

WSR 10-17-007
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed August 5, 2010, 11:00 a.m., effective September 5, 2010]

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

Purpose: Clarify that asbestos survey contents and provisions for providing copies to SRCAA; remove reference to faxed notifications and corresponding prepayment accounts; clarify that the fee waiver for demolition by structural fire training also applies when the notification lists both asbestos removal and demolition; add a provision which allows owners or contractors to file annual notifications; add a provision which allows notifications to be amended after the asbestos removal completion date on record; revise the regulation so that one person doesn't have to have multiple credentials to prepare an alternate work plan when standard asbestos removal methods can't be used; allow the agency to accept emergency work notifications one working day after the emergency work commenced; change "shall" to "may" regarding the board amending the fee schedule to more accurately recover program costs; and include an additional incremental fee for incrementally larger abatement projects.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article IX and Section 10.09.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.380(2).

Other Authority: Chapter 70.94 RCW, 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

Adopted under notice filed as WSR 10-11-005 on May 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: Nonsubstantive change to header in Section 9.04.B.2.d and typographical error in Section 10.09.A regarding annual notifications corrected to reflect ≤ 159 sq. ft. versus ≤ 160 sq. ft. which makes the number consistent with the annual notification provision being proposed in Section 9.04.A.6.j.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 5, 2010,

Matt Holmquist
Compliance Administrator

Spokane Regional Clean Air Agency (SRCAA) Regulation I

AMENDATORY SECTION

SECTION 9.02 DEFINITIONS

A. HERA Building Inspector means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. AHERA Project Designer means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. Asbestos means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), or anthophyllite.

D. Asbestos-Containing Material means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA. It includes any material presumed to be asbestos-containing.

E. Asbestos-Containing Waste Material means any waste that contains or is contaminated with asbestos-containing material, except for nonfriable asbestos-containing roofing that remains nonfriable. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable.

G. Asbestos Survey means a written report resulting from a thorough inspection performed pursuant to Section 9.03 of this Regulation.

H. Competent Person means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been

trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

I. Contiguous means touching or adjoining.

J. Component means any equipment, pipe, structural member, or other item or material.

K. Controlled Area means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

L. Demolition means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. Pursuant to the EPA asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, it includes wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations and includes moving a facility.

M. Disposal Container means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

N. Facility means an institutional, commercial, public, industrial or residential structure, installation or building (including any structure, installation or building containing condominiums, or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; or any active or inactive waste disposal site. The term includes any structure, installation or building that was previously subject to the Asbestos NESHAP, regardless of its current function, apartments which are an integral part of a commercial facility, and mobile structures used for non-residential purposes. It also includes homes that are demolished or renovated to build non-residential structures (e.g., homes demolished for highway construction projects).

O. Friable Asbestos-Containing Material means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal).

Such materials include, but are not limited to, thermal system insulation, surfacing material, Nicolet roofing paper, and cement asbestos products.

P. Leak-Tight Container means a dust-tight and liquid tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed

plastic bags, metal or fiber drums, and sealed polyethylene plastic.

Q. Nonfriable Asbestos-Containing Material means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

R. Nonfriable Asbestos-Containing Roofing means an asbestos-containing roofing material where all of the following apply:

1. The roofing is a nonfriable asbestos-containing material;

2. The roofing is in good condition and is not peeling, cracking, or crumbling;

3. The roofing binder is petroleum-based and asbestos fibers are suspended in that base with individual fibers still encapsulated; and

4. The roofing binder exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing and disposing of it.

S. Owner-Occupied, Single-Family Residence means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g., utility bills). This term includes houses, mobile homes, trailers, detached garages, outbuildings, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property, multiple unit buildings (e.g., duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g., a business being operated out of a residence), structure, or installation that contains a residential unit. This term does not include structures used for structural fire training exercises (Regulation I, Article VI, Section 6.01 and 40 CFR Part 61, Subpart M).

T. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article IX of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 9.04 of this Regulation and/or performing the asbestos survey.

U. Person means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

V. Renovation means altering a structure or component in any way, other than demolition.

W. Structure means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations (~~equipment, and other parts and miscellaneous components~~). This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

X. Surfacing Material means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproof-

ing material on structural members, or other material on surfaces for decorative purposes.

Y. Suspect Asbestos-Containing Material means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g., as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993).

Z. Thermal System Insulation means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AA. Visible Emissions means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

BB. Wallboard System means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A ((W))wallboard system((s)) where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

CC. Waste Generator means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

DD. Workday means Monday through Friday 8:00 a.m. to 4:30 p.m. excluding legal holidays observed by the Agency.

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

AMENDATORY SECTION

SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS

A. Except as provided for in Section 9.03.F of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 CFR 763.86 or an alternate asbestos survey method pursuant to Section 9.03.F of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by

performing an asbestos survey, that a suspect asbestos-containing material does not contain asbestos. Per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86, the required number of bulk asbestos samples must be collected and analyzed pursuant to Section 9.02.D of this Regulation to determine that material does not contain asbestos.

3. Bulk samples must be analyzed for asbestos pursuant to Section 9.02.D of this Regulation by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).

C. Asbestos Survey Report.

These requirements apply to asbestos surveys, regardless of when they were performed. Except where additional information is required pursuant to EPA Regulation 40 CFR Part 763.85, asbestos surveys shall contain, at a minimum, all of the following information:

1. General Information.

- a. Date that the inspection was performed;
- b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;
- c. Site address(es)/location(s) where the inspection was performed;
- d. Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);
- e. The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;
- f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);
- g. Identify all suspect-asbestos containing materials and their locations, except where limitations of the asbestos survey identified in Section 9.03.C.1.f (above) prevented such identification;
- h. Identify materials presumed to be asbestos-containing material;
- i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other description);
- j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:
 - 1) Laboratory name, address and NVLAP certification number;
 - 2) Bulk sample numbers;
 - 3) Bulk sample descriptions;
 - 4) Bulk sample results showing asbestos content; and
 - 5) Name of the person at the laboratory that performed the analysis.
2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).
 - a. Describe the color of each asbestos-containing material;
 - b. Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g., schematic and/or other detailed description); and
 - c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet).

D. Asbestos Survey Posting.

Except as provided for in Section 9.03.F of this Regulation, a complete copy of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. If an AHERA Building Inspector determines there are no suspect asbestos-containing materials in the work area, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.

E. Asbestos Survey Retention.

The property owner, ~~((or))~~ owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), shall retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and provide a copy ~~((make it available))~~ to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g., sample and test) any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination shall include a description, approximate quantity, and location of presumed asbestos-~~((asbestos))~~ containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, ~~((or))~~ owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, shall retain a complete copy of the written determination for at least 24 months from the date it was made and shall provide a copy ~~((make it available))~~ to the Agency upon request. Except for Section 9.03.A-E, all other requirements of this Regulation remain in effect.

3. Alternate Asbestos Survey

A written alternate asbestos survey method shall be prepared and used on occasions when conventional sampling methods required in EPA regulations 40 CFR 763.86 can not be exclusively performed (all other asbestos survey requirements in Section 9.03 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof, rubble or debris piles, and ash or soil, because they are not structures with intact materials and identifiable homogeneous areas. Alternate asbestos survey methodology may be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g., random composite bulk samples at incremental 1'

depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

4. Demolition by Fire Fighting Instruction Fires.

Pursuant to RCW 52.12.150(6), asbestos surveys need not be performed by an AHERA Building Inspector. However, pursuant to Section 9.04.A.6 of this Regulation, the project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

5. Underground Storage Tanks.

An asbestos survey is not required prior to renovation or demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the renovation or demolition of an underground storage tank, work shall cease until it is determined pursuant to Section 9.03.B and C of this Regulation whether or not the suspect asbestos-containing material is asbestos-containing material. All other requirements of this Regulation remain in effect.

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

AMENDATORY SECTION

SECTION 9.04 NOTIFICATION REQUIREMENTS

A. General Requirements.

Except as provided for in Section 9.04.A.6.c, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, has been submitted to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. Unless otherwise approved by SRCAA, ~~((F))~~ the notification must be submitted by the property owner or owner's agent on approved forms through the Agency's website or ~~((or))~~ submitted at the Agency's place of business in person or via U.S. mail, ~~((or for those contractors using the Agency's prepayment account, notifications may be submitted via facsimile. Prepayment accounts will no longer be offered and notifications submitted via facsimile will no longer be accepted once the Agency begins accepting notifications via its website.))~~

1. When the Notification Waiting Period Begins

The notification waiting period shall begin on the work-day a complete notification is received by the Agency and shall end after the notification waiting period in Section 10.09 has passed (e.g., The notification waiting period for a notification submitted after 4:30 p.m. on a Friday shall not begin until the following Monday, provided Monday is not a holiday observed by the Agency. A 10-day notification period means work on an asbestos project or demolition can begin on day 11.). A notification is considered complete when all information requested on the notification, including

the required fee and any additional information requested by the Control Officer or his/her authorized representative, is received by the Agency. The notification waiting period shall not begin for incomplete notifications (e.g., unpaid fees, notifications where the asbestos project start date and/or completion date and/or demolition start date is listed as "To Be Determined", when types and quantities of asbestos are unknown, etc.).

2. Project Duration

The duration of an asbestos project shall be commensurate with the amount of work involved. The duration of the project may take into account applicable scheduling limitations (e.g., asbestos removal that needs to be done in phases, based on scheduling limitations determined by the property owner) provided scheduling limitations can be provided in writing to the Control Officer or his/her authorized representative upon request.

3. Multiple Asbestos Projects or Demolitions.

Notification for 5 or fewer structures may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to asbestos projects or demolitions on contiguous real properties having the same owner or real properties with the same owner separated only by a public right-of-way (e.g., alley or roadway).

b. The work will be performed by the same abatement and/or demolition contractor.

c. The notification includes the specific site address for each structure. Where a specific site address isn't available for each structure (e.g., at a large commercial facility with multiple structures), provide a detailed description/location for each structure.

d. The notification includes the amount and type of asbestos-containing material associated with each structure and indicates which structures will be demolished.

4. Notification Expiration.

Notifications are valid for no more than 365 days from the earliest original notification start date. A new notification shall be submitted to the Agency for work to be performed beginning or continuing more than 365 days from the earliest original notification start date and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of this Regulation.

5. Record Keeping.

a. A copy or printout of the notification, all amendments to the notification, and the complete asbestos survey shall be made available for inspection at all times at the asbestos project or demolition site.

b. The property owner ((~~or~~) and) owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the Agency upon request.

6. Notification Exceptions.

a. Asbestos Project Thresholds.

Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project (per structure, per calendar year).

b. Nonfriable Asbestos-Containing Materials: Caulking, Window-Glazing, Roofing.

Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window-glazing, or roofing (roofing used on roofs versus other applications). All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

c. Owner-Occupied, Single-Family Residences.

For an asbestos project involving an owner-occupied, single-family residence performed by someone other than the resident owner (e.g., an asbestos removal contractor), it shall be the responsibility of the person performing the asbestos project to submit a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. The notification must be submitted by the owner's agent on approved forms. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

d. Underground Storage Tanks.

Notification is not required for demolition of underground storage tanks with no asbestos. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

e. Demolition of Structures With a Projected Roof Area ≤ 120 Square Feet.

Notification is not required for demolition of structures with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article IX.

f. Demolition by Fire Fighting Instruction Fires.

The ((~~project~~) notification) fee in Section 10.09 is waived for any demolition (when the notification project type is for asbestos removal and demolition or the notification project type is demolition with no asbestos removal) performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

g. Abandoned Asbestos-Containing Material.

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

h. Emergencies.

The advance notification period may be waived if an asbestos project or demolition must be conducted immediately because of any of the following:

1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

4) The project must proceed to avoid imposing an unreasonable financial burden.

i. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authorization. The written authorization shall reference the applicable state of emergency, what fee(s) will be waived, to what extend the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

j. Annual Notification.

A property owner or owner's agent may file one or more annual notifications if all of the following conditions are met:

1) If more than one annual notification is filed for the same real property, there must not be duplication of structures listed on the annual notifications.

2) The total amount of asbestos-containing material for all asbestos projects performed under an annual notification is less than or equal to 259 linear feet and less than or equal to 159 square feet per structure, per calendar year. If any quantity of asbestos-containing material is removed from a structure which is below notification thresholds of 10 linear feet and/or 48 square feet per structure per calendar year, and an annual notification is filed after the removal occurred, the quantity of asbestos-containing material removed from each structure must be applied towards the annual notification removal limits for each structure.

3) The annual notification is valid for one calendar year.

4) The annual notification is exempt from the requirements in Sections 9.04.A.2, 9.04.A.3.b, 9.04.A.3.d, and 9.04.A.4. All other requirements apply.

5) Quarterly reporting forms approved by SRCAA shall be completed and received by SRCAA for the first calendar quarter by April 15, for the second calendar quarter by July 15, for the third calendar quarter by October 15, and for the fourth calendar quarter by January 15. Quarterly reports shall be filed with SRCAA even when no asbestos-containing material is removed for the respective reporting period.

B. Amendments.

1. Mandatory Amendments.

Amendments must be submitted by the person or party that originally submitted the notification unless that person or party explicitly names another person or party that is authorized to file an amendment (~~(to the original notification or most recent amendment filed with the Agency)~~). An amendment shall be submitted to the Agency for any of the following changes in notification, must be submitted in accordance with the advance notification requirements in Section 10.09 of this Regulation (~~((e.g., In order to change the asbestos project start date or place a project "on hold", an amendment must be submitted prior to the asbestos project start date listed on the original notification or, if applicable, prior to the start date submitted on the most recent notification amendment on file with the Agency.))~~) and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of this Regulation:

a. Project Type.

Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition) or cancellation of a project filed under a notification.

b. Job Size.

Increases in the job size category, which increase the fee or changes the advance notification period. For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted.

c. Type of Asbestos.

Changes in the type of asbestos-containing material that will be removed.

d. Start Date.

Changes in the asbestos project start date or earliest demolition start date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new start date has not been confirmed) or canceling a notification altogether.

e. Completion Date.

Changes in the asbestos project completion date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new end date has not been confirmed).

2. Opportunity for Amendment.

a. Start Date on Record.

An amendment must be submitted on or before the most current asbestos removal start date on record in order to change the asbestos removal start date or place a project "on hold".

~~((a))~~ b. Last Completion Date on Record.

In no case shall an amendment be accepted by the Agency if it is filed after the last completion date on record. Where the notification project type indicates asbestos removal only, the last completion date on record refers to the last asbestos (~~(project)~~) removal completion date on record. Where the notification project type indicates asbestos removal and demolition or demolition with no asbestos removal, the last completion date on record is 365 days from the earliest original notification start date.

1) In the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of Article X of this Regulation.

2) Where the notification project type indicates asbestos removal and demolition, the last asbestos removal completion date on record has already passed, and when asbestos-containing materials are encountered prior to or during demolition that were not identified in the asbestos survey, SRCAA may accept an amendment for additional asbestos removal, provided the additional asbestos removal is complete within 365 days from the earliest original notification start date.

~~((b))~~ c. Canceled Notification.

Once a property owner or owner's agent cancels a notification, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a new, complete notification, including the required fee and any

additional information requested by the Control Officer, has been submitted to the Agency on approved forms through the Agency's website or in person at the Agency's place of business by the property owner or owner's agent, in accordance with the advance notification period requirements contained in Article X, Section 9.04.A and 10.09 of this Regulation).

~~((e))d. Adding Structures ((or Changing Project Sites)).~~

Amendments may not be used to add structures to a previously submitted notification if the structure(s) meet(s) the definition of a facility in Section 9.02.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 9.06 PROCEDURES FOR ASBESTOS PROJECTS

A. Training Requirements.

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Asbestos Project Work Practices.

Except as provided in Sections 9.08.A-C of this Regulation, it shall be unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project shall be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or off-site).

2. Negative Pressure Enclosure.

If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material exposed during removal shall be immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonab-

sorbent asbestos-containing material exposed during removal shall be immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

a. All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers.

b. All asbestos-containing waste material resulting from an asbestos project shall be sealed in leak-tight containers as soon as possible after removal, but no later than the end of each work shift.

c. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

d. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

e. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

f. Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a waste disposal site approved to accept asbestos-containing waste material.

6. Visible Emissions

No visible emissions shall result from an asbestos project.

