staffing company, regardless of the duration of the placement. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this section. In addition, the person filling out the annual survey must provide the following additional information:

(A) Total number of staffing company employees furnished by staffing companies;

(B) Top three occupational codes of all staffing company employees; and

(C) Average duration of all staffing company employees.

(c) **Examples.** Assume these facts for the following examples. Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices at a facility located in Everett, WA. Worldwide Materials claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Worldwide Materials has one hundred employees.

(i) On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked forty hours a week and were expected to work for fifty-two consecutive weeks. Worldwide Materials must report these employees as being employed in a full-time position. Although the five employees are not currently working, they are on workers' compensation leave and Worldwide Materials had intended for the full-time positions to be filled for at least fifty-two consecutive weeks.

(ii) In September, Worldwide Materials hires two employees on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the position is intended to be filled for a period exceeding twelve consecutive months, Worldwide Materials must report these positions as two full-time positions.

(iii) Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, fifty-two weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) On November 1st, a Worldwide Materials engineer begins twelve weeks of family and medical leave. The engineer was expected to work forty hours a week for fifty-two consecutive weeks. While the engineer is on leave, Worldwide Materials hires a staffing company to furnish a worker to complete the engineer's projects. Worldwide Materials must report the engineer as a full-time position on the annual ~~(report)~~ survey. Worldwide Materials must also report the worker furnished by the staffing company as a temporary employment position and include the information as required in (b) of this subsection.

(v) Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week, but are expected to work twelve consecutive months. The three research employees are paid a comparable wage as other research employees who are required to work a set schedule of forty hours a week. Although the three research employees may work fewer hours, they are receiving comparable wages as other research employees working forty hours a week. Worldwide Materials must report these positions as full-time employment positions, because each position is equivalent to a full-time employment position.

(vi) Worldwide Materials has a large order to fulfill and hires ten employees for the months of June and July. Five of the employees leave at the end of July. Worldwide Materials decides to have the remaining five employees work on an on-call basis for the remainder of the year. As of December 31st, three of the employees are working for Worldwide Materials on an on-call basis. Worldwide Materials must report three temporary employment positions on the annual survey and include these positions in the information required in subsections (5), (8), and (9) of this section.

(8) **What are wages?** For the purposes of the annual survey, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, or otherwise as reported on the W-2 forms of employees. Stock options granted as compensation to employees are wages to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer. The compensation of a proprietor or a partner is determined in one of two ways:

(a) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(b) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances is the compensation.

(9) **What are employer-provided benefits?** The annual survey requires persons to report the number of employees that have employer-provided medical, dental, and retirement benefits, by each of the wage bands. An employee has employer-provided medical, dental, and retirement benefits if the employee is currently eligible to participate or receive the benefit. A benefit is "employer-provided" if the medical, dental, and retirement benefit is dependent on the employer's establishment or administration of the benefit. A

benefit that is equally available to employees and the general public is not an "employer-provided" benefit.

(a) **What are medical benefits?** "Medical benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical and/or dental care services.

(i) Health plans include any:

(A) "Employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA);

(B) "Health plan" or "health benefit plan" as defined in RCW 48.43.005;

(C) Self-funded multiple employer welfare arrangement as defined in RCW 48.125.010;

(D) "Qualified health insurance" as defined in Section 35 of the Internal Revenue Code;

(E) "Archer MSA" as defined in Section 220 of the Internal Revenue Code;

(F) "Health savings plan" as defined in Section 223 of the Internal Revenue Code;

(G) "Health plan" qualifying under Section 213 of the Internal Revenue Code;

(H) Governmental plans; and

(I) Church plans.

(ii) "Health care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(b) **What are dental benefits?** "Dental benefits" means a dental health plan offered by an employer as a benefit to its employees. "Dental health plan" has the same meaning as "health plan" in (a) of this subsection, but is for the purpose of providing for employees or their beneficiaries, through the purchase of insurance or otherwise, dental care services. "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) **What are retirement benefits?** "Retirement benefits" means compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. An employer contribution to the retirement plan is not required for a retirement plan to be employer-provided. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods after employment is terminated. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **Examples.** Assume these facts for the following examples. Medical Resource, Inc. is a pharmaceutical manufacturer located in Spokane, WA. Medical Resource, Inc. claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. It employs two hundred full-time employees and fifty part-time employees. Medical Resource, Inc. also hires a staffing company to furnish seventy-five workers.

(i) Medical Resource, Inc. offers its employees two different health plans as a medical benefit. Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Plan A until completing thirty days of employment. Plan B costs employees \$200 each month. Full-time and part-time employees are eligible for Plan B after six months of employment. One hundred full-time employees are enrolled in Plan A. One hundred full-time and part-time employees are enrolled in Plan B. Forty full-time and part-time employees chose not to enroll in either plan. Ten part-time employees are not yet eligible for either Plan A or Plan B. Medical Resource, Inc. must report two hundred employees as having employer-provided medical benefits, because this is the number of employees enrolled in the health plans it offers.

(ii) Medical Resource, Inc. does not offer medical benefits to the employees of the staffing company. However, twenty-five of these workers have enrolled in a health plan through the staffing company. Medical Resource, Inc. must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) Medical Resource, Inc. does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all employees with a 30% discount on any dental care service. No action, other than Medical Resource, Inc. employment, is required by employees to receive this benefit. Unlike the medical benefit, employees are eligible for the dental benefit as of the first day of employment. This benefit is not provided to the workers furnished by the staffing company. Medical Resource, Inc. must report two hundred and fifty employment positions as having dental benefits, because this is the number of employees enrolled in this dental plan.

(iv) Medical Resource, Inc. offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource, Inc. makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, two hundred and twenty-five workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan. One hundred of these workers receive matching contributions. Medical Resource, Inc. must report two hundred employment positions as having employer-provided retirement benefits, because this is the number of employees enrolled in the 401(k) Plan.

(v) Medical Resource, Inc. coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered to bank customers. Employees who open an IRA with the bank can arrange to have their contributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource, Inc. cannot



report that these fifty employees have employer-provided retirement benefits. IRAs are not an employer-provided benefit because the ability to establish the IRA is not dependent on Medical Resource, Inc.'s participation or sponsorship of the benefit.

(10) **Is the annual survey confidential?** The annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax adjustment taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request. More confidentiality provisions in regards to the annual surveys are as follows:

(a) **Failure to timely file a complete annual survey subject to disclosure.** If the following taxpayers fail to timely file a complete annual survey for claiming the tax adjustment, then the fact that such taxpayers fail to timely file a complete annual survey is not confidential:

(i) Persons receiving deferral of taxes under chapter 82.75 RCW on an eligible investment project in biotechnology products (RCW 82.32.645(6));

(ii) Persons claiming the B&O tax exemption provided by RCW 82.04.4266 for fruits and vegetables, RCW 82.04.-4268 for dairy products, and RCW 82.04.4269 for seafood products (RCW 82.32.610(5)); and

(iii) Persons claiming the B&O tax credit provided by RCW 82.04.449 for customized employment training (RCW 82.32.650(5)).

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If the following taxpayers report a tax adjustment amount on the annual survey that is different than the amount actually claimed on the taxpayers' tax returns or otherwise allowed by the department, then the amount actually claimed or allowed may be disclosed:

(i) Persons claiming the high technology B&O tax credit provided by RCW 82.04.4452 (RCW 82.04.4452 (6)(d)(i));

(ii) ~~((Persons claiming the B&O tax credit provided by RCW 82.04.4487 for engaging in qualified preproduction development in the field of aeronautics (RCW 82.32.635 (2)(e));~~

~~(iii) Persons claiming the B&O tax rate provided by RCW 82.04.250(3) for FAR part 145 certificated repair stations (RCW 82.32.640 (2)(e)); and~~

~~(iv))~~ Persons claiming the B&O tax rate provided by RCW 82.04.260(12) for timber products (RCW 82.32.630 (2)(d)).

(c) **Tax adjustment is less than ten thousand dollars.** If the tax adjustment of the following taxpayers is less than ten thousand dollars during the period covered by the annual survey, then such taxpayers may request the department to treat the tax adjustment as confidential under RCW 82.32.-330. The request must be made for each survey in writing, dated and signed by the owner, corporate officer, partner, guardian, executor, receiver, administrator, or trustee of the business, and filed with the department's special programs division at the address provided above in subsection (3) of this section.

(i) Persons claiming the high technology B&O tax credit provided by RCW 82.04.4452 (RCW 82.04.4452 (6)(d)(ii)); and

(ii) Persons claiming the B&O tax credit provided by RCW 82.04.4487 for engaging in qualified preproduction development in the field of aeronautics (RCW 82.32.635 (2)(d));(~~;~~

~~(iii) Persons claiming the B&O tax rate provided by RCW 82.04.250(3) for FAR part 145 certificated repair stations (RCW 82.32.640 (2)(d)); and~~

~~(iv) Persons claiming the B&O tax rate provided by RCW 82.04.260(12) for timber products (RCW 82.32.630 (2)(e)))).~~

(11) **What are the consequences for failing to timely file a complete annual survey?**

(a) **What is a "complete annual survey"?** An annual survey is complete if:

(i) The annual survey is filed on the form required by this section or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all survey questions required by this section.

Responses such as "varied," "various," or "please contact for information" are not good faith responses to a question.

(b) **High technology business and occupation (B&O) tax credit.** If a person claiming the B&O tax credit provided by RCW 82.04.4452 for persons engaged in qualified research and development fails to timely file a complete annual survey by the date due, the person is not eligible to take or assign the credit in the year the person failed to timely complete the annual survey. See RCW 82.04.4452. For example, if a person claims the credit in 2006 but fails to file a complete annual survey by March 31, 2007, then the person is not eligible to take or assign the credit in 2007. If a person claims the B&O tax credit during this period of ineligibility, the department will declare the amount of taxes for which the credit was claimed during the period of ineligibility to be immediately due and payable with interest (~~and penalties~~), as provided in chapter 82.32 RCW.

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

(c) **Tax deferrals for investment projects in rural counties.** If a recipient of the deferral fails to timely file a complete annual survey required under RCW 82.60.070 by the date due, 12.5% of the total deferred tax is immediately due. See RCW 82.60.070. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee is responsible for payment to the extent the lessee has received the economic benefit. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessment may be assessed and imposed. For example, if a person fails to file a complete annual survey by March 31, 2007, then 12.5% of the total deferred tax is immediately due, with applicable penalties and interest beginning to accrue on the due date.

(d) **Tax deferrals for investment projects for high technology businesses.** If a recipient of the deferral fails to timely file a complete annual survey required under RCW

82.63.020 by the date due, 12.5% of the total deferred tax is immediately due with interest, but not penalties, as provided in chapter 82.32 RCW. See RCW 82.63.045. Interest is computed retroactively to the date the tax deferral was claimed and accrues until the liability is paid in full. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(e) **Business and occupation (B&O) tax exemption for fruit and vegetable, dairy product, and seafood product businesses.** If a person fails to timely file a complete annual survey for the B&O tax exemption under RCW 82.04.4266, 82.04.4268, or 82.04.4269 by the due date, the amount of taxes exempted for the previous calendar year is immediately due and payable. See RCW 82.32.610. Interest, but not penalties, applies to the amounts due under this subsection. The amount due must be calculated using a rate of 0.138%. Interest is computed retroactively to the date the tax exemption was claimed and accrues until the liability is paid in full.