AMENDATORY SECTION

SECTION 9.08 ALTERNATE MEANS OF COMPLIANCE

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Demolition.

Where standard asbestos project work practices in Section 9.06.B can not be utilized to remove asbestos-containing material (financial considerations aside) prior to demolition, when demolition has already occurred, or a similar situation exists (typically leaving a pile/area of debris, rubble, ash,

and/or soil), an alternate asbestos removal method may be employed provided it complies with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer (~~((who is also))~~ and a Certified Industrial Hygienist (CIH) or an AHERA Project Designer (~~((who is also))~~ and a Licensed Professional Engineer (PE) must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 9.06.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

a. Reason(s) why standard work practices can not be utilized;

b. Date(s) the work area was evaluated by the (~~((AHERA Project Designer))~~ person(s) that prepared the AWP;

c. Site address(es)/location(s) where the inspection was performed;

d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);

e. If an asbestos survey was performed, incorporate it by reference;

f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;

h. ~~A statement that ((The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in))~~ the AWP will be as effective as the work practices in Section 9.06.B; (~~and~~)

i. Signature(s) of the (~~((AHERA Project Designer))~~ person(s) that prepared the AWP(~~(-); and ((AHERA Project Designer certification number, and date certification expires.))~~)

j. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 9.03 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). Unless alternate procedures are specified in the AWP by an AHERA Project Designer (~~((who is also))~~ and a Certified Industrial Hygienist or an AHERA Project Designer (~~((who is also))~~ and a Licensed Professional Engineer, the AWP shall include all of the following requirements in Section 9.08.A.4.a-f of this Regulation:

a. Controlled Area.

The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. The controlled area shall protect persons outside the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris shall be handled in a wet condition.

1) Absorbent materials shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal shall be wetted immediately.

2) Nonabsorbent materials shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal shall be wetted immediately.

c. Asbestos-Containing Waste Materials.

1) All asbestos-containing waste material and/or asbestos contaminated waste material shall be kept wet and shall be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

2) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

3) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

4) Leak-tight containers shall be kept leak-tight.

5) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that shall be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

1) The procedures shall require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work shall stop until an AHERA Project Designer (~~((who is also))~~ and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer) has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

2) The Agency shall immediately be notified by the owner or owner's agent if the airborne fiber concentrations

exceed a net difference of 0.01 f/cc and work shall stop until an AHERA Project Designer (~~((who is also))~~ and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer) has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

1) A competent person shall be present for the duration of the asbestos project (includes demolition) and shall observe work activities at the site.

2) The competent person shall stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

3) The competent person shall stop work if AWP procedures are not followed and shall ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures shall be included in the AWP. In addition to these procedures, the following requirements apply:

1) The AWP shall identify what materials will be separated from the asbestos-containing material waste stream and shall describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream shall be free of asbestos-containing material.

2) A competent person shall ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

5. Visible Emissions.

No visible emissions shall result from an asbestos project.

6. Record Keeping.

a. The AWP shall be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP shall retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project shall also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and made available to the Agency upon request. The person(s) preparing and performing such tests shall also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

7. Other Requirements.

All applicable local, state, and federal regulations must be complied with.

B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.

Nonfriable asbestos-containing roofing material as defined in Section 9.02 of this Regulation may be left in place

during demolition, except for demolition by burning, if all of the following are met:

1. A signed and dated written determination was made by an AHERA Project Designer that includes all of the following:

a. A summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;

b. A summary of the work practices and engineering controls that will be used;

c. A determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and

d. The property owner or owner's agent and the AHERA Project Designer that performed the determination shall retain a complete copy of the determination for at least 24 months from the date it was performed and make it available to the Agency upon request.

2. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

C. Exception for Hazardous Conditions (Leaving Friable and/or Nonfriable Asbestos-Containing Material in Place During Demolition).

Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g., asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. At a minimum, the owner and owner's agent must comply with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer (~~((who is also))~~ and a Certified Industrial Hygienist or an AHERA Project Designer (~~((who is also))~~ and a Licensed Professional Engineer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an Alternative Work Plan (AWP) that ensures the planned control methods will be protective of public health.

2. Determination of a Hazardous Condition.

An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health.

3. AWP Contents.

The AWP must contain all of the following information:

a. Date(s) the work area was evaluated by the (~~AHERA Project Designer~~) person(s) that prepared the AWP;

b. Site address(es)/location(s) where the inspection was performed;

- c. A copy of the hazardous conditions determination from a government official or licensed structural engineer;
- d. If an asbestos survey was performed, incorporate it by reference;
- e. All procedures that will be followed for controlling asbestos emissions during the asbestos project;
- f. ~~A statement that ((The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in)) the AWP will be protective of public health; ((and))~~
- g. Signature(s) of the ~~((AHERA Project Designer)) person(s) that prepared the AWP((-); and ((AHERA Project Designer certification number, and date certification expires.))~~
- h. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

4. AWP Procedures.

The requirements of Section 9.08.A.3-7 of this Regulation shall be complied with.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 9.09 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

A. Disposal Within 10 Days of Removal.

Except as provided in Section 9.09.C (Temporary Storage Site) of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Waste Tracking Requirements.

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

1. Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:
 - a. The name, address, and telephone number of the waste generator.
 - b. The approximate quantity in cubic meters or cubic yards.
 - c. The name and telephone number of the disposal site operator.
 - d. The name and physical site location of the disposal site.
 - e. The date transported.
 - f. The name, address, and telephone number of the transporter.
 - g. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.
2. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the asbestos-

containing waste material is delivered. If requested by the disposal site operator, a copy of the Alternate Work Plan or written determination as specified pursuant to Sections 9.08.A-C of this Regulation shall also be provided to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

3. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

4. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

5. Retain a copy of all waste shipment records for at least 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to the Agency upon request.

C. Temporary Storage Site.

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.
2. The application must be accompanied by a non-refundable fee as set in the fee schedule.
3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.
4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.
5. The storage area must be locked except during transfer of asbestos-containing waste material.
6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 calendar days.
7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

D. Disposal of Asbestos Cement Pipe.

Asbestos cement pipe used on public right-of-ways, public easements, ~~((or other))~~ and places receiving the prior written approval of the Control Officer may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

AMENDATORY SECTION

SECTION 10.09 ASBESTOS PROJECT AND DEMOLITION NOTIFICATION WAITING PERIOD AND FEES

A. Written notification, as required in Article IX, Section 9.04, shall be in accordance with the waiting period in the tables that follow and shall be accompanied by the appropriate nonrefundable fee, as specified in the fee schedule.

Owner-occupied, single-family residence	Waiting Period
≥ 0 ln ft and/or ≥ 0 sq ft asbestos performed by residing owner	Notification Not Required
< 10 ln ft and/or < 48 sq ft asbestos not performed by residing owner	Notification Not Required
≥10 ln ft and/or ≥ 48 sq ft asbestos not performed by residing owner	Prior Notice
All Demolition	3 Days

Not owner-occupied, single-family residence	Waiting Period
< 10 ln ft and/or < 48 sq ft asbestos	Notification Not Required
10-259 ln ft and/or 48-159 sq ft asbestos	3 Days
260-999 ln ft and/or 160-4,999 sq ft asbestos	10 Days
≥ 1,000 ln ft and/or ≥ 5,000 sq ft asbestos	10 Days
All Demolition	10 Days

Additional categories	Waiting Period	Reference
Emergency	Prior Notice*	Sect. 9.04.A.6.h.
<u>Annual Notification (< 259 ln ft and/or < 159 sq ft)</u>	<u>Prior Notice</u>	<u>Sect. 9.04.A.6.j</u>
Amendment	Prior Notice	Section 9.04.B.
Alternate Asbestos Project Work Practices	10 days	Section 9.08.A.
Demolition with Nonfriable Asbestos Roofing	10 days	Section 9.08.B.
Exception for Hazardous Conditions	10 days	Section 9.08.C.

*If prior notice isn't possible because of life endangerment or other serious consequences, the Agency may accept, at its discretion, a completed emergency notification if it is filed no later than the first regular Agency work day after the asbestos project and/or demolition commenced.

B. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board (~~shall~~) may amend the fee schedule to more accurately recover program costs.

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

**WSR 10-18-012
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-214—Filed August 20, 2010, 8:51 a.m., effective September 20, 2010]

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

Purpose: Amending WAC 232-12-021 Importation and retention of dead nonresident wildlife, 232-12-068 Nontoxic shot requirements, and 232-12-134 Report required of licensed trappers.

Adopting WAC 232-28-434 2010-11 Migratory waterfowl seasons and regulations and chapter 232-30 WAC, Falconry regulations.

Repealing WAC 232-12-101 Falconry and captive propagation of raptors permitted, 232-12-104 Falconry definitions, 232-12-106 Provisions for accidental take by falconers, 232-12-107 Falconry permit license required, 232-12-114 Permit required for capture of raptors, 232-12-117 Marking and identification of raptors required, 232-12-121 Reporting requirements for capture, importation, exportation, transfer, or other disposal of raptors, 232-12-124 Methods of capture and prohibitions in taking raptors, 232-12-127 Revocation, modifications, or suspension of falconry permits, 232-12-129 Captive propagation of raptors—Sale, records, reports and inspection, and 232-16-690 Bayview Game Reserve.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-101, 232-12-104, 232-12-106, 232-12-107, 232-12-114, 232-12-117, 232-12-121, 232-12-124, 232-12-127, 232-12-129, and 232-16-690; and amending WAC 232-12-021, 232-12-068, and 232-12-134.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210.

Other Authority: C.F.R. Title 50, Part 21, Subpart C, Section 21.29; Migratory Bird Treaty Act.

Adopted under notice filed as WSR 10-09-104 on April 21, 2010, and WSR 10-13-180 on June 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: **WAC 232-12-021 Importation and retention of dead nonresident wildlife.**

Changes from the text of the proposed rule and reasons for difference:

- None.

WAC 232-12-064 Live wildlife.

- A clerical error included this WAC in the list of WACs proposed for repeal. No changes were made to this rule.

WAC 232-12-066 Revocation, modification, or suspension of a permit to hold wild animals, wild birds, or game fish in captivity.

- A clerical error included this WAC in the list of WACs proposed for repeal. No changes were made to this rule.

WAC 232-12-068 Nontoxic shot requirements.**Changes from the text of the proposed rule and reasons for difference:**

- Under the list of approved nontoxic shot types, the composition of tungsten-iron-copper-nickel was corrected to reflect the composition approved by United States Fish and Wildlife Service. The list of approved nontoxic shot types was also amended to include tungsten-iron-polymer shot, recently approved by United States Fish and Wildlife Service.
- Under subsection (3), Hoehn Road was added to the list of areas where possession of only nontoxic shot is required when hunting for upland game birds (pheasants, quail, chukar, or gray partridge), mourning doves, band-tailed pigeons, or game animals. The reason for the change is that the department completed an agreement with the United States Forest Service on July 23, 2010, to add Hoehn Road near Sedro Wooley as a new pheasant release site in Skagit County for the 2010-11 season. The site has been determined to be an area where nontoxic shot use is necessary to prevent lead shot ingestion by wildlife.

WAC 232-12-134 Report required of licensed trappers.**Changes from the text of the proposed rule and reasons for difference:**

- None.

WAC 232-12-264 Baiting of waterfowl.**Changes from the text of the proposed rule and reasons for difference:**

- This WAC amendment request is being withdrawn due to an insufficient number of commission votes necessary to approve the proposed amendments.

WAC 232-16-690 Bayview Game Reserve.**Changes from the text of the proposed rule and reasons for difference:**

- None; rule is repealed as originally proposed.

WAC 232-28-434 2010-11 Migratory waterfowl seasons and regulations.**Changes from the text of the proposed rule and reasons for difference:**

- Under duck season bag limits, grammatical changes were made to clarify geographical restrictions on bag limits.
- Under snow goose authorization requirements, the section listing Fir Island restrictions was moved to a new section, titled Skagit County special restrictions, to expand and highlight restrictions developed, based on input from a citizens' working group in Skagit County and the statewide waterfowl advisory group. Within the new section, the restriction on discharging a firearm within one hundred feet of any paved road while hunting snow geese was expanded from Fir Island to all of Skagit County, because snow geese have started using new areas in Skagit County off of Fir Island. Additional language was added in the new section regarding decoy use on Fir Island, to add violation of decoy requirements to the list of conditions for authorization invalidation, as well as violation of the one hundred foot road buffer when hunting snow geese. Because of these additions, the requirement for decoy use in the snow goose quality hunting program on pages 3 and 4 were deleted as duplicative. Decoy requirements and firearm use restrictions along roads are intended to improve hunting practices, and invalidation of authorizations will assist in achieving compliance with these rules. In the last sentence, references to 2010-11 and 2011-12 were changed to "current" and "subsequent" respectively, to eliminate the need to modify these references each year.
- Under Goose Management Areas 2A, 2B, and special late goose season for Goose Management Area 2A, changes were made to all bag limits for cackling geese from three per day and six in possession to two per day and four in possession. The reason for the change is the federal frameworks for cackling goose bag limits were not increased by the U.S. Fish and Wildlife Service at their July 27-29, 2010, meetings, based on recommendations from the Pacific Flyway Council. Additional coordination with Alaska subsistence hunters is required before seasons can be liberalized.
- Under Goose Management Area 2A, Christmas and New Year's closures were added to the Ridgefield NWR goose season to avoid having staff work check stations on holidays.
- In the last paragraph under special provisions for Goose Management Areas 2A and 2B, a restriction was added to goose checking requirements, regarding presentation of intact and fully feathered geese at check stations, to improve the ability of check stations to determine subspecies identification.

Chapter 232-30 WAC Falconry regulations.**Changes from the text of the proposed rule and reasons for difference (by individual WAC):**

- Extensive edits were made for the purposes of paragraph and section structure, sentence simplification, punctuation, correction of person and voice of language (from second person to third, e.g. from "you" replaced by "the falconer"), and incorporated

United States Fish and Wildlife Service new falconry regulations language, grammar, clarification of content, and word spacing.

- Replaced the word "bird" used throughout all sections with the word "raptor" to be more precise in the type of birds that the new falconry WACs cover.

WAC 232-30-100 Falconry and captive propagation of raptors permitted.

- Edited the WAC to delete the word "adult." Falconry regulations apply to all age classes of raptors.

WAC 232-30-120 Falconry definitions.

- Edited the WAC to clarify the definition of a hybrid raptor.
- Edited the WAC with the word "may" to clarify the definition of hacking.
- Edited to clarify the WAC definition of the falconry term "hacking" to indicate it is not solely, but sometimes, the temporary release of a raptor held in falconry to the wild so that it may survive on its own.

WAC 232-30-130 Permits to practice falconry.

- Added clarifying language that agents or other parties under the supervision of a falconer do not need falconry permits.
- Edited the WAC to clarify that people who are not falconers may participate in falconry activities in the field with nonresident falconers.

WAC 232-30-140 Reporting falconry activities.

- Deleted partially redundant language.

WAC 232-30-151 Apprentice falconer classes of permit and permitted raptors.

- Edited the WAC to allow apprentices to possess a wider range of raptors.

WAC 232-30-152 General falconer classes of permit and permitted raptors.

- Edited the WAC to allow general falconers to possess raptors from any origin - wild taken, captive bred, or exotics.

WAC 232-30-153 Master falconer classes of permit.

- Edited the WAC to clarify the type and source of raptor a master class of falconer may possess.
- Clarified the subsection with the insertion of language indicating wild taken eagles will count against the five raptors a master may take, even though Washington does not have a permitted eagle take.

WAC 232-30-175 Transport of raptors out of state.

- Edited the WAC to clarify that only an out of country loss of a raptor needs immediate reporting.

WAC 232-30-220 Designation as a wild raptor.

- Edited the WAC to clarify the designation status of a wild raptor.

WAC 232-30-242 Releasing a falconry raptor to the wild permanently.

- The edited WAC added the federal requirement for removing bands from raptors to be released to the wild.

WAC 232-30-244 Transfer, selling, or trading raptors under a falconry permit.

- The edited WAC added omitted content from existing WAC regarding the transfer of wild caught raptors out of state.
- Deleted subsection (4) and moved it to become subsection (6) in WAC 232-30-510.

WAC 232-30-250 Provisions for accidental take by falconers.

- Edited the WAC to replace "protected" with "threatened and endangered."