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

(f) **Tax deferrals for investment projects for fruit and vegetable, dairy product, and seafood product businesses.** If a recipient of the deferral fails to file a complete annual survey required under RCW 82.74.040 by the date due, 12.5% of the total deferred tax is immediately due with interest, but not penalties, as provided in chapter 82.32 RCW. See RCW 82.-74.040. Interest begins to accrue on the due date and accrues until the liability is paid in full. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(4), the lessee must be responsible for payment to the extent the lessee has received the economic benefit.

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

(g) **Tax deferrals for investment projects for biotechnology products.** If a recipient of the deferral fails to file a complete annual survey required under RCW 82.32.645 by the due date, 12.5% of the total deferred tax is immediately due with interest, but not penalties, as provided in chapter 82.32 RCW. See RCW 82.32.645. Interest begins to accrue on the due date and accrues until the liability is paid in full.

(h) ~~((Business and occupation (B&O) tax credit for qualified preproduction development in the field of aeronautics under RCW 82.04.4487.~~ If a person fails to timely file a complete annual survey for the B&O tax credit under RCW 82.04.4487 by the due date, the amount of tax credit claimed for the previous calendar year is immediately due and payable. See RCW 82.32.635. Interest, but not penalties, applies to the amounts due under this subsection. Interest is

computed retroactively to the date the tax credit was claimed and accrues until the liability is paid in full.

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

A person is not required to file a complete annual survey under this subsection if the person is required to and timely files the annual report under RCW 82.32.545.

~~(i) **Reduced business and occupation (B&O) tax rate for FAR part 145 certified repair stations.** If a person fails to timely file a complete annual survey for the reduced B&O tax rate under RCW 82.04.250(3) by the due date, the amount of tax reduced for the previous calendar year is immediately due and payable. See RCW 82.32.640. Interest, but not penalties, applies to the amounts due under this subsection. Interest is computed retroactively to the date the reduced taxes were due and accrues until the liability is paid in full.~~

If a person fails to file the survey by due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

~~(j)) **Business and occupation (B&O) tax credit for customized employment training.** If a person fails to timely file a complete annual survey for the B&O tax credit under RCW 82.04.449 by the due date, the amount of tax credit claimed for the previous calendar year is immediately due and payable. See RCW 82.32.650. Interest, but not penalties, applies to the amounts due under this subsection. Interest is computed retroactively to the date the tax credit was claimed and accrues until the liability is paid in full.~~

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

~~((k)) (i) **Reduced business and occupation (B&O) tax credit for timber products.** If a person fails to timely file a complete annual survey for the reduced B&O tax rate under RCW 82.04.260(12) by the due date, the amount of tax reduced for the previous calendar year is immediately due and payable. See RCW 82.32.630. Interest, but not penalties, applies to the amounts due under this subsection. Interest is computed retroactively to the date the reduced taxes were due and accrues until the liability is paid in full.~~

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must

be made in writing before the due date to the address provided in subsection (3)(c) of this section.

**WSR 10-10-040**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 27, 2010, 11:02 a.m., effective May 28, 2010]

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

Purpose: The purpose of these rules is to establish the procedures the department of licensing will follow in order to provide full access to public records.

Citation of Existing Rules Affected by this Order: Amending WAC 308-10-005, 308-10-010, 308-10-015, 308-10-020, 308-10-025, 308-10-030, 308-10-040, 308-10-041, 308-10-045, 308-10-050, 308-10-055, 308-10-067, and 308-10-070.

Statutory Authority for Adoption: RCW 42.56.040, [42.56.]070.

Other Authority: RCW 46.01.110.

Adopted under notice filed as WSR 10-07-131 on March 23, 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 1, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 13, 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 13, Repealed 0.

Date Adopted: April 27, 2010.

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-005 Authority and purpose.** (1) RCW ((42.17.260(1)/))42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency.

(2) The purpose of these rules is to establish the procedures the department of licensing will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the department of licensing and establish processes for both requestors and the department of licensing staff that are

designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the department of licensing will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-010 Definitions.** (1) The definitions set forth in RCW ((42.17.020/))42.56.010 shall apply to this chapter.

(2) "Designee" is a department employee authorized by the public records officer to receive and respond to a public records request.

(3) The "department of licensing" is the agency created pursuant to chapter 46.01 RCW. The department of licensing shall hereinafter be referred to as the department. Where appropriate, the term department also refers to the staff and employees of the department of licensing.

(4) "Director" means the director of the department of licensing as appointed by the governor ((pursuant to RCW 46.01.090)).

(5) "Listing (list)" means an item-by-item series of names, figures, words or numbers written or printed one after the other.

(6) "Individual" means a natural person.

(7) "Commercial purpose" means using or intending to use information for the purpose of facilitating a profit expecting business activity.

(8) "Profession" when applied to department records, or the release of department record information, means any state regulated business, profession or occupation administered by the assistant director, business and professions division.

AMENDATORY SECTION (Amending WSR 92-09-107, filed 4/20/92, effective 5/21/92)

**WAC 308-10-015 Location of administrative office.** The administrative office of the department and its director and staff ((are)) is located in the Highways-Licenses Building, 1125 Washington Street Southeast, Olympia 98504. The administrative office of the public records officer is located at 8005-A River Drive Southeast, Olympia 98501.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-020 Operations and procedures.** (1) The department is organized under a director, deputy director, chief financial officer, chief information officer and three assistant directors. Each assistant director and officer is delegated authority to act in a specific functional area. The five major functional components are: ((Vehicle services,)) Driver and vehicle services, driver policy and programs,

finance and administration division, information services, and business and professions division.

(2) The director of the department is appointed by the governor, with consent of the senate, and holds office at the pleasure of the governor.

(a) Subject to statutory limitations the director has complete charge of the department. The director may delegate any power or duty vested in the office to any assistant or subordinate, but remains responsible for the official acts of the officers and employees.

(b) By the specific powers of legislation and delegation the director is charged with the responsibility and authority to act and direct in the following areas:

(i) Efficiently administer the laws pertaining to licensing of vehicles, vehicle operators, professions, occupations, real estate, vessels, and businesses.

(ii) Adopt and enforce rules consistent with, and necessary to carry out, the provisions of existing laws.

(c) Each assistant director and officer reports directly to the deputy director, unless otherwise prescribed.

(d) Unless specifically delegated the director shall establish and maintain relationships with the state's executive offices, legislature, and other state agencies, other states and other states' agencies, agencies of the federal government, state and national associations, local and municipal governments, boards and commissions, and the press.

(e) The director shall have direct authority over matters pertaining to public information, research, and legal issues.

(3) The assistant director, driver and vehicle services, has authority to act in the following areas:

(a) Administer laws pertaining to:

(i) Vehicle and vessel licensing and excise tax programs;

(ii) Fuel tax programs;

(iii) Proration and reciprocity programs;

(iv) Vehicle and vessel dealer, manufacturer licensing and inspection programs; ~~((and))~~

(v) Miscellaneous vehicle licensing programs including: Transporters, wreckers, hulk haulers, abandoned vehicles, tow truck operators, scrap processors, snowmobile and ORV vehicle dealers; and

(vi) Driver licensing and nondriver identification card programs.

(b) Adopt and enforce rules and standards to carry out the provisions of existing law.

(c) Administer the licensing functions of county auditors, and licensing agents who have been appointed by county auditors to act on behalf of the department.

(4) The assistant director, driver ~~((services))~~ policy and programs, has authority to act in the following areas:

(a) Administer the laws pertaining to driver licensing, financial responsibility, and driver improvement~~((and examining))~~;

(b) Adopt and enforce rules and standards to carry out the provisions of existing law~~((and~~

~~((determine field office locations and initiate property acquisition))~~.

(5) The assistant director, business and professions division, has authority to act in the following areas:

(a) Administer the laws in conjunction with appointed boards pertaining to the following professions, occupations, and businesses:

Appraisers  
Architects  
Auctioneers  
Bail bonds  
Boxing  
Camping resorts  
Cemeteries  
Collection agencies  
Cosmetologists  
Court reporters  
Driver training schools  
Employment agencies  
Engineers  
Firearms  
Funeral directors  
Geologists  
Home inspectors  
Land surveyors  
Landscape architects  
Limousines  
Martial arts  
Notaries public  
On-site wastewater treatment  
Real estate  
Private investigators  
Security guards  
Sellers of travel  
Timeshares  
Tattoo and body piercing  
Vehicle for hire (includes taxis)  
Wrestling  
Uniform commercial code (UCC)

(i) The assistant director of the business and professions division helps administer the laws in conjunction with appointed boards, who exercise administrative and regulatory functions. Those boards are as follows:

Real Estate Appraiser Commission  
Board of registration for architects  
Board of funeral directors and embalmers  
Cemetery licensing board  
Collection agency board  
Cosmetology, barbering, esthetics, and manicuring advisory board  
Professional engineers and land surveyors board  
Landscape architect board  
Real estate commission  
On-site wastewater design advisory committee  
Geologist licensing board

(ii) Correspondence to these boards should be directed to the program units for the boards.

(b) Adopt and enforce the rules, regulations and standards in conjunction with appointed boards to carry out the provisions of existing laws.

(c) Establish and maintain relationships with commissions, boards, societies, associations, and agencies both

external and internal to this state in order to enhance the department's capability for recommending improvements in legislation, rules, or regulations relative to professions, occupations, or businesses.

(d) Administer the laws pertaining to Uniform Commercial Code, business licensing and registration.

(6) The chief financial officer, finance and administration division, has authority to act in the following areas:

(a) Develop, promote, and direct department activities and programs which relate to:

- (i) Budget and management systems;
- (ii) Supply and equipment procurement;
- (iii) Records management;
- (iv) Fiscal and revenue accounting;
- (v) Contracts;
- (vi) Safety and risk management;
- (vii) Facilities;
- (viii) ~~(Mail)~~ Customer service center operations;
- (ix) Transportation;
- (x) Commute trip reduction;
- (xi) Sustainability;
- (xii) Public records disclosure;
- (xiii) Mail center operations;

(b) Organize, provide, and manage integrated staff services to best serve the overall interests of the department.

(7) The chief information officer, information services, has the authority to act in the following areas:

(a) Develop, promote, coordinate, and direct department activities which relate to the automated processing of data.

(b) Consult and work with other state agencies in structuring and phase-in of interagency related programs.

(c) Develop and implement a formal problem reporting system.

(8) The department conducts informal and formal proceedings in areas of its statutory authority as related in WAC 308-10-020. These proceedings are governed by chapters 34.05, 42.30 and 43.24 RCW, except that the denial, suspension, or revocation of drivers' licenses are not subject to provisions of chapter 34.05 RCW, the Administrative Procedure Act, other than those actions taken pursuant to chapter 46.29 RCW. The department has adopted rules in Title 308 WAC.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-025 Public records available.** All public records of the department are deemed to be available for public inspection and copying during normal business hours pursuant to these rules, except as otherwise provided by chapters ~~((42.177))~~42.56 and 46.12 RCW, WAC 308-10-050 and 308-93-087. For the purposes of this chapter, the normal business hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-030 Public records officer.** The department's public records officer shall be designated by the director and is the point of contact for public records requests. The person so designated shall be located in the ~~((main adminis-~~

~~trative offices of the department))~~ administrative office mentioned in WAC 308-10-015. The public records officer shall be responsible for the following: The implementation of the department's rules regarding release of public records, coordinating the staff of the department in this regard, maintaining, keeping current, and publishing an index of all agency records and ensuring compliance with the public records disclosure act requirements.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-040 Requests for public records.** In accordance with requirements of chapter ~~((42.177))~~42.56 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon the department's public records request form or by letter, fax, or e-mail addressed to the public records officer or designee where the record is held. The request shall include the following information:

- (a) The name and address of the person requesting the record.
- (b) The calendar date on which the request is made.
- (c) The nature of the request.
- (d) A reference to the requested record as it is described in the current department record index.

Note: If the material is not identifiable by reference to the department's current index, an accurate description of the record is ~~((requested))~~ required.

(e) The signature and other contact information including telephone number and any e-mail address. A signature is not required for requests submitted by e-mail.

(f) If for a "motor vehicle record" as defined in 18 U.S.C. 2725, a statement of the allowable use under 18 U.S.C. 2721 that will be made of the requested record.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

(3) Persons authorized by law to obtain lists of names of individuals from public records will be required to complete a statement agreeing not to release or use the information for commercial purposes.

(4) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records ~~((or a deposit. Pursuant to))~~ under WAC 308-10-045~~((, standard photocopies will be provided at fifteen cents per page))~~.

(5) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm, in writing, receipt of the information and the substance of the request.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-041 Processing of public records requests—General.** (1) Providing "fullest assistance." The department is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying;  
 (b) If copies are requested and payment ~~((of a deposit))~~ for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided in a letter, by telephone or e-mail. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) Consequences of failure to respond. If the department does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer or designee to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) Inspection of records.

(a) Consistent with other demands, the department shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the department's notification to him or her that the records are available for inspection or copying. The department will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the department to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the department

may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(7) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set ~~((of))~~ of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the department has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate to the requestor that the department has closed the request.

(10) Later discovered documents. If, after the department has informed the requestor that it has provided all available records, the department becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

#### NEW SECTION

**WAC 308-10-042 Processing of public records requests—Electronic records.** (1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. The public records officer or designee will provide the nonexempt records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps its records.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-045 Costs of providing copies of public records.** (1) No fee shall be charged for the inspection of public records. The department shall charge a fee in the amount necessary to reimburse the department for its actual costs incident to providing copies of public records. The schedule of charges is:

ITEM	FEE
Copies produced on copying and duplicating equipment <u>including scanning</u>	15 cents per page

ITEM	FEE
Computer generated listing, magnetic tapes or labels	Cost of services <u>and media</u>
Microfilm copies	75 cents per page
Postal charges	May be added to any copy of a public record if applicable
<u>Compact discs</u>	<u>Cost</u>

(2) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The department will not charge sales tax when it makes copies of public records.

(3) Payment may be made by check or money order to the department.

(4) When it is in the fiscal and administrative interest of the state, the public records officer or designee may waive charges of \$4.50 or less.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-050 Exemptions.** (1) The department may determine that a public record requested is exempt under the provisions of chapter ~~((42.177))~~42.56 RCW. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure.

(2) Under RCW ~~((42.17.260))~~42.56.210, the department may delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ~~((42.177))~~42.56 RCW.

(3) The department will not release personal or highly restricted information, as defined in 18 U.S.C. 2725~~((3))~~ (4), from records pertaining to motor vehicle operator's licenses and permits, motor vehicle titles, motor vehicle registrations, and identification cards, unless the release both is considered a permissible use under 18 U.S.C. 2721 and is otherwise permitted by state law. In construing 18 U.S.C. 2721 (b)(2), the release of personal information for use in connection with matters of motor vehicle safety or driver safety shall be deemed to include the physical safety of persons as drivers, passengers or pedestrians and their motor vehicles or property.

(4) All denials of requests for public records will be accompanied by a written statement specifying the reason for the deletion or denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(5) The department is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-055 Review of denials of public records.** (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the manager of administration, finance and administration division. That person will immediately consider the petition and either affirm or reverse the denial within ~~((two))~~ ten business days following the department's receipt of the petition, or within such other time as the department and the requestor mutually agree to.

(3) Review by the attorney general's office. Pursuant to RCW ~~((42.17.325))~~42.56.530, if the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW ~~((42.17.340))~~42.56.550 ~~((at the conclusion of two business days after the initial denial regardless of any internal administrative appeal)).~~

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-067 Public records indexing system.** (1) The department has implemented a system of indexing for identification and location of the following records:

(a) All records issued before July 1, 1990, for which the department has maintained an index.

(b) Final orders from adjudicative proceedings as defined in RCW 34.05.010(1) entered after June 30, 1990, that contain an analysis or decision of substantial importance to the department in carrying out its duties.

(c) Declaratory orders entered after June 30, 1990, that contain an analysis or decision of substantial importance to the department in carrying out its duties.

(d) Interpretive statements entered after June 30, 1990.

(e) Policy statements entered after June 30, 1990.

(2) The department shall maintain a general index of all its records available to the public for inspection and copying, including those records mentioned above.

(3) The general index of public records will be maintained and updated by the department. The public records officer is responsible for updating the general index. The index of records is available during regular business hours for public inspection at the department's ~~((main office located at the Department of Licensing, 1125 Washington Street S.E., Olympia, Washington 98504. The public records officer is responsible for updating the general index))~~ administrative

office located at 8005-A River Drive Southeast, Olympia 98501 and is available on-line at [www.dol.wa.gov](http://www.dol.wa.gov).

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

**WAC 308-10-070 Communications with department.**

All written communications with the department pertaining to the administration or enforcement of chapter ((42-177))42.56 RCW and these rules shall be addressed as follows: Department of Licensing, c/o Public Records Officer, ((Highways Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504-8001)) 8005-A River Drive Southeast, Olympia 98501.

**WSR 10-10-041**

**PERMANENT RULES**

**STATE BOARD OF HEALTH**

[Filed April 27, 2010, 11:56 a.m., effective May 28, 2010]

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

Purpose: WAC 246-491-039 was amended to comply with SHB 1510, chapter 44, Laws of 2009, which establishes an administrative option for an individual to obtain some of the confidential information from their birth certificate. This rule amendment specifies the manner by which the individual establishes their identity and which items from the birth certificate that the department will provide.

Citation of Existing Rules Affected by this Order: Amending WAC 246-491-039.

Statutory Authority for Adoption: RCW 70.58.055.

Adopted under notice filed as WSR 10-04-101 on February 3, 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 1, Repealed 0.

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

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

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

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

Date Adopted: March 10, 2010.

Craig McLaughlin  
Executive Director

AMENDATORY SECTION (Amending WSR 02-20-092, filed 10/1/02, effective 11/1/02)

**WAC 246-491-039 Confidential information on state of Washington live birth and fetal death certificates under chapter 70.58 RCW.** (1) The confidential sections of

the certificate of live birth and the certificate of fetal death are not subject to public inspection and may not be included on certified copies of the record except upon order of a court, or as specified in subsection (2) of this section.

(2) An individual who is the subject of the birth certificate may request the confidential information from that individual's birth certificate.

(a) All requests are to be made to the department on a form provided by the department.

(b) In order to obtain the confidential information:

(i) The individual and the subject of the birth certificate must be the same person.

(ii) The individual must have proof of identity as specified in (c) of this subsection.

(c) Proof of identity includes:

(i) A current document issued by a federal or state government with the individual's name, date of birth, photograph, signature, and physical description.

(ii) A legal record documenting any name change, if needed, to verify that the individual and the subject of the birth certificate are the same person.

(iii) If not applying in person, a notarized signature of the individual making the request must be included with the proof of identity.

(d) The department shall, upon receipt of a request in compliance with (a) through (c) of this subsection, provide to the individual the following items, as available from their birth certificate:

(i) Newborn medical record number;

(ii) Birth weight;

(iii) Infant head circumference;

(iv) Obstetric estimate of gestation;

(v) Apgar scores;

(vi) Infant transferred within twenty-four hours of delivery;

(vii) Abnormal conditions of the newborn; and

(viii) Congenital anomalies of the newborn.

**WSR 10-10-043**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed April 27, 2010, 2:29 p.m., effective May 28, 2010]

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

Purpose: The purpose of these rules is to implement the new radiologist assistant (RA) profession created by SSB 6439 (chapter 246, Laws of 2008), now codified in chapter 18.84 RCW. These rules establish enforceable standards of practice, education and examination requirements, and licensing fees.

Citation of Existing Rules Affected by this Order: Amending WAC 246-926-020, 246-926-140, 246-926-150, 246-926-180, 246-926-190, and 246-926-990.

Statutory Authority for Adoption: RCW 18.84.040.

Adopted under notice filed as WSR 09-24-101 on December 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: The proposed rule published in WSR 09-24-101 referred to the January 2005 American Registry of Radio-



logic Technologists Role Delineation document as the scope of practice for radiologist assistants. The only change was to incorporate the tasks directly into the rule language.

A final cost-benefit analysis is available by contacting Susan Gragg, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@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 3, Amended 6, 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 3, Amended 6, Repealed 0.

Date Adopted: April 23, 2010.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

**WAC 246-926-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

~~(1) ("Unprofessional conduct" as used in this chapter means the conduct described in RCW 18.130.180.~~

~~(2) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.~~

~~(3) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.~~

~~(4) "Department" means the department of health.~~

~~(5) "Radiological technologist" means a person certified under chapter 18.84 RCW.~~

~~(6) "Registered X-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.~~

~~(7) "Direct supervision" means the appropriate licensed practitioner is on the premises and is quickly and easily available.~~

~~(8) "Mentally or physically disabled" means a radiological technologist or X-ray technician who is currently mentally incompetent or mentally ill as determined by a court, or who is unable to practice with reasonable skill and safety to patients by reason of any mental or physical condition and who continues to practice while so impaired-)) "ARRT" means the American Registry of Radiologic Technologists.~~

~~(2) "Department" means the department of health.~~

~~(3) "Direct supervision" means the appropriate licensed practitioner is on the premises and is quickly and easily available.~~

(a) For a diagnostic, therapeutic, or nuclear medicine radiologic technologist, the appropriate licensed practitioner is a physician licensed under chapter 18.71 or 18.57 RCW.