WAC 232-30-410 Inspections.

- Edited the WAC to consolidate and simplify federal regulation language.
- Added clarifying language regarding inspections of facilities on property not owned by a falconer.
- Edited WAC to delete ambiguous "he/she" pronouns to specifically state that if the falconer does not own the falconry facility, he or she must submit to the department a statement, signed by the property owner, agreeing that the facilities may be inspected in the presence of the property owner at any reasonable time, without advance notice, as per federal regulation language.

WAC 232-30-420 Facilities are required for possession of falconry or abatement raptors.

- Edited the WAC to eliminate the need for new Washington resident falconers to have approved facilities prior to importing a raptor into the state.
- Edited WAC to add the omitted word "falconer" after "resident," since the WAC obviously refers to a falconer, not any resident of the state.

WAC 232-30-440 Facilities and care requirements and guidelines.

- The edited WAC added clarifying federal language on exceptions for the raptor water source requirement.

WAC 232-30-510 Captive propagation of raptors.

- Added new subsection language (5) and (6) to permit the use of wild-caught raptors for captive propagation, but to prohibit the sale or trade of their progeny.

WAC 232-30-520 Hacking of falconry raptors.

- Edited the WAC to add additional use of hacking for the simple return of a falconry raptor to the wild.

WAC 232-30-530 Abatement activities with captive raptors.

- The edited WAC added language to clarify conflicting federal language that apprentice class falconers may conduct bird abatement activities.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, Repealed 10; Federal Rules or Standards: New 1, 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 3, Repealed 11.

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: August 6, 2010.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 07-62, filed 5/3/07, effective 6/3/07)

WAC 232-12-021 Importation and retention of dead nonresident wildlife. It is unlawful:

(1) To import or possess dead wildlife, taken in another state or country, into Washington unless such wildlife was acquired lawfully. Proof of legal acquisition must be retained during the period of retention of the carcass or edible parts. Violation of this subsection is punishable under RCW 77.15-290.

(2) For a person who imports a dead mountain sheep, mountain goat, cougar or bear to fail to report such importation to the department in writing within ten days of the importation. The report must contain the name and address of the importer, the location where the dead wildlife is being stored and general information describing where and how the wildlife was obtained. Violation of this subsection is punishable under RCW 77.15.290.

(3) To import or possess deer, elk, or moose, or parts thereof, harvested in Colorado, Wyoming, Utah, New Mexico, Wisconsin, Illinois, South Dakota, Nebraska, Kansas, New York, West Virginia, Virginia, North Dakota, Alberta, and Saskatchewan with the following exceptions:

- (a) Meat that has been deboned in the state or province where it was harvested and is imported as boned out meat;
- (b) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;
- (c) Hides or capes without heads attached;
- (d) Tissue imported for use by a diagnostic or research laboratory;
- (e) Finished taxidermy mounts.

Violation of this subsection is punishable under RCW 77.15.290.

(4) To fail to notify the department within twenty-four hours if an importer or receiver of deer or elk is notified by a state or province that a harvested animal has tested positive for chronic wasting disease. Violation of this subsection is an infraction punishable under RCW 77.15.160.

AMENDATORY SECTION (Amending Order 09-53, filed 4/15/09, effective 5/16/09)

WAC 232-12-068 Nontoxic shot requirements. (1) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot when hunting for waterfowl, coot, or snipe. Nontoxic shot includes the following approved types:

Approved Nontoxic Shot Type*	Percent Composition by Weight
bismuth-tin	97 bismuth, 3 tin
iron (steel)	iron and carbon
iron-tungsten	any proportion of tungsten, ≥ 1 iron
iron-tungsten-nickel	≥ 1 iron, any proportion of tungsten, up to 40 nickel
tungsten-bronze	51.1 tungsten, 44.4 copper, 3.9 tin, 0.6 iron; and 60 tungsten, 35.1 copper, 3.9 tin, 1 iron
tungsten-iron-copper-nickel	40-76 tungsten, <u>10-37</u> iron, 9-16 copper, 5-7 nickel
tungsten-matrix	95.9 tungsten, 4.1 polymer
tungsten-polymer	95.5 tungsten, 4.5 nylon 6 or 11
tungsten-tin-iron	any proportions of tungsten and tin, ≥ 1 iron
tungsten-tin-bismuth	any proportions of tungsten, tin, and bismuth
tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, 2.8 nickel
<u>tungsten-iron-polymer</u>	<u>41.5-95.2 tungsten, 1.5-52.0 iron, and 3.5-8.0 fluoropolymer</u>

*Coatings of copper, nickel, tin, zinc, zinc chloride, and zinc chrome on approved nontoxic shot types also are approved.

The director may adopt additional nontoxic shot types consistent with federal regulations.

(2) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot in the following areas:

- Well's Wildlife Area (Bridgeport Bar Unit)
- Cowlitz Wildlife Area (all units)
- Whatcom Wildlife Area (all units)
- Shillapoo Wildlife Area (all units)
- Skagit Wildlife Area (all units)
- Snoqualmie Wildlife Area (all units)
- Sunnyside-Snake River Wildlife Area (Headquarters, Byron and Windmill Ranch units)
- Sinlahekin Wildlife Area (Driscoll Island, Hegdahl, and Kline Parcel units)

~~((John's River))~~ Olympic Wildlife Area (Chinook and Chehalis units)

South Puget Sound Wildlife Area (Davis Creek (Koopman) Unit).

(3) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading), other than nontoxic shot, when hunting for upland game birds (pheasants, quail, chukar, or gray partridge), mourning doves, band-tailed pigeons, or game animals in the following areas:

Chehalis River pheasant release site

Dungeness Recreation Area

Hoehn Road pheasant release site

Hunter Farms pheasant release site

Raymond Airport pheasant release site

Two Rivers and Wallula Units of the U.S. Fish and Wildlife Service's McNary National Wildlife Refuge

All Whidbey Island pheasant release sites

(4) Beginning in 2011, it is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading), other than nontoxic shot, when hunting for upland game birds (pheasant, quail, chukar, and gray partridge), mourning doves, band-tailed pigeons, on areas where pheasants are released, to include:

Asotin Wildlife Area (Hartssock Unit)	Chelan Wildlife Area (Chelan Butte and Swakane units)	Columbia Basin Wildlife Area (Banks Lake, Gloyd Seeps, Lower Crab Creek, Quincy Lakes, Warden units)
Sinlahekin Wildlife Area (Chiliwist Unit)	Colockum Wildlife Area (Headquarters Unit)	Wenas Wildlife Area (Wenas Unit)
Klickitat Wildlife Area (Hill Road Unit)	Scatter Creek Wildlife Area	Sherman Creek Wildlife Area
Skookumchuck Wildlife Area	Steamboat Rock, Fish-trap, John Henley, Willow Bar, Rice Bar, Hartssock, Mill Creek, Wallula, Peninsula, Hollebeke/Lost Island, Buckshot, Big Flat, and Ringold Pheasant Release sites	Fort Lewis Belfair Woodland Creek and Lincoln Creek Pheasant Release sites

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 232-12-101 Falconry and captive propagation of raptors permitted.
- WAC 232-12-104 Falconry definitions.
- WAC 232-12-106 Provisions for accidental take by falconers.
- WAC 232-12-107 Falconry permit license required.
- WAC 232-12-114 Permit required for capture of raptors.

- WAC 232-12-117 Marking and identification of raptors required.
- WAC 232-12-121 Reporting requirements for capture, importation, exportation, transfer, or other disposal of raptors.
- WAC 232-12-124 Methods of capture and prohibitions in taking raptors.
- WAC 232-12-127 Revocation, modifications or suspension of falconry permits.
- WAC 232-12-129 Captive propagation of raptors—Sale, records, reports and inspection.

AMENDATORY SECTION (Amending Order 06-196, filed 8/15/06, effective 9/15/06)

WAC 232-12-134 Report required of licensed trappers. All trappers purchasing a trapping license must report their trapping activity, regardless of trapping success or whether they trapped or not.

(1) Trappers must report trapping activity by April ~~((10))~~ 20.

(2) Reports must be made using the department's designated Trapper's Report of Catch form or internet trapper reporting system.

(3) If a trapper chooses to report using the Trapper's Report of Catch form, it is the responsibility of the licensed trapper to obtain a form and ensure the form is received by Washington Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091.

(4) Any trapper not reporting by April ~~((10))~~ 20 will be in noncompliance of reporting requirements.

(5) False reports will be considered the same as noncompliance.

(6) Failure to report trapping activity is an infraction, punishable under RCW 77.15.160.

~~((7) Noncompliant trappers who have paid their penalty under subsection (6) of this section must report their trapping activity prior to being issued a trapping license.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 232-16-690 Bayview Game Reserve.

NEW SECTION

WAC 232-28-434 2010-11 Migratory waterfowl seasons and regulations.

DUCKS

Statewide

Oct. 16-20, 2010 and Oct. 23, 2010 - Jan. 30, 2011; except scaup season closed Oct. 16 - Nov. 5.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 25-26, 2010.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 2 pintail, 3 scaup, 1 canvasback, and 2 redhead statewide; and to include not more than 1 harlequin, 2 scoter, 2 long-tailed duck, and 2 goldeneye in Western Washington.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 4 pintail, 6 scaup, 2 canvasback, and 4 redhead statewide; and to include not more than 1 harlequin, 4 scoter, 4 long-tailed duck, and 4 goldeneye in Western Washington.

Season limit: 1 harlequin in Western Washington.

AUTHORIZATION REQUIRED TO HUNT SEA DUCKS

When hunting sea ducks (harlequin, scoter, long-tailed duck, goldeneye) in Western Washington, all persons are required to possess a sea duck hunting authorization and harvest record card. Hunters who did not possess a 2009-10 authorization must submit an application form to WDFW (forms available on-line and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest record card. Hunters must report harvest information by February 15, 2011. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2011-12 sea duck season.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.
Possession limit: 25 coots.

SNIPE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.
Possession limit: 16 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 25-26, 2010, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.
Possession limit: 8 Canada geese.

Western Washington Goose Seasons

Goose Management Area 1

Island, Skagit, Snohomish counties.

Oct. 16, 2010 - Jan. 30, 2011 for snow, Ross', or blue geese.
Oct. 16-28, 2010 and Nov. 6, 2010 - Jan. 30, 2011 for other geese (except Brant).

Daily bag limit: 4 geese.
Possession limit: 8 geese.

AUTHORIZATION REQUIRED TO HUNT SNOW GEESE

When hunting snow geese in Goose Management Area 1, all persons are required to possess a snow goose hunting authorization and harvest record card. Hunters who did not possess a 2009-10 authorization must submit an application form to WDFW (forms available on-line and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a snow goose into possession, hunters must record in ink the information required on the harvest record card. Hunters must report harvest information by February 15, 2011. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2011-12 snow goose season.

SNOW GOOSE QUALITY HUNTING PROGRAM IN GOOSE MANAGEMENT AREA 1

All hunters must obey posted signs regarding access restrictions. Quality hunt units are not available for commercial uses.

On each Saturday during the Goose Management Area 1 season, all units in the Snow Goose Quality Hunting program will be open only to hunters selected by random drawing prior to the season. Hunters must apply for special Saturday hunting authorizations by September 24, 2010, using the department's internet or mail application systems. Successful applicants will be assigned at random to units for each Saturday, and will be mailed a special Saturday hunting authorization listing their hunt date. When hunting snow geese on their assigned unit and hunt date, successful applicants are required to possess this special Saturday hunting authorization. No more than three individuals possessing snow goose authorizations can hunt with the successful applicant. Successful applicants must check in with the WDFW hunt coordinator at least one week prior to their scheduled hunting day to receive specific hunting unit information.

SKAGIT COUNTY SPECIAL RESTRICTIONS

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or to discharge a firearm for the purpose of hunting snow geese within 100 feet of any paved public road in other areas of Skagit County.

It is unlawful to hunt snow geese on Fir Island, Skagit County, inland of the surrounding dikes, unless each hunter sets up a minimum of 24 snow goose decoys. Additionally, it is unlawful to hunt snow geese over decoys unless the decoys are set up in a realistic pattern, are under the immediate control of the hunter, and are not left unattended. For the purposes of this section, a "decoy" is defined as any structure the size of or larger than a mallard duck decoy. A violation of this section is punishable under RCW 77.15.400.

While hunting snow geese, if a hunter is convicted of (a) trespass; (b) shooting from, across, or along the maintained part of any public highway; (c) discharging a firearm for the pur-

pose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or discharging a firearm within 100 feet of any paved public road for the purpose of hunting snow geese in other areas of Skagit County; (d) exceeding the daily bag limit for geese; or (e) violating decoy requirements, authorization will be invalidated for the remainder of the current snow goose season and an authorization will not be issued for the subsequent snow goose season.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 13-28, 2010 and Dec. 8, 2010 - Jan. 30, 2011, except closed Dec. 25, 2010 and Jan. 1, 2011. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 13-27, 2010 and Dec. 9, 2010 - Jan. 29, 2011, except closed Nov. 25, 2010 and Dec. 25, 2010 and Jan. 1, 2011.

Bag limits for Goose Management Area 2A:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

Goose Management Area 2B

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 16 - Dec. 22, 2010 and Jan. 5-15, 2011; Dec. 26 and 29, 2010, and Jan. 2, 2011.

Bag limits for Goose Management Area 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 3 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose, 2 Aleutian geese, and 6 cackling geese.

Season limit: 1 dusky Canada goose.

Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 40 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 40 dusky, to be distributed 5 for Zone 1 (Ridgefield NWR); 5 for Zone 2 (Cowlitz County south of the Kalama River); 15 for Zone 3 (Clark County except Ridgefield NWR); 7 for Zone 4 (Cowlitz County north of the

Kalama River and Wahkiakum County); and 8 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunting is only permitted by authorization, available at any WDFW license vendor to hunters who have met requirements for participation. New hunters and those who did not maintain a valid 2009-10 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

With authorization, hunters will receive a harvest record card. Hunters must carry the authorization card and harvest record card while hunting. Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest record card. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. All geese shall be presented intact and fully feathered at the check station. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest record card, authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Goose Season for Goose Management Area 2A:

Open to Washington department of fish and wildlife master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid 2010-11 southwest Washington goose hunting authorization, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 5 - Mar. 9, 2011.

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency

action if the harvest of dusky Canada geese exceeds 45 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 16-28, 2010 and Nov. 6, 2010 - Jan. 30, 2011.

Daily bag limit: 4 geese.
Possession limit: 8 geese.

Eastern Washington Goose Seasons

Goose Management Area 4

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Saturdays, Sundays, and Wednesdays only during Oct. 16, 2010 - Jan. 23, 2011; Nov. 11, 25, and 26, 2010; Dec. 27, 28, 30, and 31, 2010; January 17, 2011; and every day Jan. 24-30, 2011.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 16-20, 2010, every day from Oct. 23, 2010 - Jan. 30, 2011.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.
Possession limit: 8 geese.

BRANT

Open in Skagit County only on the following dates:

Jan. 15, 16, 19, 22, 23, 26, 29, and 30, 2011.

If the 2010-11 pre-season Brant population in Skagit County is below 6,000 (as determined by the early January survey), the Brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:

Jan. 15, 16, 18, 20, 22, 23, 25, 27, 29, and 30, 2011.

AUTHORIZATION REQUIRED TO HUNT BRANT

All persons hunting Brant in this season are required to possess a Brant hunting authorization and harvest record card. Hunters who did not possess a 2009-10 authorization must submit an application form to WDFW (forms available online and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a Brant into possession, hunters must record in ink the information required on the harvest record card. Hunters must report harvest information by February 15, 2011. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2011-12 Brant season.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 Brant.
Possession limit: 4 Brant.

SWANS

Season closed statewide.

FALCONRY SEASONS

DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. 16-20, 2010 and Oct. 23, 2010 - Jan. 30, 2010 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 16, 2010 - Jan. 30, 2010 for snow, Ross', or blue geese. Oct. 16-28, 2010 and Nov. 6, 2010 - Jan. 30, 2010 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 13-28, 2010 and Dec. 8, 2010 - Jan. 30, 2010.

Goose Management Area 2B: Saturdays and Wednesdays only, Oct. 16, 2010 - Jan. 16, 2010.