(b) For a radiologist assistant, the appropriate licensed practitioner is a radiologist.

(4) "General supervision" for a radiologist assistant means the procedure is furnished under the supervising radiologist's overall direction and control. The supervising radiologist must be on-call or be available for consultation.

(5) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

(6) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(7) "Personal supervision" for a radiologist assistant means the supervising radiologist must be in the room during the performance of the procedure.

(8) "Radiological technologist" means a person certified under chapter 18.84 RCW.

(9) "Radiologist" means a licensed physician licensed under chapter 18.71 or 18.57 RCW and certified by the American Board of Radiology or the American Osteopathic Board of Radiology.

(10) "Radiologist assistant" means an advanced-level diagnostic radiologic technologist certified under chapter 18.84 RCW.

(11) "Registered X-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.

(12) "Unprofessional conduct" as used in this chapter means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

**WAC 246-926-140 Approved schools for diagnostic, therapeutic, or nuclear medicine radiologic technologists.**

Approved schools and standards of instruction for diagnostic radiologic technologist, therapeutic radiologic technologist, and nuclear medicine technologist are those recognized as radiography, radiation therapy technology, and nuclear medicine technology educational programs that have obtained accreditation from the Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee on Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation.

AMENDATORY SECTION (Amending Order 237, filed 2/7/92, effective 2/19/92)

**WAC 246-926-150 Certification designation for diagnostic, therapeutic, or nuclear medicine radiologic technologists.** A certificate shall be designated in a particular field of radiologic technology by:

(1) The educational program completed; diagnostic radiologic technologist - radiography program; therapeutic radiologic technologist - radiation therapy technology program; and nuclear medicine technologist - nuclear medicine technology program; or

(2) By meeting the alternative training requirements established in WAC 246-926-100((;)) and 246-926-110, 246-926-120, or 246-926-130.

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

**WAC 246-926-180 Parenteral procedures for diagnostic or therapeutic radiologic technologists.** (1) A certified diagnostic or therapeutic radiologic technologist may administer diagnostic and therapeutic agents under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW. Diagnostic and therapeutic agents may be administered via intravenous, intramuscular, or subcutaneous injection. In addition to direct supervision, before the radiologic technologist may administer diagnostic and therapeutic agents, the following guidelines must be met:

(a) The radiologic technologist has had the prerequisite training and thorough knowledge of the particular procedure to be performed;

(b) Appropriate facilities are available for coping with any complication of the procedure as well as for emergency treatment of severe reactions to the diagnostic or therapeutic agent itself, including readily available appropriate resuscitative drugs, equipment, and personnel; and

(c) After parenteral administration of a diagnostic or therapeutic agent, competent personnel and emergency facilities must be available to the patient for at least thirty minutes in case of a delayed reaction.

(2) A certified radiologic technologist may perform venipuncture under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW.

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

**WAC 246-926-190 State examination/examination waiver/examination application deadline for diagnostic, therapeutic, or nuclear medicine radiologic technologists.** (1) The ~~((American Registry of Radiologic Technologists))~~ ARRT certification examinations for radiography, radiation therapy technology, and nuclear medicine technology are the state examinations for certification as a radiologic technologist.

(2) The examination shall be conducted in accordance with the ~~((American Registry of Radiologic Technologists))~~ ARRT security measures and contract.

(3) Applicants taking the state examination must submit the application, supporting documents, and fees to the department of health for approval prior to being scheduled to take the examination.

(4) Examination candidates shall be advised of the results of their examination in writing by the department of health.

(5) The examination candidate must have a minimum scaled score of seventy-five to pass the examination.

NEW SECTION

**WAC 246-926-300 Radiologist assistant scope of practice.** (1) In addition to diagnostic radiologic technologist

tasks, a radiologist assistant may perform advanced diagnostic imaging procedures under the direction of a supervising radiologist. Those procedures include, but are not limited to:

(a) Enteral and parenteral procedures;

(b) Injecting diagnostic agents to sites other than intravenous;

(c) Diagnostic aspirations and localizations; and

(d) Assisting radiologists with other invasive procedures.

(2) The tasks a radiologist assistant may perform include the following:

(a) Preimaging procedures.

(i) Procedures that may be performed under general supervision:

(A) Review of medical records to verify patient and procedure; obtain medical history and vital signs; perform physical examination, evaluate medical record, history, and physical examination for contraindications for the procedure (e.g., compliance with preparation instructions for the procedure, pregnancy, medications). Discrepancies and/or contraindications must be reviewed with the supervising radiologist;

(B) Discuss examination/procedure details (including risks, benefits, and follow-up instructions) with patient or patient representative;

(C) Obtain informed consent (patients must be able to communicate with the radiologist for questions or further information as needed);

(D) Apply electrocardiography (ECG) leads and recognize life threatening abnormalities;

(E) Routine urinary catheterization;

(F) Venipuncture;

(G) Administer oxygen as prescribed; and

(H) Position patients to perform required procedure, using immobilization devices and modifying technique as necessary.

(ii) Procedures that may be performed under direct supervision: Nonroutine catheterization (known anatomic anomalies, recent surgeries).

(b) Pharmaceuticals.

(i) Imaging agent procedures that may be performed under general supervision:

(A) Monitor intravenous (IV) flow rate; and

(B) Monitor patients for side effects or complications and report findings to the supervising radiologist as appropriate.

(ii) Imaging contrast agent under direct supervision:

(A) Administer contrast agents and/or radiopharmaceuticals as prescribed by the radiologist; and

(B) Provide information to patients on the effects and potential side effects of the pharmaceutical required for the examination.

(iii) Oral medications, excluding imaging agents, always require direct supervision.

(iv) Parenteral medication administration procedures, excluding imaging agents, requiring direct supervision:

(A) Monitor IV flow rate; and

(B) Monitor patients for side effects or complications and report findings to the supervising radiologist as appropriate.

(v) Parenteral medication administration procedures, excluding imaging agents, requiring personal supervision:

(A) Administer general medications as prescribed by the radiologist;

(B) Administer conscious sedation medications as prescribed by the radiologist; and

(C) Provide information to patients on the effects and potential side effects of the pharmaceutical required for the examination.

(c) Imaging procedures.

(i) Procedures that may be performed under general supervision:

(A) Operate a fixed/mobile fluoroscopic unit;

(B) Document fluoroscopy time; and

(C) Assess patient's vital signs and level of anxiety and/or pain, and inform the radiologist when appropriate.

(ii) Fluoroscopic examinations and procedures that require direct supervision:

(A) Upper GI;

(B) Esophagus;

(C) Small bowel studies;

(D) Barium enema;

(E) Cystogram;

(F) T-tube cholangiogram;

(G) Hysterosalpingogram (imaging only) if OB/GYN is present in the room;

(H) Retrograde urethrogram;

(I) Nasoenteric and oroenteric feeding tube placement;

(J) Port injection;

(K) Fistulogram/sonogram;

(L) Loopogram; and

(M) Swallowing study.

(iii) Fluoroscopic examinations and procedures that require personal supervision: Hysterosalpingogram (imaging only) if OB/GYN is not present in the room.

(iv) Contrast media administration and needle or catheter placement.

(A) Procedures that may be performed under general supervision: Basic peripherally inserted central catheter (PICC) placement.

(B) Procedures that may be performed under direct supervision:

(I) Joint injection and aspiration;

(II) Arthrogram (conventional, computed tomography (CT), and magnetic resonance (MR));

(III) Complex peripherally inserted central catheter (PICC) placement;

(IV) Thoracentesis and paracentesis with appropriate image guidance; and

(V) Lower extremity venography.

(C) Procedures that may be performed under personal supervision:

(I) Lumbar puncture under fluoroscopic guidance;

(II) Lumbar, thoracic, and cervical myelogram;

(III) Nontunneled venous central line placement;

(IV) Venous catheter placement for dialysis;

(V) Breast needle localization; and

(VI) Ductogram (galactogram).

(d) Image review, requires general supervision:

(i) Evaluate images for completeness and diagnostic quality;

(ii) Recommend additional images in the same modality as required (general radiography, CT, MR);

(iii) Evaluate images for diagnostic utility and report clinical observations to the radiologist;

(iv) Review imaging procedures, make initial observations, and communicate observations only to the radiologist; and

(v) Perform post-processing procedures:

(A) Routine CT (e.g., 3D reconstruction, modifications to field of vision (FOV), slice spacing, algorithm);

(B) Specialized CT (e.g., cardiac scoring, shunt graft measurements); and

(C) MR data analysis (e.g., 3D reconstructions, maximum intensity projection (MIP), 3D surface rendering, volume rendering).

(e) Postprocedures, requires general supervision:

(i) Record previously communicated initial observations of imaging procedures according to approved protocols;

(ii) Communicate radiologist's report to referring physician;

(iii) Provide radiologist-prescribed post care instructions to patients;

(iv) Perform follow-up patient evaluation and communicate findings to the radiologist;

(v) Document procedure in appropriate record and document exceptions from established protocol or procedure; and

(vi) Write patient discharge summary for review and cosignature by radiologist.

(f) Other procedures.

(i) Procedures that may be performed under general supervision:

(A) Participate in quality improvement activities within radiology practice (e.g., quality of care, patient flow, reject-repeat analysis, patient satisfaction); and

(B) Assist with data collection and review for clinical trials or other research.

(ii) Procedures that may be performed under personal supervision: Additional procedures deemed appropriate by the radiologist.

(g) When performing any task or procedure, the radiologist assistant must be able to recognize and respond to medical emergencies (e.g., drug reactions, cardiac arrest, hypoglycemia) and activate emergency response systems, including notification of the radiologist.

(3) Initial findings and observations made by a radiologist assistant communicated solely to the supervising radiologist do not constitute diagnoses or interpretations.

(4) At the direction of the supervising radiologist, a radiologist assistant may administer imaging agents and prescribed medications; however, nothing in this chapter allows a radiologist assistant to prescribe medications.

#### NEW SECTION

**WAC 246-926-310 What are the requirements to be certified as a radiologist assistant?** (1) Individuals wanting to be certified as a radiologist assistant must:

- (a) Graduate from an educational program recognized by the ARRT;
  - (b) Obtain a passing score on the national ARRT registered radiologist assistant examination; and
  - (c) Submit the application, supporting documents, and fees to the department of health.
- (2) An individual certified as a radiologist practitioner assistant through the certification board of radiology practitioner assistants who takes and passes the national ARRT registered radiologist assistant examination by December 31, 2011, shall be considered to have met the education and examination requirements for certification as a radiologist assistant.

**NEW SECTION**

**WAC 246-926-320 Radiologist assistant—Supervisory plans.** (1) A radiologist assistant must submit to the department a supervisory plan on a form approved by the department.

- (a) The plan must be approved before the radiologist assistant can practice.
- (b) The plan must be signed by both the radiologist assistant and a radiologist licensed in this state.
- (c) A radiologist assistant may assist a radiologist other than his or her supervising radiologist so long as it is done with the knowledge and agreement of the supervising radiologist, and is reflected in an approved supervisory plan.
- (2) A radiologist assistant can have multiple supervisory plans provided each one is approved by the department.
- (3) A radiologist assistant does not have to be employed by his or her supervising radiologist.
- (4) Changes to supervisory plans.