Goose Management Areas 3, 4, and 5: Oct. 16-28, 2010 and Nov. 6, 2010 - Jan. 30, 2010.

Daily bag limit for all areas: 3 geese (except Brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except Brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Chapter 232-30 WAC

FALCONRY REGULATIONS

NEW SECTION

WAC 232-30-100 Falconry and captive propagation of raptors permitted. (1) The director may issue permits for the taking and possession of raptors for falconry, captive propagation, and for the possession, transfer, use, and disposition of raptors, except for those species restricted by the state or that appear on the federal endangered species list. However, progeny of a federally threatened or endangered

raptor held legally before November 10, 1978, may be retained for falconry use under these regulations.

(2) It is unlawful to take or possess a raptor, or raptor eggs, without a permit from the director and/or the U.S. Fish and Wildlife Service. It is unlawful to violate the conditions of a permit issued under this rule.

NEW SECTION

WAC 232-30-110 Revocation, modifications, or suspension of falconry permits. A permit issued hereunder may be revoked, modified, or suspended by the director for cause. Cause shall include, but is not limited to, the failure to provide adequate falconry facilities and equipment, the failure to provide adequate care, feed, or maintenance for a raptor, or for inhumane treatment of a raptor.

NEW SECTION

WAC 232-30-120 Falconry definitions. "Abatement" is the use of trained raptors to abate depredation problems caused by migratory birds and other wildlife.

"Captive-bred raptor" means the progeny of a mating of raptors in captivity.

"Falconry" means the possession and use of raptors for the purpose of hunting or free flight training.

"Hacking" is the release, sometimes temporary, of a raptor held for falconry to the wild so that it may survive on its own.

"Hybrid" means offspring of raptors of one or more distinct species listed in the U.S. Fish and Wildlife 50 C.F.R. § 10.13.

"Imp" is to cut a broken or damaged feather and replace or repair it with an undamaged feather.

"Imprint," for the purposes of falconry, means a raptor that is hand-raised in isolation from the sight of other raptors from two weeks of age until it has fledged. An imprinted raptor is considered to be so for its entire lifetime.

"Raptor" means a migratory bird of the Order Falconiformes or the Order Strigiformes listed in the U.S. Fish and Wildlife Service regulations at 50 C.F.R. § 10.13, including the bald eagle (*Haliaeetus leucocephalus*) and the golden eagle (*Aquila chrysaetos*).

"Take" means to trap or capture or attempt to trap or capture a raptor from the wild.

NEW SECTION

WAC 232-30-130 Permits to practice falconry. (1) An applicant for a Washington falconry permit must complete and submit an application form from the department. The applicant must meet the state residency requirements for Washington.

(2) The temporary possession and short-term handling of a raptor, such as letting any other person hold or practice flying a raptor, is not possession for the purposes of this section if the handler is under the permitted falconer's supervision, employed, or under contract by the permitted falconer. A falconry observer, including a person accompanying a falconer when hunting or otherwise flying a falconry raptor, is not required to possess a falconry permit or a hunting license.

(3) For determining possession and take of raptors for falconry, a regulatory year is the calendar year starting January 1st and ending the following December 31st.

(4) Falconry permits shall be valid from the date issued until the date of expiration on the permit. The permit will be valid for a maximum period of two years to expire on December 31st.

(5) A resident of Washington must have a valid Washington falconry permit to take, possess raptors for falconry, or to practice falconry. To release a falconry raptor to pursue or hunt, depending on the type of game hunted, a resident falconer may need resident state and/or tribal hunting licenses, permits, stamps, and/or a Federal Migratory Bird Hunting and Conservation Stamp (a "Duck Stamp").

(6) A falconer must have permit(s) or legible copies of his/her permit in immediate possession if he/she is trapping, transporting, displaying, or engaging in falconry.

NEW SECTION

WAC 232-30-140 Reporting falconry activities. (1) Throughout this chapter, reporting of falconry activities is a requirement of regulations. All raptor acquisitions, captures, purchases, gifting, sales, transfers, releases, banding, escapes, loss by death, and all other changes in raptor status are to be reported to the department and the U.S. Fish and Wildlife Service. Reporting will be done by filing a U.S. Fish and Wildlife Service Form 3-186A with both agencies.

(2) The form may be submitted directly to the U.S. Fish and Wildlife Service to a national computer electronic reporting system on-line via the web site <http://permits.fws.gov/186A>. The department accesses information from that data base to satisfy the state reporting requirement. For those who do not wish to submit electronic reports, the department will accept paper forms and will enter the falconry transaction into the U.S. Fish and Wildlife Service data base. The department may charge an administrative processing fee per paper form.

(3) A falconer is required to keep copies of all electronic data base submissions or paper forms documenting take, transfer, loss, banding, or microchipping of each falconry raptor until five years after a falconry raptor transaction.

NEW SECTION

WAC 232-30-151 Apprentice falconer classes of permit and permitted raptors. (1) An applicant for an apprentice falconry permit must be at least twelve years of age. If under eighteen years of age, a parent or legal guardian must sign the application and will be legally responsible for the apprentice falconer's activities.

(2) An applicant must correctly answer at least eighty percent of the questions on an examination administered by the department, or provide proof of having previously held a valid apprentice falconry permit. The examination will cover care and handling of falconry raptors, state and federal regulations relevant to falconry, and other appropriate subject matter.

(3) An applicant must submit a letter to the department from a general falconer or a master falconer, who is at least eighteen years of age with at least two years experience at the

general falconer level, stating that he/she has agreed to be a sponsor to assist the applicant in learning about the husbandry and training of raptors held for falconry, relevant wildlife laws and regulations, and in deciding what permitted raptor species is appropriate to possess while an apprentice falconer.

(4) The applicant must submit an original, signed certification incorporated into the department application form, worded as follows: *I certify that I have read and am familiar with Washington and U.S. Fish and Wildlife Service falconry regulations, and the federal Migratory Bird Treaty Act, and that the information I have submitted is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to cancellation of the application and/or criminal penalties.*

(5) An apprentice falconer may not intentionally capture a raptor species that this permit classification does not allow the falconer to possess for falconry. Any raptor captured, that an apprentice falconer is not permitted to take must be released immediately.

(6) Regardless of the number of state, tribal, or territorial falconry permits an apprentice falconer may have, he/she may possess no more than one raptor for use in falconry.

(7) An apprentice falconer may take a red-tailed hawk (*Buteo jamaicensis*) or a kestrel (*Falco sparverius*) from the wild in Washington.

(8) An apprentice may possess any species of Falconiform or Strigiform, except a golden eagle (*Aquila chrysaetos*), a bald eagle (*Haliaeetus leucocephalus*), a white-tailed eagle (*Haliaeetus albicilla*), or a Steller's sea-eagle (*Haliaeetus pelagicus*), or a federally listed threatened or endangered species for falconry. An apprentice falconer may possess captive-bred individuals or hybrids of the species he/she is allowed to possess for falconry.

(9) A wild raptor may be transferred to an apprentice.

(10) An apprentice falconer may not possess a nestling raptor taken from the wild and may not possess a raptor that is imprinted on humans.

(11) An apprentice falconer may take a free flying permitted raptor species less than one year of age from the wild during any period.

(12) Raptor facilities must pass inspection by the department or its designee before an apprentice falconer applicant is granted a permit.

NEW SECTION

WAC 232-30-152 General falconer classes of permit and permitted raptors. (1) An applicant for a general falconry permit must be at least sixteen years of age. If sixteen or seventeen years of age, a parent or legal guardian must sign the application and will be legally responsible for the general falconer's activities until the falconer is eighteen years old.

(2) An applicant must submit a document from a general falconer or master falconer (preferably the apprentice's sponsor) to the department stating that the applicant has practiced falconry at the apprentice falconer level or equivalent for at least two years, including maintaining, training, flying, or hunting the raptor(s) for at least four months in each year.

That practice may include capture and release of falconry raptor(s). The applicant may provide proof of a previously held valid general falconry permit. A falconry school program or education is not acceptable to shorten the period of two years at the apprentice falconer level.

(3) A general falconer may not capture a raptor species that this permit classification does not allow the falconer to possess for falconry. A general falconer must release immediately any raptor he/she may not possess.

(4) A general falconer may take raptors less than one year of age from the wild during any time of the year. However, an American kestrel or great horned owl of any age may be taken from the wild during any time of the year.

(5) Regardless of the number of state, tribal, or territorial falconry permits a general falconer may have, he/she may possess no more than three raptors for use in falconry.

(6) A general falconer may take the following species of raptors from the wild in Washington: Red-tailed hawk (*Buteo jamaicensis*), kestrel (*Falco sparverius*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), gyrfalcon (*Falco rusticolus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), goshawk (*Accipiter gentilis*), great horned owl (*Bubo virginianus*), barred owl (*Strix varia*).

(7) A general falconer may possess any species of Falconiform or Strigiform except a golden eagle (*Aquila chrysaetos*), a bald eagle (*Haliaeetus leucocephalus*), a white-tailed eagle (*Haliaeetus albicilla*), or a Steller's sea-eagle (*Haliaeetus pelagicus*). A general falconer may use captive-bred individuals or hybrids of the species he/she is allowed to possess.

(8) Species of raptors that are not listed in the U.S. Fish and Wildlife Service regulations at 50 C.F.R. § 10.13 are not covered under these regulations; however, general falconers may practice falconry or hunt with exotic raptors unless otherwise prohibited. Possession, import, and export of exotics may be subject to other state and federal regulations.

NEW SECTION

WAC 232-30-153 Master falconer classes of permit.

(1) An applicant for a master falconry permit must attest and/or provide evidence of having practiced falconry with his/her own raptor(s) at the general falconer level for at least five years, or provide proof of previously holding a valid master falconry permit.

(2) A master falconer may not intentionally capture a raptor species that this permit classification does not allow the falconer to possess for falconry. Any raptor captured, that a master falconer is not permitted to take, must be released immediately.

(3) A master falconer, may take raptors less than one year of age from the wild during any period. However, an American kestrel or great horned owl of any age may be taken from the wild during any time of the year.

(4) Regardless of the number of state, tribal, or territorial falconry permits a master falconer may have, he/she may possess no more than five wild taken raptors for use in falconry, including golden eagles (*Aquila chrysaetos*). A master falconer may possess any number of captive-bred raptors;

however, the master falconer must train them in the pursuit of wild game and use them in hunting.

(5) A master falconer may take the following species of raptors from the wild in Washington: Red-tailed hawk (*Buteo jamaicensis*), kestrel (*Falco sparverius*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), goshawk (*Accipiter gentilis*), great horned owl (*Bubo virginianus*), and barred owl (*Strix varia*).

(6) A nestling, or fledgling peregrine falcon may be taken by a master falconer who possesses, at the time of capture, a permit from the department authorizing the capture. The number and age class of peregrine falcons to be captured in Washington will be determined by the director in accordance with federal regulations or implementation guidance may vary annually in response to population and productivity data, and as a participant in actions of the Pacific Flyway Council. The director will establish permit issuance procedures, requirements for monitoring capture, and open areas for the capture of peregrine falcons.

(7) A master falconer may possess any species of Falconiform or Strigiform except a bald eagle (*Haliaeetus leucocephalus*). A master falconer may possess any captive-bred individual, or hybrids of any species.

(8) A master falconer who meets the requirements in this section may possess up to three wild taken eagles of the following species for use in falconry: Golden eagle (*Aquila chrysaetos*), white-tailed eagle (*Haliaeetus albicilla*), or Steller's sea-eagle (*Haliaeetus pelagicus*).

(9) The department must have the following documented before approving a request from a master falconer to possess an eagle to use in falconry:

(a) Experience in handling large raptors, such as eagles, ferruginous hawks (*Buteo regalis*), goshawks (*Accipiter gentilis*), great horned owls (*Bubo virginianus*), red-tailed hawks (*Buteo jamaicensis*), or others. Include information about which species have been handled, the type, and duration of the activity in which experience was gained.

(b) At least two letters of reference from people with experience handling and/or flying large raptors. Each must contain a concise history of the author's experience with large raptors, which can include, but is not limited to, falconry, propagation, abatement, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors. Each letter must also assess the master falconer's capability to care for eagles and fly them in falconry.

(10) A wild taken golden eagle (*Aquila chrysaetos*), white-tailed eagle (*Haliaeetus albicilla*), or Steller's sea-eagle (*Haliaeetus pelagicus*) in possession will count as one of the five wild taken raptors a master falconer is allowed to possess for use in falconry.

(11) Species of raptors that are not listed in the U.S. Fish and Wildlife Service regulations at 50 C.F.R. § 10.13 are not covered under these regulations. Master falconers may practice falconry or hunt with exotic raptors unless otherwise prohibited. Possession, import, and export of exotics may be subject to other state and federal regulations.

NEW SECTION

WAC 232-30-160 Reinstatement of an expired falconry permit. (1) If a permit has expired for less than five years, it will be reinstated at the level held previously.

(2) If a permit has expired for five years or more, the permittee must correctly answer at least eighty percent of the questions on the Washington falconry examination. If the falconer passes the test, his/her permit may be reinstated at the previously held level. The reinstated falconer's facilities must pass inspection by the department or its delegate prior to possession of a falconry raptor.

NEW SECTION

WAC 232-30-171 New Washington residents from outside the United States. (1) A new Washington resident from outside the United States may qualify for a falconry permit appropriate for his/her experience. The falconer must demonstrate knowledge of state and federal falconry laws and regulations by correctly answering at least eighty percent of the questions on the Washington falconry examination. If the new falconer passes the test, the department will decide for which level of falconry permit he/she is qualified, consistent with the class requirements for a falconry permit in these regulations.

(2) In addition to passing the examination, the department will base its decision for permit issuance on documentation of the falconer's experience and any other pertinent material and supportive documents provided by the falconer or a third party. The falconer's facilities must meet the standards in these regulations and be inspected prior to receiving a Washington falconry permit.

NEW SECTION

WAC 232-30-172 Nonresident falconers in Washington. (1) Nonresident falconers may practice falconry in Washington. The nonresident falconer must possess a valid permit to possess raptors and practice falconry in his/her home state, tribe, or country. The nonresident may possess, transport through the state, fly, practice falconry, or hunt with legal raptors held under the authority of such permit.

A falconer from another country may need federal permits to bring a raptor into the United States to be legally possessed in Washington.

(2) A falconer may import a raptor into Washington if a health certificate for the raptor is in the possession of the importer. When flown free, any raptor brought into Washington temporarily from another country must have two attached radio transmitters.

(3) In order to release a falconry raptor to pursue game, or hunt, depending on the type of game hunted, a nonresident falconry permit holder may be required to purchase appropriate nonresident state and/or tribal hunting licenses, permits, tags, Washington Bird Stamp, migratory bird validation, and/or a federal Migratory Bird Hunting and Conservation Stamp.

(4) Nonresident falconers may be authorized by permit from the director to capture one legal raptor per year in Washington with the requirement to purchase a nonresident

raptor capture permit. A premium Class 1 nonresident raptor capture permit may authorize a nonresident falconer to capture a peregrine falcon (*Falco peregrinus*), a gyrfalcon (*Falco rusticolus*), or a goshawk (*Accipiter gentilis*). A basic Class 2 nonresident raptor capture permit may authorize a nonresident falconer to capture any other raptor species authorized for capture in Washington.

(5) The taking of a legal raptor by a nonresident must comply with Washington regulations for the appropriate class of falconer. The nonresident raptor capture permit shall be valid for one year.

NEW SECTION

WAC 232-30-173 Falconers moving to Washington.

(1) If a falconer with a valid falconry permit issued by another state, territory, or tribe moves to Washington with the intent to establish residency, he must notify the department and apply for a Washington falconry permit after ninety days of residency in Washington.

(2) Prior to being issued a Washington falconry permit, the falconer may continue to hold all raptors which he/she legally held prior to his/her move. The department will issue an appropriate class of permit based on the out-of-state permit and experience the applicant has possessed.

(3) Until the falconer has established official residency and a Washington permit has been issued, or until the permit expiration date occurs, the department will continue to recognize a valid permit issued from another state.

NEW SECTION

WAC 232-30-174 Falconers moving out of Washington. The department will continue to recognize as valid a Washington falconer's permit for a falconer who has moved out-of-state until he/she has established official residency in the new state.

NEW SECTION

WAC 232-30-175 Transport of raptors out-of-state.

Raptors possessed by Washington falconers may be transported out-of-state. If the raptor dies or is lost while out of the country, the falconer must report the loss to the department immediately upon return to Washington.

NEW SECTION

WAC 232-30-210 Take from the wild. (1) A falconer must report take of a raptor from the wild no later than ten days after the capture of the raptor.

(2) A falconer may take no more than two raptors from the wild each year to use in falconry.

(3) The number of wild-caught or captive-bred raptors transferred is not restricted, but a falconer may not exceed the possession limit of his/her class of falconry.

(4) A falconer may recapture a falconry raptor that he/she lost at any time. The recapture will not be considered a new take of a wild raptor.

(5) If a falconer transfers a raptor taken from the wild to another permittee in the same year in which it is captured, the

raptor will count as one of the raptors the falconer is allowed to take from the wild that year. It will not count as a capture by the recipient, though it will always be considered a wild raptor.

NEW SECTION

WAC 232-30-215 Capture of marked raptors. (1) A raptor wearing falconry equipment or a captive-bred raptor may be captured at any time even if the falconer capturing it is not authorized to possess the species. The falconer must report the capture of a raptor wearing equipment or a captive-bred raptor that is not his/her own to the department no more than five working days after the capture.

(2) The recaptured falconry raptor must be returned to the person who lost it if that person is authorized to possess it. If that person cannot possess the raptor or does not wish to possess it, it may be kept by the falconer who captured it without it counting as a wild take, but he/she must be authorized to possess it.

(3) Disposition of a raptor whose legal possession cannot be determined will be at the discretion of the department. While the falconer who captured the raptor holds it for return to the person who lost it, the raptor will not count against his/her possession limit.

(4) With the exception of a banded peregrine falcon, a falconer may take any raptor authorized for his/her possession from the wild if the raptor is banded with a Federal Bird Banding Laboratory aluminum band.

(5) If a falconer captures a peregrine falcon with a research band, such as a colored band with alphanumeric codes, or a research marker attached to it, it must be immediately released. If the falcon has a transmitter attached to it, the capturing falconer is authorized to possess the raptor up to thirty days to allow time to contact the researcher to determine if he/she wants to replace the transmitter or its batteries. If the researcher wants to do so, or to have the transmitter removed, the researcher or his or her designee may make the change or allow the capturing falconer to do so before the raptor is released. If the researcher does not want to keep the transmitter on the falcon, the raptor may be kept if it was captured in circumstances in which capture of wild peregrines is allowed.

(6) If a falconer captures any other species of raptor that has any band, research marker, or transmitter attached to it, the band numbers and all other relevant information must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263. If the raptor has a transmitter attached to it, the capturing falconer is authorized to possess the bird up to thirty days to allow time to contact the researcher to determine if he/she wants to replace the transmitter or its batteries. If the researcher wants to do so, or to have the transmitter removed, the researcher or his or her designee may make the change or allow the capturing falconer to do so before the raptor is released. If the researcher does not want to keep the transmitter on the raptor, the raptor may be kept if it was captured in circumstances in which capture of that species of wild raptor is allowed.

NEW SECTION

WAC 232-30-220 Designation as a wild raptor. Raptors removed from the wild for falconry are always considered wild taken raptors, no matter how long they are held in captivity or whether they are transferred to other permittees or permit types. For the purposes of the number of wild raptors a falconer may take in a year, a raptor is considered to be taken from the wild only by the person who originally captured it. This raptor will not count against that number for the subsequent falconers to whom it is legally transferred.

NEW SECTION

WAC 232-30-222 Take of nestling at nest site. (1) It is unlawful to remove an immature raptor from a nest unless one or more live nestling raptors remain in the nest.

(2) A person other than a permitted falconer may climb to a raptor nest and remove a nestling for the falconer, but only with the falconer present at the nest site.

(3) The falconer taking a raptor must be present at the capture site. The falconer is considered the person who removes the raptor from the wild even if a proxy climber, or other person, captures the raptor for the falconer. The falconer is responsible for reporting take of the raptor from the wild.

(4) If a falconer is not at the immediate location where a raptor is taken from the wild for him/her, the person who removes the raptor from the wild must be a general or master falconer, and must report take of the raptor. If that person then transfers the raptor to another falconer, the originating falconer must report the transaction no later than ten days after the take of the raptor. The raptor will count as one of the two wild raptors that the falconer is allowed to capture in any year. The raptor will not count as a raptor taken from the wild by the recipient. The falconer who takes the raptor from the wild must report the take even if he/she promptly transfers it to another falconer.

(5) If a falconer has a long-term or permanent physical impairment or disability that prevents him/her from attending the capture of a raptor, a general or master falconer may capture a raptor for that falconer. The disabled falconer is responsible for reporting take of the raptor from the wild, and the raptor will count against the take of wild raptors he/she is allowed to take in any year. It will not count against the annual wild take for the falconer who captured the raptor for the disabled falconer.

NEW SECTION

WAC 232-30-224 Raptors injured due to falconer trapping efforts. (1) There are two options for dealing with a raptor injured during trapping efforts. In either case, the falconer involved with the capture is responsible for the costs of care and rehabilitation of the raptor.

(2) The raptor may be possessed by the falconer and reported within ten days after capture of the raptor. The raptor will count against his/her possession limit.

(3) The raptor may be given directly to a veterinarian, a permitted wildlife rehabilitator, or an appropriate department representative or delegate. It will not count against the

allowed take or the number of raptors the falconer may possess.

NEW SECTION

WAC 232-30-230 Acquisition, transfer, release, loss, or banding of a raptor. (1) Acquisition, transfer, rebanding, microchipping, release, loss, banding, or death of a falconry raptor must be reported to the department within ten days.

(2) If a raptor possessed by a falconer is stolen, the falconer must report the theft to the department and to the U.S. Fish and Wildlife Service Regional Law Enforcement office within ten days of the theft of the raptor.

NEW SECTION

WAC 232-30-232 Acquiring a raptor for falconry from a permitted rehabilitator. A raptor of any age and of a species that can be lawfully possessed, may be acquired by a falconer directly from a rehabilitator or designee of WDFW. Transfer to the falconer is at the discretion of the department in consultation with the rehabilitator. It must be reported within ten days.

NEW SECTION

WAC 232-30-240 Flying a hybrid raptor in falconry. When flown free, a hybrid raptor must have at least two attached radio transmitters.

NEW SECTION

WAC 232-30-242 Releasing a falconry raptor to the wild permanently. (1) A species not native to Washington, or a hybrid of any kind, may not be permanently released to the wild intentionally.

(2) If the species a falconer wants to release is native to Washington and is captive-bred, it may not be released to the wild intentionally without permission from the department. The raptor may be hacked to the wild at an appropriate time of year and an appropriate location. If banded, the falconry band must be removed, and the falconer shall report the release.

(3) If the species a falconer wants to release is native to Washington and was taken from the wild, it may be released at an appropriate time of year and an appropriate location. If the raptor is banded with a cable-tie falconry band, the falconer must remove the band before releasing the raptor. The falconer shall report the release.

NEW SECTION

WAC 232-30-244 Transfer, selling, or trading raptors under a falconry permit. (1) A falconer or propagator may purchase, sell, or barter, or offer to sell, purchase, or barter captive-bred or hybrid raptors marked with seamless bands to other falconry permittees who are authorized to possess them.

(2) Wild taken raptors may not be purchased, sold, traded, or bartered. Exchanging raptors with other falconers is not considered to be barter or trade.

(3) It is unlawful to transfer a wild caught raptor to out-of-state recipients for one year from the date of capture.

(4) A raptor may be transferred to another permit type if the recipient of the raptor, which could be the same transferring falconer, possesses the necessary permits for the other activity.

(5) A wild-caught falconry raptor may be transferred to another permit type in less than two years with the exception of one year for a sharp-shinned hawk (*Accipiter striatus*), a Cooper's hawk (*Accipiter cooperii*), a merlin (*Falco columbarius*), or an American kestrel (*Falco sparverius*), if the raptor has been injured, and a veterinarian or permitted wildlife rehabilitator has determined that the raptor can no longer be flown for falconry. Report this transaction within ten days and provide a copy of the certification from the veterinarian or rehabilitator that the raptor is not useable in falconry to the department.

(6) A surviving spouse, executor, administrator, or other legal representative of a deceased falconry or raptor propagation permittee may transfer any raptor held by the permittee to another authorized permittee within ninety days of the death of the falconry permittee. After ninety days, disposition of a raptor held under the permit is at the discretion of the department.

NEW SECTION

WAC 232-30-250 Provisions for accidental take by falconers. (1) When a raptor being used in falconry accidentally takes any species of wildlife (quarry) for which the hunting season is not currently open, the falconer must release the quarry if it is not seriously injured. If the quarry has been seriously injured or killed, the falconer may not retain or possess the quarry, but the raptor may feed upon the quarry before leaving the site of the kill.

(2) If the accidentally killed quarry is a species identified on the Washington candidate species list (for endangered, threatened, or sensitive status) or is a federally or state endangered or threatened species, or specifically identified by the director, the falconer shall, before leaving the site of the kill, record upon a form provided by the department, or upon a facsimile, the falconer's name, falconry permit number, date, species and sex (if known) of the quarry, and exact location of the kill. The falconer shall submit the information to the department by April 1st following the close of the current hunting season or within ten days of the kill if not during a hunting season. A falconer must also report take of any federally threatened or endangered listed species to the U.S. Fish and Wildlife Service.

(3) Accidental kill by any falconer in any license year shall not exceed a total of five individuals of any combination of species designated under subsection (2) of this section. Following an accidental kill by any falconer of any species designated under subsection (2) of this section, the falconer shall cease hunting for the day.

(4) Falconers must ensure that their activities do not cause the take of federally or state listed threatened or endangered wildlife, for example, by avoiding flying a raptor in the vicinity of the listed species. Notwithstanding any other section of this rule, take of species designated as endangered,

threatened, or sensitive in Washington under WAC 232-12-011 or 232-12-014 is not permitted except by permit from the director.

(5) Violation of this section is an infraction, punishable under RCW 77.15.160.

NEW SECTION

WAC 232-30-260 Closed areas for raptor trapping and practicing falconry. (1) A falconry permit does not authorize a falconer to capture or release raptors or practice falconry on public lands where it is prohibited, on private property without permission from the landowner or custodian, or on tribal lands without permission. Falconry raptors may drift from the control of the falconer. It is the falconer's responsibility to receive permission to enter to retrieve a falconry raptor from public land where falconry is prohibited, or from private or tribal lands.

(2) Trapping raptors for falconry is not allowed in the Debay and Johnson Slough Unit, the Fir Island Farms Reserve Unit, or the Headquarters (Skagit) Unit in the western half of the Skagit Wildlife Area.

NEW SECTION

WAC 232-30-310 Banding or microchip tagging raptors used in falconry. (1) If a falconer takes a goshawk (*Accipiter gentilis*), Harris's hawk (*Parabuteo unicinctus*), peregrine falcon (*Falco peregrinus*), or gyrfalcon (*Falco rusticolus*) from the wild or acquires one from a rehabilitator, it must be banded with a permanent, nonreusable, numbered U.S. Fish and Wildlife Service leg band that the department will supply. If desired by the falconer, he/she may purchase and implant an ISO (International Organization for Standardization) compliant (134.2 kHz) microchip in the raptor in lieu of a band. The falconer must report the action and the band number and/or microchip information within ten days.

(2) A raptor bred in captivity must be banded with a seamless metal band or have an implanted ISO-compliant (134.2 kHz) microchip. If a seamless band is removed, or if it is lost, report it and request a replacement U.S. Fish and Wildlife Service nonreusable band from the U.S. Fish and Wildlife Service. The falconer must report the action and the band number and the microchip information within ten days.

(3) A seamless band does not need to be applied until a nestling has developed sufficiently for the band to remain in place.

(4) If the band must be removed or is lost from a raptor in possession, report the loss of the band within five days, and request a replacement U.S. Fish and Wildlife Service nonreusable band from the department. Report the rebanding immediately.

(5) It is unlawful to alter, deface, or counterfeit a band. A falconer may smooth any imperfect surface on the rear tab of a band on a raptor taken from the wild if that action does not affect the integrity of the band or the numbering on it.

(6) If health or injury problems are documented for a raptor in possession that is caused by the band, the department will provide an exemption to the requirement for that raptor. In that case, the falconer shall keep and possess a copy of the exemption paperwork with him/her when trans-

porting or flying the raptor. If the raptor is a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon, the band must be replaced with an ISO-compliant microchip purchased by the falconer.

(7) A raptor removed from the wild shall not be banded with a seamless numbered band.

NEW SECTION

WAC 232-30-410 Inspections. (1) Falconry, abatement, and propagation raptors, facilities, records, and equipment may be inspected in the presence of a falconry permittee during business hours, or reasonable time of the day, and on any day of the week by state, federal, or other authorized officials.

(2) If a falconer's facilities are not on property owned by the falconer, he/she must submit to the department a signed and dated statement showing that the property owner agrees that the falconry facilities and raptors may be inspected without advance notice, at any reasonable time of the day in the presence of the property owner.

(3) Inspecting authorities may not enter the facilities or disturb the raptors unless the falconer is present.

NEW SECTION

WAC 232-30-420 Facilities are required for possession of falconry or abatement raptors. (1) A resident falconer in Washington must maintain approved facilities for housing raptors used in recreational falconry or in abatement. Nonresident falconers must house falconry raptors in adequate temporary facilities.

(2) Raptor facilities shall be approved by the department before a new falconry permittee obtains a raptor.

(3) The U.S. Fish and Wildlife Service establishes standards and specifications for raptor propagation facilities.

(4) All raptors held under a falconry or abatement permit shall be maintained in humane and healthful conditions.

NEW SECTION

WAC 232-30-430 Falconry facilities on property not owned by falconry permittee. Falconry facilities may be on property owned by another person where a falconer resides, or at a different location.

NEW SECTION

WAC 232-30-440 Facilities and care requirements and guidelines. (1) For housing wild raptors indoors or outdoors, the facility must protect raptors from predators, the environment, and domestic animals. The facility must have a suitable perch for each raptor, at least one opening for sunlight, and must provide a healthy environment for raptors. Untethered raptors may be housed together if they are compatible with each other. Each raptor must have an area large enough to allow it to fly if it is untethered or, if tethered, to fully extend its wings or attempt to fly while tethered without damaging its feathers or contacting other raptors. Each raptor must have a pan of clean water available unless weather con-

ditions, the perch type used, or other factor makes access to a water pan unsafe for the raptor.

(2) An indoor facility must be large enough to allow for the care and feeding of raptors kept there. Acceptable indoor facilities include perch enclosures where raptors are tethered side by side. If raptors in an indoor facility are not tethered, all walls that are not solid must be protected on the inside. Suitable materials may include vertical bars spaced narrower than the width of the body of the smallest raptor housed in the enclosure. However, heavy-duty netting or other such materials may be used to cover the walls or roof of the enclosure.

(3) Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and maintain healthy feathers. A falconry raptor or raptors may be kept inside a residence if a suitable perch or perches are provided. If inside a home, windows or other aspects of the structure do not need modification. Raptors kept in a home must be tethered when they are not being moved into or out of the location in which they are kept, exercised, worked with, or trained.

(4) An outdoor facility may be made of wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material. The facility must have at least a covered perch to protect a raptor held in it.

(5) New and different types of housing facilities and/or husbandry practices may be used if they satisfy the basic requirements above.

(6) Falconry raptors may be kept outside in the open if they are under watch, at any location, or by a designated individual, for example in a weathering yard.

(7) The department must be informed within five business days if a permittee moves his/her falconry facilities to another location.

NEW SECTION

WAC 232-30-450 Required equipment. A falconer must have appropriate jesses or the materials and equipment to make them, leash and swivel, bath container, and appropriate scales or balances for weighing raptor(s) in possession.

NEW SECTION

WAC 232-30-460 Facilities for a raptor when in transport, using it for hunting, or are away from facilities, and temporary housing. (1) A raptor must have a suitable perch and protection from extreme temperatures, wind, and excessive disturbance. A "giant hood" or similar container is an example of an acceptable means for transporting and/or housing a raptor when away from a falconry facility.

(2) A raptor may be temporarily housed outside of a falconer's permanent facilities when a falconer is not transporting it or using it for hunting for no more than one hundred twenty consecutive calendar days if the raptor has suitable facilities as described in WAC 232-30-440.