- (a) The radiologist assistant must submit a new supervisory plan to change any part of the supervisory plan. The changes are not effective until the new plan is approved by the department.
- (b) If the supervisory relationship ends, the radiologist assistant must immediately cease practice under that plan and must notify the department in writing within seven calendar days.

**AMENDATORY SECTION** (Amending WSR 08-16-008, filed 7/24/08, effective 7/25/08)

**WAC 246-926-990 Radiologist assistants; diagnostic, therapeutic, and nuclear medicine radiologic technologists(§); X-ray technicians—Certification and registration fees and renewal cycle.** (1) Certificates and registrations must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

<b>Title of Fee</b>	<b>Fee</b>
(2) The following nonrefundable fees will be charged for certified <u>diagnostic, therapeutic, and nuclear medicine radiologic technologists</u> :	
Application	\$150.00
Renewal	70.00
Late renewal penalty	50.00
Expired certificate reissuance	80.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(3) The following nonrefundable fees will be charged for registered X-ray technicians:	
Application	75.00
Renewal	75.00
Late renewal penalty	50.00
Expired reissuance	50.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(4) The following nonrefundable fees will be charged for certified radiologist assistants:	
<u>Application</u>	<u>150.00</u>
<u>Renewal</u>	<u>150.00</u>
<u>Late renewal penalty</u>	<u>75.00</u>
<u>Expired reissuance</u>	<u>75.00</u>
<u>Certification of registration or certificate</u>	<u>15.00</u>
<u>Duplicate registration or certificate</u>	<u>15.00</u>

**WSR 10-10-044  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed April 28, 2010, 10:32 a.m., effective May 29, 2010]

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

Purpose: The purpose of this rule-making order is to adopt changes to WAC 392-172A-05080 Right to a due process hearing. This rule describes the right of parents and school districts to file a request for a due process hearing on certain special education matters. The rule also describes the timeline for filing and information about services available to assist parents with this process.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 392-172A-05080].

Statutory Authority for Adoption: RCW 28A.155.090.

Other Authority: 34 C.F.R. §§ 300.507 and 300.511.

Adopted under notice filed as WSR 10-04-049 on January 28, 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 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 1, 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: April 28, 2010.

Randy Dorn  
State Superintendent

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

**WAC 392-172A-05080 Right to a due process hearing.** (1) A parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation or educational placement, or the provision of FAPE to a student.

(2) The due process hearing request must (~~allege a violation that occurred not more than~~) be made within two years (before) of, and allege a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

(3)(a) Information about any free or low-cost legal and other relevant services available in the area is maintained on OSPI's web site and is provided by the office of administrative hearings to parents whenever a due process hearing request is filed by either the parent or the school district; and

(b) Districts must provide this information to parents whenever a parent requests the information.

**WSR 10-10-055**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Securities Division)

[Filed April 29, 2010, 1:53 p.m., effective May 30, 2010]

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

Purpose: The securities division is adopting amendments to its franchise broker rules set forth in chapter 460-82 WAC to codify current Franchise Policy Statement 06, which

concerns the effective date for franchise broker licenses, as new section WAC 460-82-050 and to streamline and update the books and records requirements in WAC 460-82-200. The text of chapter 460-82 WAC marked to show the amendments is filed with this notice.

Citation of Existing Rules Affected by this Order: Amending WAC 460-82-200.

Statutory Authority for Adoption: Chapter 19.100 RCW.

Other Authority: RCW 19.100.250.

Adopted under notice filed as WSR 10-07-095 on March 19, 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 1, Amended 1, 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 1, Repealed 0.

Date Adopted: April 29, 2010.

Scott Jarvis  
Director

NEW SECTION

**WAC 460-82-050 Franchise broker license effective period.** Each franchise broker license issued pursuant to RCW 19.100.140 is effective for the calendar year and shall expire on the last day of the year.

AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

**WAC 460-82-200 Franchise broker (~~record~~) record-keeping requirements.** Every franchise broker shall make and keep current the following books and records (~~relating to his business~~):

(1) Records of (~~original entry containing the~~) each sale of a franchise(, to whom sold,) including:

(a) The name and address of the franchisee;

(b) The aggregate purchase price(, the amount paid down, the installment payments, if any,);

(c) Records of any payments collected by the franchise broker in connection with the offer or sale of a franchise;

(d) The terms of payment;

(e) A receipt signed by the purchaser confirming delivery of the Franchise Disclosure Document in accordance with WAC 460-80-300;

(f) The commission paid to the broker(,);

(g) The amount (~~dispersed~~) disbursed for advertising and other amounts to be funded (~~(to)~~) by the franchisor.

~~(2) ((An individual registration card for each franchisee, his name and address, aggregate amount to be paid, terms of the payment, a copy of the receipt signed by the purchaser that he had received a copy of the offering circular and that it had been received ten business days before the sale.~~

~~(3))~~ Every franchise broker shall keep a copy of all advertising used by the broker in the sale of ~~((said))~~ franchises, including but not limited to the internet, radio, newspaper, T.V. media, letters, brochures, etc.

~~((4))~~ (3) Every franchise broker shall preserve for a period of not less than six years from the closing of any franchise account, all records, books and memorandums that relate to the ~~((franchisee))~~ offer or sale of franchises.

### WSR 10-10-058

#### PERMANENT RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-13—Filed April 29, 2010, 4:30 p.m., effective May 30, 2010]

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

Purpose: The purpose of this new rule is to provide clarity for insurers when issuing personal injury protection coverage with automobile insurance policies.

Statutory Authority for Adoption: RCW 48.02.060 and 48.22.105.

Adopted under notice filed as WSR 10-01-132 on December 21, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-30-300(3), *WAC 284-01-050* was changed to *15 U.S.E. Sec. 7001*.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 50258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail [kacys@oic.wa.gov](mailto:kacys@oic.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 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: April 29, 2010.

Mike Kreidler  
Insurance Commissioner

### NEW SECTION

**WAC 284-20-300 Mandatory offering of personal injury protection.** (1) Insurers issuing an automobile liability insurance policy must offer the minimum personal injury protection coverage limits required in RCW 48.22.095, and must make available, if requested, additional personal injury protection limits as defined in RCW 48.22.100. Insurers may also offer other personal injury protection limits, in addition to these required offerings.

(2) If the named insured rejects personal injury protection coverage, the insurer must promptly delete the coverage after the insurer receives the rejection notice from the named insured. The insurer must retain a copy of the rejection notice or request to delete coverage with the policy record.

(3) Insurers may use electronic forms, electronic signatures and electronic attestations, in accordance with 15 U.S.C. Sec. 7001, to comply with this rule. The insurer must maintain an auditable compliance record and provide this information to the commissioner upon request.

(4) This section does not apply to corporations, partnerships, or any other nonhuman entity named as the insured.

### WSR 10-10-061

#### PERMANENT RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 10-94—Filed April 30, 2010, 8:23 a.m., effective May 31, 2010]

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

Purpose: Amending WAC 220-55-115 Recreational license dealer's fees, 232-12-047 Unlawful methods for hunting, 232-12-051 Muzzleloading firearms, 232-12-054 Archery requirements—Archery special use permits, 232-12-284 Bighorn sheep—Marking requirements, 232-28-248 Special closures and firearm restriction areas, 232-28-266 Damage prevention permits, 232-28-273 2009-2011 Moose, bighorn sheep, and mountain goat seasons and permit quotas, 232-28-285 2010-2011 Pilot cougar hunting seasons with the aid of dogs, 232-28-286 2010, 2011, and 2012 Spring black bear seasons and regulations, 232-28-287 2009-2010, 2010-2011, 2011-2012 Cougar permit seasons and regulations, 232-28-290 Washington raffle hunts, 232-28-291 Special hunting season permits, 232-28-292 Washington auction hunts, 232-28-295 Landowner hunting permits, 232-28-337 Deer and elk area descriptions, 232-28-342 Small game seasons, 232-28-351 Deer general seasons and definitions and 232-28-352 Elk general seasons and definitions; adopting new WAC 232-28-288 2010-2011 Fall black bear hunting seasons and regulations, 232-28-355 2010 Deer special permits and 232-28-356 2010 Elk special permits; and repealing WAC 232-28-353 2009 Deer special permits and 232-28-354 2009 Elk special permits.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-353 and 232-28-354; and amending WAC 220-55-115, 232-12-047, 232-12-051, 232-12-054, 232-12-284, 232-28-248, 232-28-266, 232-28-273, 232-28-285, 232-28-286, 232-28-287, 232-28-290, 232-28-291, 232-

28-292, 232-28-295, 232-28-337, 232-28-342, 232-28-351, and 232-28-352.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240, 77.32.070, 77.32.530.

Adopted under notice filed as WSR 10-04-125 on February 3, 2010.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

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 3, Amended 19, 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: April 9-10, 2010.

Miranda Wecker, Chair  
Fish and Wildlife Commission

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-11 issue of the Register.

### WSR 10-10-087

#### PERMANENT RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 3, 2010, 1:12 p.m., effective June 3, 2010]

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

Purpose: To allow for reimbursement for the delivery of home health services via telemedicine. The department is also using this opportunity to incorporate minor housekeeping changes such as changing "medical assistance administration" to "the department" and any changes in terms required to be consistent with the implementation of the new ProviderOne system.

Citation of Existing Rules Affected by this Order: Amending WAC 388-551-2000, 388-551-2010, 388-551-2020, 388-551-2030, 388-551-2100, 388-551-2110, 388-551-2120, 388-551-2130, 388-551-2200, 388-551-2210, and 388-551-2220.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Chapter 74.09 RCW, and chapter 326, Laws of 2009 (SHB 1529).

Adopted under notice filed as WSR 10-05-078 on February 15, 2010.

A final cost-benefit analysis is available by contacting Ellen Silverman, DSHS-HRSA, P.O. Box 45560, Olympia,

WA 98504-5560, phone (360) 725-1570, fax (360) 586-9727, e-mail silvees@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 11, 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 11, Repealed 0.

Date Adopted: May 3, 2010.

Susan N. Dreyfus  
Secretary

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-11 issue of the Register.

### WSR 10-10-107

#### PERMANENT RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed May 4, 2010, 12:48 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Medical aid rules—Conversion factors, WAC 296-20-135, medical aid updates regarding rate setting for most professional health care services for injured workers. Rule changes are necessary to update our payment rates for health care services, which are published annually in the medical aid rules and fee schedules.

Citation of Existing Rules Affected by this Order: Amending WAC 296-20-135.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Adopted under notice filed as WSR 10-06-096 on March 2, 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 1, Repealed 0.

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

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

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 4, 2010.

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 08-09-121, filed 4/22/08, effective 7/1/08)

**WAC 296-20-135 Conversion factors.** (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of (~~(\$61.53)~~) \$60.78. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of \$3.19 per minute, which is equivalent to \$47.85 per 15 minutes. The base units and payment policies can be found in the fee schedules.