NEW SECTION

WAC 232-30-470 Care of falconry raptors by another person. (1) Another falconry permittee may care for a raptor or raptors for a falconry permittee at the permittee's

facilities or at the caregiver's facilities for up to one hundred twenty consecutive calendar days. The caregiver falconer must have a signed and dated statement from the permittee that authorizes the temporary possession of the raptor, plus a copy of FWS Form 3-186A that shows that the permittee is the possessor of the raptor(s). The statement must include information about the time period for which the caregiver will keep the raptor(s), and about what the caregiver is allowed to do with the raptor(s). The raptor(s) will remain on the permittee's falconry permit, and will not be counted against the possession limit of the caregiver falconer. If the person caring for the raptor(s) holds the appropriate level falconry permit, he/she may fly the raptor(s) including hunting.

(2) Another person who does not have a falconry permit may care for falconry raptor(s) possessed at the permittee's facilities for up to forty-five consecutive calendar days. The raptor(s) will remain on the permittee's falconry permit. The raptor(s) must remain in the authorized facilities. The person(s) caring for the raptor(s) may not fly them for any reason.

(3) The care of the falconer's raptor(s) may be extended by written request to the department in extenuating circumstances, such as illness, military service, or for a family emergency.

NEW SECTION

WAC 232-30-510 Captive propagation of raptors. (1)

A Washington falconry permit is required for anyone in the state to conduct raptor propagation with permitted native North American raptors. The director will cease to issue a specific raptor propagation permit for captive breeding and rearing of raptors at such time as this regulation becomes effective. Thereafter, the U.S. Fish and Wildlife Service will have the sole responsibility for issuing raptor propagation permits in Washington.

(2) The department may promulgate state regulations for the management of captive raptor propagation in addition to federal regulations for raptor propagation.

(3) Raptors possessed under a falconry permit may be used for captive propagation if the propagator has the required U.S. Fish and Wildlife Service propagation permit. It is not necessary to transfer a raptor from a state falconry permit to a U.S. Fish and Wildlife Service propagation permit if the raptor is used for fewer than eight months in a year for captive propagation. The raptor must be transferred by reporting that action if the raptor is permanently transferred for use in propagation. The raptor must then be banded as required by state and federal regulations. The offspring of captive raptors are considered as captive-bred.

(4) Raptors held under falconry and propagation permits shall be maintained in humane and healthful conditions.

(5) Wild-caught raptors taken in Washington may be used for propagation purposes, progeny shall not be sold or traded.

(6) A wild-caught falconry raptor may be transferred to a raptor propagation permit after the raptor has been used in falconry for at least two years, with the exception that transfer of a sharp-shinned hawk (*Accipiter striatus*), a Cooper's hawk (*Accipiter cooperii*), a merlin (*Falco columbarius*), or

an American kestrel (*Falco sparverius*) is allowed after one year. This transfer shall be reported within ten days.

NEW SECTION

WAC 232-30-520 Hacking of falconry raptors. (1)

Hacking is an approved method for falconers and propagators to condition raptors for falconry, rehabilitation, for return to the wild, or in preparation for sale of a captive-bred raptor. A general falconer or a master falconer may hack falconry raptors.

(2) Any raptor a falconer intends to hack with intent to continue to possess for recreational falconry counts against his/her permitted possession limit.

(3) Any hybrid a falconer hacks must have two attached functioning radio transmitters during hacking.

(4) A falconer may not hack a falconry raptor near a nesting area of a state or federally threatened or endangered animal species or in any other location where the raptor is likely to harm a state or federally listed threatened or endangered animal species that might be disturbed or taken by a falconry raptor being hacked.

NEW SECTION

WAC 232-30-530 Abatement activities with captive raptors. (1)

There is no specific Washington state abatement permit. The U.S. Fish and Wildlife Service has the sole responsibility for issuing special purpose abatement permits in Washington. An abatement operator, or subpermittees thereof, must possess a valid falconry permit from Washington, another state, tribe, or country. A falconry permit is not required for a person who is not engaged in flying a raptor, such as caring for, handling, or otherwise assisting the operator.

(2) An abatement operator, or subpermittees thereof, and raptor handlers using captive bred origin raptors may receive payment for providing abatement services if they are listed in a U.S. Fish and Wildlife Service Abatement Permit. Abatement activities shall comply with any federal depredation order/permit and take permits. The abatement operator may be required to possess a Washington permit issued by the director for the take of wildlife (RCW 77.12.240 and 77.36.030). It is the responsibility of the abatement operator to possess all other relevant state and local permits.

(3) A master falconer may independently conduct abatement activities. A general or apprentice falconer, may conduct abatement activities only as a subpermittee of the holder of the federal abatement permit. A raptor handler who is not engaged in active flying of the raptor is not required to possess a falconry permit.

(4) Wildlife taken under abatement and depredation permits may be stored and/or used as food for raptors.

NEW SECTION

WAC 232-30-540 Use of falconry raptors in education programs. (1)

A general or master falconer may use a raptor in education programs presented in public venues. A permitted falconer does not need a state scientific collection permit or a federal special purpose possession for education

permit for public display to conduct education activities using a falconry raptor held under a state, tribal, or territorial falconry permit.

(2) An apprentice falconer may present education programs if under the supervision of a general or master falconer.

(3) A raptor used by a falconer for education must be one primarily used for falconry. A fee for presentation of an education program may be charged, but the fee may not exceed the amount required to recoup the falconer's costs.

(4) In presenting conservation education programs, a falconer must provide information about the biology, ecological roles, and needs of raptors or other migratory birds, although not all of these topics must be addressed in every presentation.

NEW SECTION

WAC 232-30-550 Other uses of falconry raptors. (1) Falconry raptors may be used in photography, filming, or other such uses to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds, although a falconer may not be paid for doing so.

(2) A falconer may not use falconry raptors to make movies, commercials, or in other commercial ventures that are not related to falconry.

(3) Falconry raptors may not be used for commercial entertainment; for advertisements; as a representation of any business, company, corporation, or other organization; or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs, with the following exceptions:

(a) A falconry raptor may be used to promote or endorse a nonprofit falconry organization or association.

(b) A falconry raptor may be used to promote or endorse products or endeavors related to falconry including, but not limited to, items such as hoods, telemetry equipment, giant hoods, perches, materials for raptor facilities, falconry training and education materials, and scientific research and publication.

NEW SECTION

WAC 232-30-560 Falconers assisting in rehabilitation of raptors to prepare them for release. (1) A general or master falconer may assist a state and federally permitted migratory bird rehabilitator or the department to treat and condition raptors in preparation for their release to the wild. The rehabilitator must provide the falconer with a letter, note, or form that identifies the raptor and explains that the falconer is assisting in its rehabilitation. A falconer may keep a raptor undergoing rehabilitation at an approved raptor facility. The facility does not need to meet rehabilitation facility standards. A falconer may assist the department by trapping raptors for rehabilitation, or for wildlife control for release back to the wild.

(2) A raptor held for rehabilitation does not need to be added to a falconry permit. It will remain under the rehabilitator's permit.

(3) Any raptor that cannot be permanently released to the wild must be returned to the rehabilitator or the department within the one hundred eighty-day time frame in which the rehabilitator is authorized to possess the raptor, unless the department authorizes the raptor's detention for longer than one hundred eighty days, or unless the rehabilitator or department transfers the raptor to the falconer to possess or hold under his/her falconry permit.

(4) Before releasing a threatened or endangered migratory raptor, it must comply with any requirements for the release from the department and the U.S. Fish and Wildlife Service.

NEW SECTION

WAC 232-30-570 Feathers molted by falconry raptors. (1) A falconer may possess feathers for each species of raptor authorized to be possessed for as long as the falconer has a valid falconry permit. Falconers may receive feathers of any species authorized to be possessed from other permitted falconers, wildlife rehabilitators, propagators, or other authorized entities in the United States. Feathers may be exchanged with those entities. Raptor feathers and all feathers of other state and federally protected raptors shall not be bought, sold, bartered, or otherwise used for commercial purposes.

(2) A falconer may donate feathers from a falconry raptor, except golden eagle feathers, to any person or institution with a valid permit to possess them, or to anyone exempt from a permit requirement for feather possession.

(3) Except for primary or secondary flight feathers or retrices from a golden eagle (*Aquila chrysaetos*), the falconer is not required to gather feathers that are molted or otherwise lost by a falconry raptor. A falconer may leave the feathers where they fall, store them, or destroy them.

(4) A falconer must collect molted flight feathers and retrices from a golden eagle. If the falconer chooses not to keep them for imping, golden eagle (*Aquila chrysaetos*) feathers must be sent to the National Eagle Repository.

(5) Send all other feathers (including body feathers) collected from any falconry golden eagle (*Aquila chrysaetos*), that are not needed for imping, to the National Eagle Repository.

(6) Any feathers of falconry raptors in the possession of a falconer, except golden eagle (*Aquila chrysaetos*) feathers, whose permit is expired, suspended, or revoked must be donated to any person or any institution exempt from the permit requirement or authorized by permit to acquire and possess the feathers. If the feathers are not donated, they must be burned, buried, or otherwise destroyed.

NEW SECTION

WAC 232-30-580 Disposition of carcasses of falconry raptors that die. (1) The entire body of a golden eagle (*Aquila chrysaetos*), including all feathers, talons, and other parts, must be sent to the National Eagle Repository.

(2) The body or feathers of any other species of raptor may be donated to any person or institution exempt or authorized by permit to acquire and possess such parts or feathers.

(3) The body of any raptor, except that of a golden eagle (*Aquila chrysaetos*), may be kept so that the feathers are available for imping, or that the body may be mounted by a taxidermist. The mount may be displayed in giving education programs. If the raptor was banded, the band must be left on the leg. If the raptor has an implanted microchip, the microchip must be left in place.

(4) If the raptor body or feathers are not donated or kept with the falconer, it must be burned, buried, or otherwise destroyed within ten days of the death of the raptor or after final necropsy by a veterinarian. Carcasses of euthanized raptors could pose a risk of secondary poisoning to scavenging wildlife. A falconer must take appropriate precautions to avoid such poisonings.

(5) If the raptor body and its parts are retained by the falconer, the body and its parts may be possessed for as long as the falconer has a valid falconry permit. Raptor bodies including all parts, and other state and federally protected birds, shall not be bought, sold, bartered, or otherwise used for commercial purposes.

WSR 10-18-021

PERMANENT RULES

ENVIRONMENTAL HEARINGS OFFICE

(Pollution Control Hearings Board)

(Shorelines Hearings Board)

(Environmental and Land Use Hearings Board)

(Forest Practices Appeals Board)

(Hydraulics Appeals Board)

[Filed August 23, 2010, 3:08 p.m., effective September 23, 2010]

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

Purpose: The purpose of these changes is to comply with 2010 Washington laws, chapters 7, 84, 130, 210 and 285. 2010 Washington laws, chapter 210 eliminates the hydraulics appeals board (HAB) and the forest practices appeals board (FPAB), and transfers the administrative review functions of these boards to the pollution control hearings board (PCHB). 2010 Washington laws, chapter 7 eliminates the environmental and land use hearings board (ELUHB). To comply with these statutory changes, all of the HAB and ELUHB procedural rules are proposed for repeal. All of the FPAB rules, with the exception of WAC 223-08-087, the FPAB rule on temporary suspensions or discontinuances, are proposed for repeal. WAC 223-08-087 will remain in effect, and will be used by the PCHB when hearing forest practices appeals, until such time as a superseding temporary suspension or discontinuance rule is adopted for forest practices appeals before the PCHB. See 2010 Washington laws, chapter 210, section 42(2).

2010 Washington laws, chapter 210 also changes the time frames for filing appeals from certain actions of various agencies, therefore necessitating changes in the procedural rules of the PCHB and Shorelines hearings board (SHB) to conform with these statutory changes.

2010 Washington laws, chapter 210 also directs that appeals of listed decisions made by the department of natural resources, the department of fish and wildlife, the department

of ecology, the commissioner of public lands, and decisions made by state agencies that are authorized public entities under RCW 79.100.010 pertaining to derelict vessels, be filed with and reviewed by the PCHB.

Additional changes include making the PCHB and SHB rules consistent with 2010 Washington laws, chapter 210 pertaining to mediations, and adding a requirement regarding submissions of subpoenas for signature to the board's presiding officer at least ten days before the hearing.

Reasons supporting proposal: All of these changes are necessary to implement 2010 Washington laws, chapters 7, 84, 130, 210, and 285, with the exception of the addition of the ten day requirement for submission of subpoenas. The addition of a time period for submission of subpoenas for signature prior to the hearing will facilitate the return of subpoenas to the requesting party sufficiently in advance of the hearing to allow time for the requesting party to serve the subpoena.

Citation of Existing Rules Affected by this Order: Repealing FPAB procedural rules chapters 223-08, 223-09 and 223-12 WAC, with the exception of WAC 223-08-087; also repealing HAB procedural rules chapter 259-04 WAC, and the ELUHB procedural rules chapter 199-08 WAC; and amending PCHB procedural rules WAC 371-08-315, 371-08-335, 371-08-395, 371-08-400, 371-08-555 and SHB procedural rules WAC 461-08-305, 461-08-340, 461-08-345, 461-08-415, 461-08-420, and 461-08-570.

Statutory Authority for Adoption: RCW 43.21B.170, 90.58.175, 2010 Washington laws, chapters 84, 130, 210 and 285.

Adopted under notice filed as WSR 10-13-173 on June 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 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 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: August 23, 2010.

Andrea McNamara Doyle
Director of the
Environmental Hearings Office
Chair of the Pollution
Control Hearings Board
and Shorelines Hearings Board

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 199-08-300	Purpose of this chapter and applicability of the board's rules of practice to the civil rules of procedure and the rules of evidence.	WAC 199-08-400	Certification of permit applications.
WAC 199-08-305	Definitions.	WAC 199-08-425	Intervention.
WAC 199-08-310	Computation of time.	WAC 199-08-430	Joinder of parties.
WAC 199-08-315	Board membership, function and jurisdiction.	WAC 199-08-435	Request for initial hearing, jurisdictional motions.
WAC 199-08-320	Office hours, telephone number, telefacsimile number and address of the board.	WAC 199-08-440	Scheduling of initial hearing and motions.
WAC 199-08-325	Public information about practice before the board and public records.	WAC 199-08-445	Initial hearing.
WAC 199-08-330	Types of petitions before the board.	WAC 199-08-450	Case conferences.
WAC 199-08-335	Where to file a petition for review and number of copies.	WAC 199-08-455	Stays.
WAC 199-08-340	Contents of the petition for review.	WAC 199-08-460	Discovery.
WAC 199-08-345	Correction or amendment of notice.	WAC 199-08-465	Motions.
WAC 199-08-350	Persons who may appear before the board.	WAC 199-08-470	Settlement and mediation agreements.
WAC 199-08-355	Appearance by representative.	WAC 199-08-475	Use of telephone conferences, motion hearings and hearings.
WAC 199-08-360	Withdrawal or substitution of representatives.	WAC 199-08-480	Postponements and continuances of hearings.
WAC 199-08-365	Conduct before the board by representatives.	WAC 199-08-485	Dismissal, default or withdrawal of appeal.
WAC 199-08-370	Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.	WAC 199-08-490	Hearing briefs.
WAC 199-08-375	Presiding officer duties and powers.	WAC 199-08-495	Procedures for hearings on the merits.
WAC 199-08-380	Mediation.	WAC 199-08-500	Scope and standard of review.
WAC 199-08-385	Subpoenas.	WAC 199-08-505	Provision of interpreters and of reasonable accommodations to individuals with special needs.
WAC 199-08-390	Dismissal of petitions for review on jurisdictional grounds.	WAC 199-08-510	Rules of evidence—Admissibility criteria.
WAC 199-08-395	Answers to petitions for review.	WAC 199-08-515	Rules of evidence—Official notice—Matters of law.
		WAC 199-08-520	Rules of evidence—Official notice—Material facts.
		WAC 199-08-525	Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.
		WAC 199-08-540	Contents of the record.
		WAC 199-08-545	Preparation of transcripts.
		WAC 199-08-550	Preparation of findings, conclusions and orders.
		WAC 199-08-555	Final decisions and orders.