**WSR 10-10-108**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed May 4, 2010, 12:50 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Currently our reporting requirements for workers with duties supporting more than one basic classification are addressed in three separate sections of chapter 296-17 WAC. These are WAC 296-17-31002 General rule definitions, 296-17-31017 Multiple classifications, and 296-17-31020 Employee supporting multiple business operations. There are situations that are not clearly addressed by any of our current regulations and others that can be applied to more than one of these regulations. The new rule clarifies our regulations by addressing all situations where a worker is supporting multiple basic classifications in a single new section of WAC 296-17-310171 How to report hours for employees supporting multiple business operations.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-17-31020 Employee supporting multiple business operations; amending WAC 296-17-31002 General rule definitions and 296-17-31017 Multiple classifications; and new section WAC 296-17-310171 How to report hours for employees supporting multiple business operations.

Statutory Authority for Adoption: RCW 51.16.035, 51.04.020.

Adopted under notice filed as WSR 09-24-099 on December 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-17-31017(1), inserted into second paragraph: "An explanation of payroll records you must keep can be found in WAC 296-17-35201" and deleted the example.

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 2, Repealed 1.

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 2, Repealed 1.

Date Adopted: May 4, 2010.

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 09-16-110, filed 8/4/09, effective 10/1/09)

**WAC 296-17-31002 General rule definitions.** In developing the general reporting rules and classifications which govern Washington's workers' compensation classification plan, we have used certain words or phrases which could have several meanings. Many of these words or phrases are defined by law in the Revised Code of Washington (*Title 51 RCW*) and can be found in **Appendix A** of this manual. Some words, however, are not defined by law. To reduce the misunderstanding which can result by our use of certain words or phrases not defined in law (*Title 51 RCW*), we have developed definitions which will govern what these words and phrases mean for purposes of these chapters (*chapters 296-17 and 296-17A of the Washington Administrative Code(WAC)*).

***The following words or phrases mean:***

**Account:** A unique numerical reference that we assign to you that identifies your business or businesses and allows us to track exposure that you report to us and losses (*claims*) which we pay on your behalf.

**Account manager:** An individual who works in the underwriting section of the department of labor and industries and manages an employer's workers' compensation insurance account. An account manager is also referred to as an underwriter.

**Actual hours worked:** A worker's composite work period beginning with the starting time of day that the employee's work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by an employee. The following example is provided to illustrate how work hours are to be reported. If you have questions on reporting please contact our underwriting section at 360-902-4817.

**Example:** *A carpet installer arrives at the employer's place of business at 8:00 a.m. to pick up supplies, carpet, and the job assignment. The carpet installer arrives at the job site at 9:00 a.m. and works until 12 noon. The installer takes a half hour nonpaid lunch period and resumes working from 12:30 p.m. until 4:00 p.m. The installer then returns to the*



*employer's premise to drop off supplies and carpet waste. The installer leaves the employer's premise at 5:30 p.m. The employer is to report nine hours of work time regardless of whether the employee is paid by the hour or by the number of yards of carpet installed.*

**All:** When a classification contains a descriptive phrase beginning with "all" such as in "all employees," "all other employees," "all operations," or "all work to completion," it includes all operations and employments which are normally associated with the type of business covered by the classification. This condition applies even if the operations or employments are physically separated or conducted at a separate location. Operations or employments are to be classified separately when the classification wording requires it, or when the operations or employments are not incidental to, and not usually associated with, the business described by the classification.

**And:** When this word is contained in any rule it is to be considered the same as the phrase "and/or."

**Basic classification:** A grouping of businesses or industries having common or similar exposure to loss without regard to the separate employments, occupations or operations which are normally associated with the business or industry. Basic classifications describe a specific type of business operation or industry such as mechanical logging, sawmills, aircraft manufacturing, or restaurants. In most business operations some workers are exposed to very little hazard, while others are exposed to greater hazard. Since a basic classification reflects the liability (*exposure to hazard*) of a given business or industry, all the operations and occupations that are common to an industry are blended together and included in the classification. The rate for a basic classification represents the average of the hazards within the classification. All classifications contained in this manual are considered basic classifications with the exception of classifications 4806, 4900, 4904, 5206, 6301, 6302, 6303, 7100, 7101, and temporary help classifications 7104 through 7122. Classification descriptions contained in WAC 296-17A-0101 through 296-17A-7400 establish the intended purpose or scope of each classification. These descriptions will routinely include types of businesses, operations, processes or employments which are either included or excluded from the classification. These references are not to be considered an all inclusive listing unless the classification wording so specifies.

**Bone fide officer:** Any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of such officer.

**But not limited to:** When this phrase is used in any rule in this manual it is not to be interpreted as an all inclusive list. Such a list is meant to provide examples of operations, employments, processes, equipment or types of businesses which are either included or excluded from the scope of the classification.

**Excludes or excluding:** When a classification contains a descriptive phrase beginning with "excludes" or "excluding" such as "excluding drivers or delivery," "excluding second hand appliance stores," or "excludes construction operations," you must report those operations in a separate classification.

If a business fails to keep the records required in the auditing recordkeeping section of this manual and we discover this, we will assign all workers hours for which records were not maintained to the highest rated classification applicable to the work which was performed.

**Exposure:** Worker hours, worker days, licenses, material, payroll or other measurement which we use to determine the extent to which an employer's workers have been exposed to the hazards found within a particular business or industry classification.

**Free from direction or control:** The contracted individual has the responsibility to deliver a finished product or service without the contracting firm or individual either exercising direct supervision over the work hours or the methods and details of performance or having the right to exercise that authority under the contract.

**(Governing classification:** Is the basic classification assigned to a business that produces the largest number of worker hours during a calendar year (*twelve months*). The governing classification rule applies only to situations where a business has been assigned two or more basic classifications and is used for the sole purpose of determining what classification applies to employees and covered owners who support two or more operations. The governing classification rule is not to be used to determine the basic classification of a business.))

**Includes or including:** When a classification contains a descriptive phrase beginning with "includes" or "including" such as "including clerical office," "including meter readers," or "includes new construction or extension of lines," you must report these operations in that basic classification even though they may be specifically described by some other classification contained in this manual or may be conducted at a separate location.

**Industrial insurance:** Refer to the definition of "workers' compensation insurance."

**N.O.C.:** This abbreviation stands for not otherwise classified. Classifications are often worded in this way when there are many variations of the same general type of business and it would be nearly impossible to list all the variations. Before a classification designated with N.O.C. is used, all other related classifications must be reviewed to determine if the business or industry is specified in another classification.

**Example:** *You operate a retail store that sells greeting cards. In our search to classify your business we come across a classification that covers retail stores N.O.C. Before our underwriter assigns this classification to your business, they would look at other retail store classifications to see if a more precise classification could be found. In our review we note several classifications such as grocery and department stores where greeting cards are sold. None of these classifications, however, specify that they include stores that exclusively sell greeting cards. Classification 6406 "Retail stores, N.O.C.," on the other hand, contains language in its description that states it includes stores that sell items such as greeting cards, table top appliances, tropical fish and birds, and quick print shops. We would assign classification 6406 "Retail stores, N.O.C." to your business.*

**Or:** Refer to the definition of the word "and."

**Premium:** The total amount of money owed to the department of labor and industries as calculated by multiplying the assigned classification composite rate by the total units of exposure.

**Principal place of business:** The physical location of the business from which the contract of service is directed and controlled.

**Rate:** The amount of premium due for each unit of exposure. All rates are composite rates per worker hour except as otherwise provided for by other rules in this manual.

**Related by blood within the third degree:** The degree of kinship as computed according to the rules of civil law.

**Related by marriage:** The union subject to legal recognition under the domestic relations laws of this state.

**Risk:** All insured operations of one employer within the state of Washington.

**Temporary help:** The term "temporary help" means the same as temporary service contractors defined in (*Title 19 RCW*) and applies to any person, firm, association or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary help basis to others.

**Underwriter:** Refer to the definition of an "account manager."

**Within a reasonable period:** Establishing an account with state agencies shall be the time prior to the first date on which the individual begins performance of service toward the contract or the date upon which the individual is required to establish an account with a state agency, as otherwise required by law, whichever event shall last occur.

**Work day:** Any consecutive twenty-four hour period.

**Work hour:** Refer to the definition of "actual hours worked."

**Workers' compensation insurance:** The obligation imposed on an employer by the industrial insurance laws (*Title 51 RCW*) of the state of Washington to insure the payment of benefits prescribed by such laws.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

**WAC 296-17-31017 Multiple classifications. (1) Can I have more than one basic classification assigned to my account?**

Yes, we will assign other classifications to your business when the assignment of another basic classification is required or permitted by the description(s) of the employer's other classification(s).

*((Example: You operate a retail book store. We would assign classification 6406 to your retail book store. Assume that as a part of the book store business you have a separate lunch counter and espresso bar in one section of the book store. A review of classification 6406 reveals that lunch counters are to be reported separately in classification 3905. We would assign classification 3905 for your lunch counter and espresso bar operation. This classification (3905) would be in addition to the book store classification (6406). Remember to keep accurate records of the exposure of each employee by classification. If you do not keep accurate*

*records we will assign the exposure of each employee to the highest rated classification applicable to the work they performed for you. A detailed explanation of payroll records you must keep can be found in WAC 296-17-35201.))*

Whenever you have more than one classification assigned to your account, you must keep detailed records of the actual time spent by each employee in each classification. An explanation of payroll records you must keep can be found under WAC 296-17-35201. Use of percentages, averages or estimates is not permitted. If you do not have original time card or time book entries to support your reporting, all worker hours in question will be assigned to the highest rated classification applicable to your business operations.

**(2) Are there other circumstances when I can have more than one basic classification assigned to my account?**

Yes, under certain circumstances we will assign more than one basic classification to your account. These circumstances include:

- The employer is operating a secondary business which includes operations that we do not consider a normal part of that employer's principal business in Washington, or
- The employer has multiple retail store locations.

In these instances we will assign additional basic classifications *only if all of the following conditions are met:*

- The employer maintains separate payroll records for each business,
- Different employees work in each business,
- Each business is separated by structural partitions if they share a common business location,
- Each business can exist independently of the other, and
- The classification language of the principal business does not prohibit the assignment of the secondary classification.

If all of the above *five* conditions are not met, then the operations of the secondary business will be reported in the highest rated classification that applies to the employer.

**(3) What do you mean by the term "principal business?"**

The principal business is represented by the basic classification assigned to an employer which produces the greatest amount of exposure. The principal business does not include standard exception or general exclusion classifications or operations.

**(4) ~~(If I have more than one basic classification assigned to my business and I have employees who do work in more than one of these classifications, can I divide their hours between these classifications on my quarterly report?~~**

Yes, you can divide the work hours of any one employee between two or more basic classifications provided the following conditions are met:

- ~~The basic classification assigned to your business allows or requires a division of hours; and~~
- ~~You keep detailed records of the actual time spent by each employee in each classification. Use of percentages, averages or estimates is not permitted. If you do not have original time card or time book entries to support your reporting, all worker hours in question will be assigned to the high-~~

est rated classification applicable to the work being performed.

**Example:** *In a previous rule (WAC 296-17-31017) we described a book store business that operated a lunch counter and espresso bar in connection with the book store. In that example, the book store business was assigned classification 6406. A review of classification 6406 revealed that the lunch counter operation was to be reported separately in classification 3905. Assume that you have one employee who, in addition to stocking and selling books, prepares sandwiches for customers on occasion. You must keep accurate time records by day for each employee. This time record must reflect the actual time the employee worked in the book store operation and the actual time worked preparing sandwiches. If you fail to keep these records all work hours in question would be assigned to the highest rated classification which, in this example, is classification 3905.*

**(5)) If my business is assigned a basic classification and a standard exception classification and I have an employee who works in both classifications, can I divide their exposure (hours) between the two classifications on my quarterly report?**

No, you cannot divide an employee's exposure (*work hours*) between a basic classification and standard exception classification. An explanation of "standard exception classification" is discussed in the next section (WAC 296-17-31018(2)). If an employee performs work covered by a basic classification and a standard exception classification, all of their exposure (*hours*) must be reported in the basic classification applicable to your business. You cannot report the exposure (*hours*) of any employee in a standard exception classification if they perform duties covered by a basic classification assigned to your business. Refer to WAC 296-17-31018 for a list and explanation of the "exception classifications."

**((6)) (5) I have more than one standard exception classification assigned to my business. One of my employees works in more than one of the standard exception classifications. Can I divide their exposure (hours) between two or more standard exception classifications on my quarterly report?**

No, you cannot divide an employee's work hours between two standard exception classifications. You must report all exposure (*work hours*) in the highest rated standard exception classification applicable to the work being performed.

**NEW SECTION**

**WAC 296-17-310171 How to report hours for employees supporting multiple business operations. I have more than one basic classification assigned to my business and I have workers who work in more than one of these classifications. Can I divide their hours between these basic classifications on my quarterly report?** Yes, you may divide a worker's hours between basic classifications when:

- The classification descriptions allow a division of hours; and

- You maintain records from which the department can determine the hours the worker worked in each classification.

If the classification descriptions do not allow a division of hours, or if you fail to maintain adequate records, you must report the workers' hours in the highest rated risk classification applicable to your business, unless you can establish that the worker did not work in that classification.

**Example:** An employer has the risk classifications and rates shown below:

Risk Class	Description	Rate
0507 05	Roofing work	5.1370
05010 00	Wood frame building construction	2.9554
0513 00	Interior finish carpentry	1.3821

If the employer did not maintain records showing in which classes a worker worked, all of the worker's hours must be reported in class 0507.

If the employer had records that showed the worker only worked in classifications 0510 and 0513, but no further detail, all of the worker's hours must be reported in classification 0510.

If the employer had records that showed the hours the worker worked in classification 0510 and the hours the worker worked in 0513, the employer may report the worker's hours in both classes.

**I have employees with duties that support more than one basic classification, but I am unable to distinguish their hours between classifications. In what classification(s) do I report these workers' hours?** Sometimes employers are unable to divide a worker's hours between two or more classifications because the same work is incidental to more than one classification. You must report these hours in your governing classification. See "What is my governing classification?"

**What is incidental work?** Incidental work is any work, unless specifically excluded, that supports the operations described in your classification description(s), but takes place away from where the product or service is produced.

**For example:**

There is no incidental work:

- At the construction site if the employer is the builder;
- At the assembly facility if the employer is the manufacturer;
- In the emergency room if the employer is the hospital;
- In the kitchen, if the employer is in the restaurant.

Incidental work may include:

- Laundry workers employed by but not working at a hotel;
- Warehouse workers employed by but not working at a retail store;
- A technical support team working for but not at a wholesale distributor;
- Pick-up or delivery work;
- Travel time.

**What is my governing classification?** Your governing classification is the risk classification that describes what we consider your principal business. It is the basic classification assigned to your business with the largest number of worker

hours/units reported in the experience rating period as defined by WAC 296-17-850(2). If you're not sure which classification is your governing classification, you should contact your account manager or refer to the expected loss summary in your current experience rating calculation.

If you're a new business and/or a business not experience rated, a provisional governing classification may be approved by your account manager.

The following exception classifications cannot be considered a governing classification: 4900, 4904, 4911, 5206, 6301, 6302, 6303, 7100, and 7101.

**Example 1:** You operate both a motel with classification 4905, and a restaurant with classification 3905. You have an off-site laundry facility that cleans the linens for both the restaurant and for the motel.

In the sample 2009 expected loss summary shown below, the governing classification is the restaurant classification 3905 with a total of 108,199 units.

You must report all the laundry worker hours in your governing classification.

**Expected Loss Summary**

Class	Fiscal Year	Employee Units	Expected Loss Rate	Expected Losses	Primary Ratio	Expected Primary Losses
4905	2005	10,571	.4288	4,532.84	.5790	2,624.51
4905	2006	12,437	.3982	4,952.41	.5790	2,867.45
4905	2007	14,676	.3516	5,160.08	.5790	2,987.69
Class Total		37,684		14,645.33		8,479.65
3905	2005	24,701	.1539	3,801.48	.5980	2,273.29
3905	2006	35,825	.1445	5,176.71	.5980	3,095.67
3905	2007	47,673	.1290	6,149.82	.5980	3,677.59
Class Total		108,199		15,128.01		9,046.55

**Example 2:** You are a cabinet manufacturer who also offers installation services to your customers. Your manufacturing operations are under classification 2907 and your employees performing the installation service are under classification 0513. Your expected loss summary confirms you report more hours for manufacturing work in classification 2907 than for installation work in classification 0513. You must report all the delivery work in class 2907.

**Example 3:** You have a floor covering store and also offer installation services to your customers. Your store operations are under classification 6309 and your employees performing the installation service are under classification 0502. Your expected loss summary confirms you report more hours for installation work in classification 0502 than for store operations in classification 6309. You must report all the delivery work in class 0502.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 296-17-31020 Employee supporting multiple business operations.

**WSR 10-10-126**

**PERMANENT RULES**

**LIQUOR CONTROL BOARD**

[Filed May 5, 2010, 10:54 a.m., effective June 5, 2010]

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

Purpose: As part of the liquor control board's ongoing rules review process, chapter 314-07 WAC was reviewed for relevance, clarity, and accuracy.

Citation of Existing Rules Affected by this Order: Repealing 1; and amending 8.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.010.

Adopted under notice filed as WSR 10-07-082 on March 17, 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 1, Amended 8, Repealed 0.

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

Date Adopted: May 5, 2010.

Sharon Foster  
Chairman

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

**WAC 314-07-010 Definitions.** Following are definitions for the purpose of this title. Other definitions are in WAC 314-01-005 and RCW 66.08.010.

(1) "Applicant" or "liquor license applicant" means any person or business entity who is considered by the board as a true party of interest in a liquor license or permit application, as outlined in WAC 314-07-035.

(2) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs, advertising, etc.

(3) "Financier" (~~—A "financier"~~) means any person or entity who has made or will make an investment in the licensed business of more than ten thousand dollars (~~(or of more than ten percent of the initial cash outlay needed to open the business))~~ A "financier" can be someone who provides money as a gift, someone who loans money to the business and expects to be paid back the amount of the loan without interest, or someone who invests money into the business expecting a percentage of the profits, but accepts the risk that there may not be a full return on the investment. These persons or entities shall submit appropriate investigation level "financier" financial documents.

(4) "Licensee" or "liquor licensee" means any person or entity that holds a liquor license or permit, or any person or entity who is a true party of interest in a liquor license or permit, as outlined in WAC 314-07-035.

(5) "Public institution" means a public college or university. (See WAC 314-07-020 regarding the liquor control board notifying public institutions of liquor license applications.)

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

**WAC 314-07-015 General information about liquor licenses.** (1) (~~When the board issues a liquor license, it should not be construed as granting a vested right in any of the privileges of the license. Rather,~~) A person or entity must meet certain qualifications to receive a liquor license, which are continuing qualifications in order to maintain the license.

(2) A liquor license applicant may not exercise any of the privileges of a liquor license until the board approves the license application (see WAC 314-07-055 regarding temporary licenses).

(3) In approving a liquor license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a liquor license.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

**WAC 314-07-020 Liquor license qualifications and application process.** Each liquor license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the liquor license application. Following is a general outline of the liquor license application process.

(1) Per RCW 66.24.010, the board shall send a notice to the local authority regarding the liquor license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(a) The local authority may submit a written request to the board for an extension for good cause shown.

(b) If the application is within a board-recognized alcohol impact area, the board will give the local authority sixty days to comment on the liquor license application or assumption (see WAC 314-12-215(7) for more information).

(2) For an application for a new liquor license privilege, the board may require a public posting notice to be posted at the site for fourteen days.

(3) For an application for a new liquor license privilege, the board shall notify any schools, churches, or public colleges or universities within five hundred feet of the business (see RCW 66.24.010(9) for more information).

(4) The board will verify that the proposed business meets the minimum requirements for the type of license or privilege requested.

(5) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-07-040 and 314-07-045.

(6) The board may conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(7) The board may provide a briefing on liquor laws and rules.

(8) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license or privilege requested.

(9) Per RCW 66.24.010 (2)(a), all applicants must have resided in the state of Washington for at least one month prior to issuance of a liquor license. For (~~true parties of interest in~~) a corporation or a limited liability company, the entity meets this residency requirement if the entity was formed in Washington or has a certificate of authority to do business in Washington.

(10) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application will be administratively closed.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

**WAC 314-07-035 What persons or entities have to qualify for a liquor license?** Per RCW 66.24.010(1), a liquor license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

<b><u>((Type of Entity)) True party of interest</u></b>	<b><u>Persons ((considered "true party of interest")) to be qualified</u></b>
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership <del>((or)),</del> limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> <li>All general partners and spouses;</li> <li>All limited partners that have more than 10% interest in the partnership and their spouses.</li> </ul>
Limited liability company	<ul style="list-style-type: none"> <li>All members with more than 10% interest in the LLC and spouses. (Note: In order for the liquor control board to identify the <del>((true parties of interest))</del> <u>persons to be qualified</u>, we will need to know all parties that have an interest in the limited liability company or have a pending interest.)</li> <li>All managers and their spouses.</li> </ul>
Privately held corporation	<ul style="list-style-type: none"> <li>All corporate officers (or persons with equivalent title).</li> <li>All stockholders who hold more than 10% of the issued or outstanding stock. (Note: In order for the liquor control board to identify the <del>((true parties of interest))</del> <u>persons to be qualified</u>, we will need to know all parties who have been issued or will be issued corporate stock.)</li> </ul>
Publicly held corporation	All corporate officers (or persons with equivalent title).
Multi-level ownership structures	The liquor control board will review each entity to determine which individuals are <del>((true parties of interest))</del> <u>to qualify</u> according to the guidelines in this rule.
Any entity	Any person who is in receipt of, or has the right to receive, more than ten percent of the gross or net sales from the licensed business during any full or partial calendar or fiscal year. For the purposes of this chapter:

<b><u>((Type of Entity)) True party of interest</u></b>	<b><u>Persons ((considered "true party of interest")) to be qualified</u></b>
	<ul style="list-style-type: none"> <li>"Gross sales" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</li> <li>"Net sales" means gross sales minus cost of goods sold.</li> </ul>

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed or percentage basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's pre-bonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(d) A person or entity receiving payment of franchise fees on a fixed or percentage basis under a bona fide franchise agreement, unless the person or entity receiving payment of franchise fees exercises control over or participates in the management of the licensed business.