WAC 199-08-565	Petitions for reconsideration.	WAC 223-08-085	Commencing an appeal— Types and time limits.
WAC 199-08-570	Time for filing petitions for review to superior court and court of appeals.	WAC 223-08-090	Commencing an appeal— Jurisdiction.
WAC 199-08-580	Certification of record.	WAC 223-08-095	Commencing an appeal— Amendment of notice.
<u>REPEALER</u>		WAC 223-08-097	Intervention.
The following chapter of the Washington Administrative Code is repealed:		WAC 223-08-100	Prehearing conferences.
WAC 223-08-001	Purpose and applicability.	WAC 223-08-107	Prehearing procedures— Telephone.
WAC 223-08-002	Commencement of adjudica- tive proceedings.	WAC 223-08-148	Procedures—Motions.
WAC 223-08-005	Background information.	WAC 223-08-160	Hearing—Notice of.
WAC 223-08-010	Board administration and address of the board.	WAC 223-08-162	Hearing—Primary and sec- ondary setting.
WAC 223-08-020	Board administration—Quo- rum.	WAC 223-08-165	Hearing—Continuance.
WAC 223-08-030	Board administration—Pro- cedures applicable.	WAC 223-08-171	Hearing—Dismissal or default.
WAC 223-08-035	Board administration—Defi- nitions.	WAC 223-08-175	Hearing—Procedures at.
WAC 223-08-037	Board administration—Ser- vice of documents on repre- sentatives.	WAC 223-08-177	Hearing—Standard and scope of review.
WAC 223-08-040	Board administration—Pre- siding officer, powers.	WAC 223-08-180	Hearing—Additional evi- dence.
WAC 223-08-045	Board administration—Com- putation of time.	WAC 223-08-185	Hearing—Rules of evidence.
WAC 223-08-050	Appearance and practice— Persons who may appear.	WAC 223-08-190	Hearing—Admission of evi- dence and objections.
WAC 223-08-055	Appearance and practice— Notice of appearance.	WAC 223-08-195	Hearing—Excerpts from documentary evidence.
WAC 223-08-060	Appearance and practice— No formal admission.	WAC 223-08-200	Hearing—Official notice of law.
WAC 223-08-065	Appearance and practice— Withdrawal.	WAC 223-08-205	Hearing—Official notice of fact.
WAC 223-08-070	Appearance and practice— Conduct.	WAC 223-08-210	Hearing—Basis for finding of fact.
WAC 223-08-072	Appearance and practice— Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.	WAC 223-08-215	Hearing—Record.
WAC 223-08-075	Commencing an appeal— Filing and service.	WAC 223-08-220	Hearing—Transcripts.
WAC 223-08-080	Commencing an appeal— Forms.	WAC 223-08-250	Decision—Final decision.
		WAC 223-08-252	Decision—Preparation of findings, conclusions and orders.
		WAC 223-08-255	Petition for reconsideration.
		WAC 223-08-257	Appeals to the courts—Certi- fication of record.
		WAC 223-08-260	Appeal—Superior court peti- tion.
		WAC 223-08-265	Appeal—Certification of record.

WAC 223-08-270 Declaratory ruling—Petition.

WAC 259-04-070 Authority.

WAC 223-08-275 Rule making—Petition.

Reviser's note: The above reference to chapter should be sections.

AMENDATORY SECTION (Amending WSR 04-03-001, filed 1/7/04, effective 2/7/04)

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 223-09-001 Statement of exemption.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 223-12-010 Purpose.
 WAC 223-12-020 Definitions.
 WAC 223-12-030 Organization and operation of forest practices appeals board.
 WAC 223-12-040 Public records available.
 WAC 223-12-050 Public records officer.
 WAC 223-12-060 Office hours.
 WAC 223-12-070 Request for public records.
 WAC 223-12-080 Copying.
 WAC 223-12-090 Exemptions.
 WAC 223-12-100 Review of denials of public records request.
 WAC 223-12-110 Protection of public records.
 WAC 223-12-120 Records index.
 WAC 223-12-130 Communication with the appeals board.
 WAC 223-12-140 Adoption of form.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 259-04-010 Membership—Function and jurisdiction of the hydraulic appeals board.
 WAC 259-04-020 Board administration—Office of the board.
 WAC 259-04-030 Board administration—Meeting of the board.
 WAC 259-04-040 Board administration.
 WAC 259-04-050 Board administration—Communications with the board.
 WAC 259-04-060 Procedures applicable.

WAC 371-08-315 Membership, function and jurisdiction. (1) **Members.** The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals from the decisions and orders of the department of agriculture pursuant to chapters 90.48 and 90.64 RCW, the department of ecology, from the decisions of air pollution control authorities established pursuant to chapter 70.94 RCW, ~~(and)~~ from the decisions of local health departments, when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.-110(=), the decisions of the department of natural resources, the department of fish and wildlife, and the department of ecology that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7); forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180; decisions of the department of fish and wildlife to issue, deny, condition or modify a hydraulic project approval permit under chapter 77.55 RCW; decisions of the department of natural resources that are reviewable under RCW 78.44.270 and 78.44.380, and decisions of a state agency that is an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.

(a) Civil penalties imposed pursuant to RCW 18.104.-155, 70.94.431, 70.105.080, 70.105.095, 70.107.050, ~~76.09.-170, section 10, chapter 130, Laws of 2010, section 11, chapter 130, Laws of 2010, RCW 77.55.291, 78.44.250, section 1, chapter 84, Laws of 2010, RCW 86.16.081, 88.46.090, 90.03.600, 90.48.144, 90.56.310, 90.56.320, 90.56.330, 90.58.560 and chapter 90.64 RCW.~~

(b) Orders issued pursuant to RCW 18.104.043, 18.104.-060, 18.104.065, 43.27A.190, 70.94.211, 70.94.332, 70.105.-095, 70.107.060, 88.46.070, 90.14.130, 90.14.190, 90.48.120 and chapter 90.64 RCW.

(c) The issuance, modification, termination or denial of any permit certificate or license by the department of ecology or any air pollution control authority.

(d) The granting, denial, revocation, or suspension of a water right examiner certificate issued by the department under chapter 285, Laws of 2010.

(e) Decisions by the department disapproving a comprehensive solid waste management plan or any amendments to that plan that are appealed by the submitting entity pursuant to RCW 70.95.094.

(f) Decisions of local health departments regarding the grant or denial of solid waste permits or of biosolid permits pursuant to chapter 70.95 RCW.

~~((e))~~ (g) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.

~~((f))~~ (h) Any other decision by the department of ecology, the administrator of marine safety or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(3) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-335 Filing a timely appeal with the board. (1) An appeal before the board is initiated by filing a notice of appeal with the board at the environmental hearings office and by serving a copy of the appeal notice on the agency whose decision is being appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished.

(2) The notice of appeal shall be filed with the board within thirty days of the date of receipt of the order or decision unless otherwise provided by law. The board's rule governing the computation of time (WAC 371-08-310) shall determine how the thirty-day appeal period is calculated. The "date of receipt" of an order or decision means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(3) An appeal may be filed with the board by personal delivery, commercial delivery, facsimile, or first-class, registered or certified mail. An appeal is filed with the board on the date the board actually receives the notice of the appeal, not the date that the notice is mailed. Upon receiving the notice of appeal, the board will acknowledge receipt. The date stamped on the appeal notice shall be prima facie evidence of the filing date. The board may thereafter require that additional copies be filed.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-395 Mediation. ~~((The board may on occasion recommend that the parties to an appeal engage in mediation. One or more parties may also recommend to the other parties or the presiding officer that a mediation occur. Subject to availability, an administrative appeals judge from the environmental hearings office may serve as the mediator for the board. In the event that the mediation proves unsuccessful and the appeal proceeds to hearing, any administra-~~

~~five appeals judge who served as a mediator will neither preside over the appeal hearing nor have any contact with the board members regarding the appeal other than to inform the board members that the mediation did not result in a settlement.))~~ In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the environmental hearings boards must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-400 Subpoenas. (1) **Issuance.** Subpoenas may be issued by any member of the board, the presiding officer assigned to the case or an attorney of record, as provided in the Administrative Procedure Act. Each subpoena shall be subscribed with the signature of the issuing person. Parties desiring subpoenas to be signed by the presiding officer or a board member shall make a showing of general relevance and reasonable scope of the testimony or evidence sought, shall prepare the subpoenas for issuance, shall send them to the board's office for signature at least ten days before the hearing, and, upon return, shall make arrangements for service.

(2) **Form.** Every subpoena shall name the pollution control hearings board and the title of the proceedings, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under that person's control at a specified time and place.

(3) **Service.** Service of subpoenas to a witness who is not a party to the case shall be made by personally serving a copy of the subpoena to such person, in accordance with civil rule 45, and tendering on demand, where entitled to make such a demand, the fees for one day's attendance and the mileage allowed by law. All costs shall be paid by the party seeking the attendance of the witness.

(4) **Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgment of service with the board or presiding officer of the case. Failure to make proof of service does not affect the validity of the service.

(5) **Quashing.** Upon motion made promptly (at or before the time specified in the subpoena for compliance) by the person subpoenaed and upon notice to the party for whom the subpoena was issued, the presiding officer may:

(a) Quash; or

(b) Modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or

(c) Condition denial of the motion upon just and reasonable conditions.

(6) **Geographical scope.** Attendance of witnesses and production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

AMENDATORY SECTION (Amending WSR 06-07-088, filed 3/15/06, effective 4/15/06)

WAC 371-08-555 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within thirty days ~~((of))~~ from the date of ~~((receipt))~~ service of the final order or decision. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Agency" means any state governmental entity.
 (2) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in chapter 34.05 RCW. The terms "appeal," "adjudicative proceeding" and "case" are used interchangeably in this chapter.
 (3) "Board" means the shorelines hearings board, a quasi-judicial body created pursuant to chapter 90.58 RCW and described in WAC 461-08-315.

(4) "Date of ~~((filing))~~ as used in this chapter and RCW 90.58.140(6) has different meanings depending upon the type of local government decision that is being appealed.

~~((a))~~ "Date of filing" of a local government's approval or denial of a substantial development permit, or local government's denial of a variance or conditional use permit, is the date that the department actually receives a completed filing.

~~((b))~~ "Date of filing" of a local government's approval of a conditional use permit or variance is the date that the department transmits its final decision or order to local government.

~~((c))~~ For substantial development permits filed simultaneously with approvals of conditional use permits or variances, the "date of filing" is the date that the department transmits its final decision or order on the variance or conditional use permit to local government)) receipt" means:

(a) Five business days after the date of mailing; or
 (b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board during regular office hours. Any document filed with

the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties. Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.

(7) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or water subject to chapter 90.58 RCW.

(8) "Party" means:

(a) A person to whom any local government or agency decision is specifically directed; or

(b) A person named as a party to the appeal, or allowed to intervene or joined as a party by the board.

(9) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(10) "Petition for review" is a document that when properly filed with the board initiates an adjudicative proceeding before the board.

(11) "Presiding officer" means any member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or the vice-chairperson.

(12) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Facsimile transmission with mailing or submission to a commercial delivery service of copies on the same day. Service by facsimile is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to a delivery service of the copies.

(d) Commercial delivery service. Service by commercial delivery service is regarded as complete upon delivery to the delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-340 Where to file a petition for review and number of copies. (1) An adjudicative proceeding before the board is initiated by filing a petition for review with the board at the environmental hearings office. The board shall acknowledge filing of the petition for review by a stamp and the board's stamp on the petition is prima facie evidence of the date of filing. The board may thereafter require that additional copies be filed.

(2) **Deadlines for filing a petition for review.** Different deadlines for filing a petition for review apply depending

upon the type of shoreline decision or government action ~~((being appealed))~~ taken, and whether local government or the department makes the final decision.

(a) ~~((A petition for review by))~~ Any person aggrieved by ~~((the))~~ a local government's decision granting, denying or rescinding ~~((of a permit on shorelines of the state must be filed))~~ a shoreline substantial development, or its denial of a shoreline conditional use or variance must file a petition for review with the board within twenty-one days of the ~~((the))~~ date of ~~((filing" as defined in WAC 461-08-305))~~ receipt by the applicant of a written notice from the department that the department has received the local government's shoreline decision.

(b) ~~((A petition for review by))~~ If local government approves a shoreline conditional use or variance permit, that action will be reviewed by the department, which will make the final decision on the conditional use or variance permit. Any person aggrieved by ~~((a penalty assessment must be filed))~~ the department's decision to approve, approve with conditions or deny a conditional use or variance permit must file a petition for review with the board within ~~((thirty))~~ twenty-one days of the date ~~((the penalty notice is received))~~ of receipt by the local government or applicant of the department's decision.

(c) ~~((A petition for review by any person aggrieved by the department's decision to approve, reject or modify a proposed or final shoreline master program, or program amendment, by a local government that is not planning under the Growth Management Act, RCW 36.70A.300,))~~ When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of a shoreline conditional use permit and/or variance, a petition for review of the shoreline substantial development decision must be filed ~~((with the board within thirty))~~ no later than twenty-one days ~~((of))~~ from the date of ~~((the department's written notice of its decision to the local government))~~ receipt by the local government or applicant of the department's decision on the conditional use or variance permit.

(d) A petition for review by ~~((any))~~ a person ~~((aggrieved by any rules, regulations or guidelines adopted or approved by the department pursuant to chapter 90.58 RCW))~~ who has incurred a penalty assessment must be filed with the board within thirty days of the date of ~~((adoption or approval))~~ receipt of the penalty.

(e) A petition for review by any person aggrieved by the department's final decision to approve, or reject a proposed master program, or master program amendment, by a local government that is not planning under the Growth Management Act, RCW 36.70A.040, must be filed with the board within thirty days of the date of the department's written notice to the local government of its final decision.

(f) A petition for review of any rules, regulations, or guidelines adopted or approved by the department pursuant to chapter 90.58 RCW must be filed with the board within thirty days of the date of adoption or approval.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-345 Deadline for filing petition for review of permitting decisions by the department or attorney general. The department or the attorney general may, pursuant to RCW 90.58.180(2), obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition for review with the board and the appropriate local government within twenty-one days from the date of receipt of the final decision ~~((was filed))~~ as provided in RCW 90.58.140(6).

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-415 Mediation. ~~((The board may, on occasion, recommend that the parties to an appeal engage in mediation. One or more parties may also recommend to the other parties or the presiding officer that a mediation occur. Subject to availability, an administrative appeals judge from the environmental hearings office may serve as the mediator for the board. In the event that the mediation proves unsuccessful and the case proceeds to hearing, any administrative appeals judge who served as a mediator will neither preside over the hearing nor have any contact with the board members regarding the case other than to inform them that the mediation did not result in a settlement.))~~ In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the pollution control hearings board or shoreline hearings board must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-420 Subpoenas. (1) Issuance. Subpoenas may be issued by any member of the board, the presiding officer assigned to the case or by the attorney of record, as provided in the Administrative Procedure Act. Each subpoena shall be subscribed with the signature of the issuing person. Parties desiring subpoenas to be signed by the presiding officer or a board member shall make a showing of general relevance and reasonable scope of the testimony or evidence sought, shall prepare the subpoenas for issuance, shall send them to the board's office for signature at least ten days before the hearing, and, upon return, shall make arrangements for service.

(2) **Form.** Every subpoena shall name the shorelines hearings board and the title of the proceedings, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under that person's control at a specified time and place.

(3) **Service.** Service of subpoenas to a witness who is not party to the case shall be made by personally serving a copy of the subpoena to such person, in accordance with civil rule 45, and tendering on demand, where entitled to make such a demand, the fees for one day's attendance and the mileage allowed by law. All costs shall be paid by the party seeking the attendance of the witness.

(4) **Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgment of service with the board or presiding officer of the case. Failure to make proof of service does not affect the validity of the service.

(5) **Quashing.** Upon motion made promptly (at or before the time specified in the subpoena for compliance) by the person subpoenaed and upon notice to the party for whom the subpoena was issued, the board or its presiding officer may:

- (a) Quash; or
- (b) Modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or
- (c) Condition denial of the motion upon just and reasonable conditions.