(3) **Financiers**—The board may conduct a financial investigation of financiers.

(4) **Persons who exercise control of business**—The board may conduct an investigation of any person or entity who exercises any control over the applicant's business operations.

**AMENDATORY SECTION** (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

**WAC 314-07-055 Temporary retail license.** Applicants may apply for a temporary retail liquor license in addition to an annual license for the same business. If granted, the temporary license allows the applicant to operate for a period of up to sixty days while the annual license application is being processed.

<b><u>Type of Application</u></b>	<b><u>Qualification and process to receive a temporary retail license</u></b>
<del>((1) Existing licensed business—</del> Applicant is applying for a license for a business that has an existing license at the location, and all of the following apply:	In order to receive a temporary license, the applicant(s) must:

Type of Application	Qualification and process to receive a temporary retail license
<ul style="list-style-type: none"> <li>• The applicant is applying for the same license privilege(s):</li> <li>• The current license privilege is valid and has not expired:</li> <li>• There are no liquor violations pending on the current license:</li> </ul>	<ul style="list-style-type: none"> <li>• Fill out a form provided by the board signed by both the current licensee and the current landlord.</li> <li>• Pay a \$50 fee.</li> <li>• Turn in all documents necessary to complete the initial licensing investigation.</li> <li>• Clear a criminal history check, per WAC 314-07-040.</li> <li>• Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7).</li> </ul>
<p><del>((2))</del> <b>(1) New business, existing licensed business, or new license type:</b></p> <ul style="list-style-type: none"> <li>• Applicant is applying for a license at a business location that does not hold a current, valid liquor license.</li> <li>• <u>Applicant is applying for the same license privilege at a location that has a valid license that has not expired.</u></li> <li>• Applicant is applying for a license or a business that has an existing license at the location, but the applicant is applying for a different license privilege(s).</li> </ul> <p><del>((b))</del> <b>(b) Existing licensed business as described in subsection (1))</b></p>	<p>In order to receive a temporary license, the applicant(s) must:</p> <ul style="list-style-type: none"> <li>• <del>((Fill out a form provided by the board.))</del> <u>Sign the acknowledgment form.</u></li> <li>• Clear a criminal history check, per WAC 314-07-040.</li> <li>• Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7).</li> <li>• The local authority and any churches, schools, or public colleges or universities within 500 feet of the proposed licensed business must have responded to the liquor control board's notice of liquor license application, or the time period must have passed. See WAC 314-07-020, subsections (1), (2), and (3) for more information.</li> <li>• When the annual liquor license is issued, the fee will be pro-rated back to the date of issuance of the temporary license.</li> </ul>

~~((3))~~ **(2)** For the purposes of this section, "retail liquor license" shall include all classes of liquor licenses that allow the holder to sell liquor directly to the public.

~~((4))~~ **(3)** The privilege of having a temporary license issued upon an application for license does not apply to breweries or wineries ~~(, even though these licensees have limited distributor and retail privileges under their manufacturers' licenses).~~

~~((5))~~ **(4)** A temporary license under subsection (1) above may be issued for a ~~((nonretail))~~ distributor license applicant.

**NEW SECTION**

**WAC 314-07-060 Reasons for denial or cancellation of a temporary license.** Following is a list of reasons a temporary permit may not be issued or can be revoked. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application. Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing.

(1) An applicant who has received a temporary license and their application is later administratively closed, and they reapply for a liquor license at the same location.

(2) The local authority objects for any reason.

(3) The applicant affirmatively refuses to submit documents requested by the board to conduct the application investigation.

(4) The applicant accrues or is involved in a violation committed while operating under a temporary license.

(5) The investigator is unable to determine the true party of interest.

(6) The applicant fails to meet the basic requirements of the license.

(7) Denial of the permanent license is recommended to the board.

**AMENDATORY SECTION** (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

**WAC 314-07-065 Reasons the board may deny a liquor license application.** Following is a list of reasons the board may deny a liquor license application. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application.

(1) Failure to meet qualifications or requirements for the specific liquor license or privilege, as outlined in this Title 314 WAC and Title 66 RCW.

(2) Failure to submit information or documentation requested by the board.

(3) Misrepresentation of fact by any applicant or financier.

(4) Failure to meet the criminal history standards outlined in WAC 314-07-040.

(5) Failure to meet the liquor law or rule violation history standards outlined in WAC 314-07-045.

(6) Source of funds used for the acquisition, startup and operation of the business is questionable or unverified.

(7) Objection from the local authority or from the public (see WAC 314-09-010 and RCW 66.24.010(8)). ~~((The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.))~~

(8) Objection from the following entities if they are within five hundred feet of the proposed business: A public school, a private school that meets the requirements of chapter 28A.195 RCW, a church, or a public college or university. See WAC 314-09-010 and RCW 66.24.010(9) for more

information. Note: Per RCW 66.24.010(9), the board may not issue a new liquor license if the board receives objection from a public school within five hundred feet of the proposed licensed business.

(9) The board determines that the issuance of the liquor license will not be in the best interest of the welfare, health, or safety of the people of the state.

**AMENDATORY SECTION** (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

**WAC 314-07-080 Ownership changes.** ~~((a))~~ (1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-07-035 for the definition of "true party of interest"):

Type of change	Type of application	Fee
Change in <del>((any of the true party(ies) of interest))</del> <u>the qualifying persons</u> in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application	Annual fee for current license privilege.
Change in <del>((any of the true party(ies) of interest))</del> <u>the qualifying persons</u> for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder	\$75
Change in <del>((any of the true party(ies) of interest))</del> <u>the qualifying persons</u> in a limited liability company.	Application for change of limited liability company member and/or manager	\$75

~~((b))~~ (2) The board may inquire into all matters in connection with any such sale of stock/units or proposed change in officers/members.

~~((c))~~ (3) The "proposed sale of more than ten percent of the stock/units" will be calculated as a cumulative total and must be reported to the board when the accumulation of stock/units transfers or newly issued stock/units totals more than ten percent of the outstanding and/or issued stock/units of the licensed corporation or limited liability company.

**AMENDATORY SECTION** (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

**WAC 314-07-085 Change of location.** (1) Changing your liquor license to a new location requires an application, per the process outlined in WAC 314-07-015(2).

(2) Type of change of location application:

Submit a change of location application and pay a \$75 fee if:	Submit a <u>new</u> liquor license application and pay the appropriate fee for the type of liquor license you are applying for if:
<ul style="list-style-type: none"> <li>■ You are not changing the type of liquor license that you have at the current location;</li> <li>■ There is no change in any of the true parties of interest; and</li> <li>■ Your liquor license is current.</li> </ul>	<ul style="list-style-type: none"> <li>■ You are changing the type of liquor license from what you have at the current location;</li> <li>■ There is a change in any of the true parties of interest; or</li> <li>■ Your liquor license is not current.</li> </ul>

**WSR 10-10-127  
PERMANENT RULES  
LIQUOR CONTROL BOARD**

[Filed May 5, 2010, 10:55 a.m., effective June 5, 2010]

Effective Date of Rule: Thirty-one days after filing.  
Purpose: The rules implement Liquor Control Board Interim Policy #10-2009.

Statutory Authority for Adoption: RCW 66.08.030.  
Adopted under notice filed as WSR 10-07-078 on March 17, 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 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, 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: May 5, 2010.

Sharon Foster  
Chairman

**NEW SECTION**

**WAC 314-02-027 What are the requirements/restrictions for a spirits, beer, and wine restaurant license at a**



**cinema with a dinner theater venue?** (1) A spirits, beer, and wine restaurant licensee at a cinema with a dinner theater venue must meet the following requirements:

(a) Food service requirements under WAC 314-02-035; and

(b) Lighting requirements under WAC 314-11-055.

(2) Alcohol sales and service may not be provided from the concession area in the cinema lobby.

(3) Alcohol may be consumed only in the theater rooms approved by the board.

(4) Minor patrons and employees are prohibited in the individual theater rooms that allow alcohol service and consumption.

(5) A spirits, beer, and wine restaurant licensee at a cinema with a dinner theater venue must provide a floor plan of the cinema and indicate which theater rooms within the cinema will be operated as dinner theaters. Those theater rooms not operated as dinner theaters with alcohol sales and service may be open to minors and minor employees.

Example: A cinema has eight theater rooms. The licensee wants to operate theater rooms five and six as dinner theaters with meals and alcohol sales and service. Minor patrons and employees are prohibited in theater rooms five and six, but would be allowed in the lobby area and in theater rooms one, two, three, four, seven, and eight.

Example: A cinema has eight theater rooms. The licensee wants to operate all eight theater rooms as dinner theaters with meals and alcohol sales and service. Minor patrons and employees are prohibited in the lobby area and all eight theater rooms in the cinema. No minors would be allowed on the entire premises at all times.

and six, but would be allowed in the lobby area and in theater rooms one, two, three, four, seven, and eight.

Example: A cinema has eight theater rooms. The licensee wants to operate all eight theater rooms as dinner theaters with meals and alcohol sales and service. Minor patrons and employees are prohibited in the lobby area and all eight theater rooms in the cinema. No minors would be allowed on the entire premises at all times.

## NEW SECTION

**WAC 314-02-051 What are the requirements/restrictions for a beer and wine restaurant license at a cinema with a dinner theater venue?** (1) A beer and wine restaurant licensee at a cinema with a dinner theater venue must meet the following requirements:

(a) Food service requirements under WAC 314-02-045; and

(b) Lighting requirements under WAC 314-11-055;

(2) Alcohol sales and service may not be provided from the concession area in the cinema lobby.

(3) Alcohol may be consumed only in the theater rooms approved by the board.

(4) Minor patrons and employees are prohibited in the individual theater rooms that allow alcohol service and consumption.

(5) A beer and wine restaurant licensee at a cinema with a dinner theater venue must provide a floor plan of the cinema and indicate which theater rooms within the cinema will be operated as dinner theaters. Those theater rooms not operated as dinner theaters with alcohol sales and service may be open to minors and minor employees.

Example: A cinema has eight theater rooms. The licensee wants to operate theater rooms five and six as dinner theaters with meals and alcohol sales and service. Minor patrons and employees are prohibited in theater rooms five