(6) **Geographical scope.** Attendance of witnesses and production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

AMENDATORY SECTION (Amending WSR 97-19-063, filed 9/15/97, effective 10/16/97)

WAC 461-08-570 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within thirty days of the date that the board (~~issues~~) erves its final order or decision. The petitioner shall file a copy of the petition for review to superior court with the board and all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

**WSR 10-18-024
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed August 24, 2010, 10:41 a.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: This rule making updates a number of classifications in the workers' compensation program. The changes correct text and reference errors, update language which has changed as a result of technology, and make classification instructions and/or definitions clearer.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17A-0108, 296-17A-0502, 296-17A-0510, 296-17A-1007, 296-17A-1501, 296-17A-3403, 296-

17A-4904, 296-17A-5308, 296-17A-6303, and 296-17A-7205.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020(1).

Adopted under notice filed as WSR 10-13-139 on June 22, 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 10, Repealed 0.

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

Date Adopted: August 24, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0108 Classification 0108.

0108-00 Ditches and canals, N.O.C.

Applies to contractors engaged in the construction of ditches and canals not covered by another classification (N.O.C.). A ditch or canal consists of a long trench dug in the ground that will remain uncovered to serve as an artificial waterway or artificially improved river such as for irrigation, drainage, or a boundary line. Work contemplated by this classification includes digging of main irrigation canals or drainage ditches and all laterals extending from the canal or ditch, installation of pipe, making connections as needed, and filling or backfilling as needed. Equipment used by contractors subject to this classification includes a variety of machinery and equipment such as power shovels, backhoes, bulldozers, dump trucks, and mechanical or hand tool trench diggers.

This classification excludes asphalt surfacing/resurfacing which is to be reported separately in classification 0210 or 0212, and concrete construction which is to be reported separately in the applicable concrete construction classification(s).

0108-01 Sewer construction; septic tank installation

Applies to contractors engaged in the construction or repair of new or existing sewer lines and systems. This includes, but is not limited to, sewers, cesspools, drainpools, storm drains, and septic tanks including the drainfield construction. Work contemplated by this classification includes the installation and maintenance of all types of storm, sanitary or sewage lines and systems. Installation of these types of pipelines and systems occur entirely, or in part, at a depth greater than 3'. This classification includes such activities as

excavation, trench digging, leveling trench with fill material such as sand or gravel, filling or backfilling, installation of force main type sewage work, the installation of storm sewer lines including the outfall construction of drain concrete boxes, catch basins, manholes, handling and laying of pipe (regardless of the size of pipe or depth below the ground), making connections, etc. Equipment used by contractors subject to this classification includes a variety of machinery and equipment such as power shovels, backhoes, bulldozers, dump trucks, ~~((and mechanical or manual trench diggers))~~ trenchless or directional boring equipment, and manual digging.

This classification excludes side sewer hookups (street to house) when performed by a plumbing contractor as part of a plumbing contract which is to be reported separately in classification 0306; and sewer pipe cleaning including services engaged in line cleaning and unplugging of waste lines which is to be reported separately in classification 0306.

0108-02 Tanks, N.O.C. - underground: Installation, repair, or removal

Applies to contractors engaged in the installation, repair or removal of underground tanks not covered by another classification (N.O.C.) such as those used to store gas or oil. Activities include excavating or digging of holes, placement or removal of tank, and filling or backfilling. This classification makes no distinction as to the size of tank being placed or removed. Usually, the actual lifting into or out of the ground occurs with the use of a power shovel, front end loader or backhoe. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as power shovels, front end loaders, backhoes, bulldozers, and dump trucks.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0502 Classification 0502.

0502-04 Carpet, vinyl, tile and other floor or counter top covering: Installation or removal

Applies to contractors engaged in the installation or removal of floor or counter top coverings such as, but not limited to, wall to wall carpet, vinyl, laminate, tile, or artificial turf in residential or commercial settings. Work contemplated by this classification includes, but is not limited to, the installation and/or removal of foam or rubber padding, floor coverings such as rugs or carpet, tack strips, door strips, sub-flooring (particle board or plywood), linoleum, vinyl, base board or door strips, and hauling existing floor covering debris away. This classification also includes the installation of clay or ceramic tiles on counter tops and backsplashes.

This classification excludes contractors engaged in the installation of counter tops as part of an interior finish carpentry or cabinetry contract which is to be reported separately in classification 0513; the installation of hardwood floors which is to be reported separately in classification 0513; the installation of brick, slate, marble or granite which is to be reported separately in classification 0302; installation of roofing tiles which is to be reported separately in classification 0507; and

floor covering stores which are to be reported separately in the applicable classification.

0502-99 Carpet, vinyl, tile and other floor or counter top covering: Installation or removal (~~(only to be assigned by the floor covering specialist))~~)

Applies to floor covering contractors who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for "account in good standing" status for prime contractor liability.

Special note: Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

WAC 296-17A-0510 Classification 0510.

0510-00 Wood frame building: Construction or alterations, N.O.C.

Applies to contractors engaged in wood frame building construction or alterations not covered by another classification (N.O.C.). For the purposes of this classification, wood frame building construction means buildings erected exclusively of wood or wood products. This classification includes all building framing activities done in connection with wood frame building construction including the placement of roof trusses, sheathing roofs, installation of exterior building siding, and the installation of exterior doors and door frames. This classification also includes the installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract on a wood frame building. This classification also includes the erection of log home shells at customer's location. The manufacturing of log homes in a permanent yard which includes peeling the logs, notching the logs with chainsaws, and assembly is to be reported in classification 1003-06.

This classification excludes all other phases of wood frame building construction not listed as part of the framing activities above such as, but not limited to, site preparation and excavation (0101); overhead or underground utilities, asphalt work, or concrete work which is to be reported separately in the applicable classification; new landscape work (0301); brick work (0302); stucco work (0303); plumbing work (0306); HVAC work (0307); carpet and tile work (0502); exterior painting (0504); roof work (0507); insulation work (0512); interior finish carpentry - interior doors, cabinets, fixtures or molding (0513); installation of garage doors (0514); installation of sheet metal siding, gutters, and non-structural sheet metal patio covers/carports (0519); interior painting (0521); electrical work (0601) or wallboard installation, taping or texturing which are to be reported separately in the applicable classifications. For a more thorough description of the activities included and excluded from wood frame building construction, review the Construction Industry Guide.

Special note: Classification 0510 also includes wood frame building alterations or remodel work when the activity involves building new additions. The term "new additions" is defined as adding on to an existing wood frame building (upwards or outwards) in which the use of structural supports and main bearing beams is required. This is distinguishable from classification 0516 - building repair or carpentry work that typically does not require the placement of structural supports or main bearing beams. The purpose of classification 0516 is to build or rebuild with nonstructural or bearing beams, or to replace an existing portion (including existing structural and bearing beams) of a wood frame building for appearances or as a result of deterioration to make it appear new again. Care should be exercised as the terminology to build, rebuild, remodel, construct or reconstruct is irrelevant to assignment of classification which should recognize what the project actually involves.

Guidelines:

Constructing a new wood frame building that never existed - 0510

Altering all or part of an existing wood frame building by adding on new additions - 0510

Remodeling all or part of an existing wood frame building *without* adding on new additions - 0516

Installation of wood or vinyl siding on a new or existing wood frame building - 0510

Installation of wood or vinyl siding on a new addition by the remodeling contractor - 0510-02

Installation of wood or vinyl siding on an existing structure by a remodeling contractor - 0516-00

Constructing a new wood garage that never existed - 0510

Altering all or part of an existing wood garage by adding on new additions - 0510

Remodeling all or part of an existing wood garage without adding on new additions - 0516

Constructing a new wood carport or wood shed that never existed - 0510

Rebuilding an existing wood carport or wood shed (all or part) with or without new additions - 0516

Construction of a new wood deck by the framing contractor when a new wood house is being built - 0510

Constructing or replacing a wood deck on an existing wood house - 0516

Constructing or replacing a wood deck for any type of nonwood building - 0516

Altering the existing interior of a wood frame building by adding exterior additions - 0510

Remodeling the existing interior of a wood frame building without adding exterior additions - 0516

Constructing, altering, or remodeling the interiors of nonwood frame buildings - 0516

Installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract of a wood frame building - 0510.

0510-99 Wood frame building: Construction or alteration, N.O.C. (only to be assigned by the wood framing specialist)

Applies to framing contractors, who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for "account in good standing" status for prime contractor liability.

Special note: Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1007 Classification 1007.

1007-08 Geophysical exploration, N.O.C.

Applies to contractors engaged in geophysical exploration, with no core drilling, and without seismic detection, who are not covered by another classification (N.O.C.). The more common methods of geophysical exploration are gravitational, electric and magnetic. In the gravitational method, delicate pendulums and torsion balances capable of detecting differences in the gravitational pull of the earth at various places enable the geologist to tell where oil is likely to be found. There are two electrical methods, resistivity and inductive. In the resistivity method, measurements are taken on an ohmmeter, which indicate the resistivity of the subsurface. The inductive method is somewhat comparable, but instead of determining the resistivity of the subsurface formations, the conductivity is measured enabling the geologist to determine the character of the subsurface being studied. The magnetic method is accomplished by means of a highly developed form of magnetic dipping needle with a telescope magnifier. The magnetic attraction exerted by magnetic rocks and formations causes the needle to deflect from its horizontal plane, thereby enabling a geologist to develop contour maps with lines of equal magnetic attraction. This classification includes prospectors who may specialize in particular instrumentation such as electrical, gravity, magnetic or seismic. The prospector studies structure of subsurface rock formations to locate petroleum deposits; conducts research using geophysical instruments such as seismograph, gravimeter, torsion balance, and magnetometer, pendulum devices, and electrical resistivity apparatus to measure characteristics of the earth; computes variations in physical forces existing at different locations and interprets data to reveal subsurface structures likely to contain petroleum deposits; and determines desirable locations for drilling operations. This classification includes prospecting for mineral ores and the testing of soil for percolation when performed by employees of an employer subject to this classification.

This classification excludes core drilling and seismic geophysical exploration which are to be reported separately in classification 0103, and geophysical crews employed by oil companies who are to be reported in the classification applicable to the business.

Special note: When assigning classifications 1007-08, 4901-16 - Geologists, and 0103-10 - Seismic geophysical exploration, care must be taken to look beyond the word "geologist" to determine the actual nature of the activities being performed.

1007-09 Testing and inspecting of pipelines or utility lines using radiographic, video, infrared thermography or X-ray analysis process by contractor at industrial plants or construction sites

Applies to establishments engaged in the testing or inspecting of pipelines, utility lines or conduits for others, provided the testing or inspecting is not performed in conjunction with the construction of the pipeline. This classification includes testing or inspecting involving radiographic, video, infrared thermography or X-ray analysis processes such as the X raying of containers, inspecting of utility lines, and the drawing of oil samples on-site when performed by employees of an employer subject to this classification. Classification 1007-09 is assigned primarily to field activities.

This classification excludes testing or inspecting done in conjunction with construction which is to be reported separately in the appropriate construction classification.

1007-15 Inspection and grading bureaus, N.O.C.; log scaling and grading bureaus; lumber inspection services; weigh scale attendants, N.O.C.; weather stations; rain-making - no aircraft; air flow/heat balancing and testing

Applies to establishments operating as *inspection and grading bureaus*, not covered by another classification (N.O.C.), including, but not limited to, those involved in inspecting and grading commodities such as logs, lumber, shingles, shakes, poles, and railroad ties. The commodity is examined and stamped with a grademark which indicates the grade, species, producer's name or number and other pertinent data. A certificate of inspection may be issued in lieu of a grademark. The purpose of the inspection is to grade, tally, and stamp only those products which meet certain required specifications and to cull those products which do not meet the established standards. *Log scaling and grading bureaus* measure the logs, and by applying log rule formulas, determine the net yield, usually expressed in board feet. A scale ticket containing descriptive data is attached to the end of the log. This classification also applies to *weigh scale attendants* not covered by another classification (N.O.C.), when the service is available to the general public, otherwise the weigh scale attendants are to be included in the basic classification of the business. This classification includes establishments engaged exclusively in such services as auto emission control testing, air flow balancing and testing, the balancing and testing of heating, ventilating and air conditioning systems, hydrostatic testing of such objects as boilers, tanks, pipes and fittings using compressed air or water pressure to detect leaks, the strength testing of building material such as, but not limited to, asphalt, concrete and steel; and the testing or inspecting of steel weldments. This classification also includes *weather stations* which observe and record weather conditions for use in forecasting, and which read weather instruments, including thermometers, barometers, and hygrometers to ascertain elements such as temperature, barometric pressure, humidity, wind velocity, and precipitation.

Weather data is transmitted and received also from other stations. A fully automated (computerized) weather station can be reported under classification 4904. This classification also covers rainmaking without the use of aircraft.

~~((**Special note:** Classification 1007, classification 5001, and classification 5004, shall not be assigned to the same business unless the operations described by these classifications are conducted as separate and distinct businesses and the conditions set forth in the general reporting rules covering the operation of a secondary business have been met.))~~

1007-16 Foresters (to be assigned only by reforestation underwriter)

Applies to foresters engaged in forest management. Foresters may plan and direct forestation or reforestation projects, map forest areas, estimate standing timber and future growth, or manage timber sales. Foresters also may plan cutting programs to assure continuous production of timber, and determine methods of cutting and removing timber with a minimum of waste and environmental damage. They may plan and design forest fire suppression and fire-prevention programs, plan and design construction of fire towers, trails, roads and fire breaks and may also plan and design projects for control of floods, soil erosion, tree diseases, and insect pests in forests. Foresters may specialize in one aspect of forest management.

This classification excludes manual labor or direct supervision of manual labor.

1007-18 Foresters and timber cruisers - scientific tree, forestry, and watershed studies (to be assigned only by reforestation underwriter)

Applies to establishments engaged in scientific tree studies for others. Scientific tree studies are research oriented; random sample plots are measured and data such as the size of trees, species, disease and insect or animal damage, and seedling mortality, are recorded. Plots are maintained where each tree is tagged, its genealogy recorded, and growth statistics entered. A scion (a detached living shoot or twig) may be grafted onto a root stock and detailed records maintained of its genealogy and growth. Other data, such as fertilizers used, also may be maintained. These test plots are sometimes referred to as progeny plots or progeny studies. This classification includes scientific studies of watersheds or watershed restoration which involves the evaluation of slopes, road systems, streams and the entire ecosystem (an ecological community with its physical environment, regarded as a unit). This classification also includes precommercial thinning layouts or pruning inspections to determine if an area is ready for thinning or pruning.

This classification excludes manual labor or direct supervision of manual labor.

~~((**Special note:** Classification 1007, classification 5001, and classification 5004 shall not be assigned to the same business unless the operations described by these classifications are conducted as separate and distinct businesses and the conditions set forth in the general reporting rules covering the operation of a secondary business have been met.))~~

1007-19 Timber cruisers (to be assigned only by reforestation underwriter)

Applies to timber cruisers engaged in cruising timber land to estimate the volume and quality of a timber stand through an on-site visual inspection. A timber cruiser collects data concerning forest conditions for appraisal, sales, administration, logging, land use, and forest management planning. A forest area is traversed on foot in an established pattern and sampling techniques applied. The height and diameter of each tree in a test site is recorded as are defects such as rot and bends, to estimate the useable wood in each tree. From the data collected a summary report is prepared giving the timber types, sizes, condition and outstanding features of an area, such as existing roads, streams, and communication facilities. Trees may be marked with spray paint to denote trail, boundary, or for cutting.

This classification excludes manual labor or direct supervision of manual labor.

1007-20 Foresters and timber cruisers - tree auditing (to be assigned only by reforestation underwriter)

Applies to establishments engaged in tree auditing for others. This service is generally associated with new plantations and is the process of evaluating the quality and the rate of planting of new trees, as well as surveying newly planted sites on a periodic schedule to determine the survival rate.

This classification excludes tree auditing services when planting is in process, which is to be reported separately in classification 5004 (~~and manual labor or direct supervision of manual labor~~).

~~((Special note: Classification 1007, classification 5001, and classification 5004 shall not be assigned to the same business unless the operations described by these classifications are conducted as separate and distinct businesses and the conditions set forth in the general reporting rules covering the operation of a secondary business have been met.))~~ This classification excludes manual labor or direct supervision of manual labor.

1007-21 Environmental and ecological surveyor services, N.O.C.

Applies to establishments engaged in providing environmental and ecological surveying services not covered by another classification (N.O.C.) for others. Environmental or ecological surveying firms typically serve as consultants to industrial or commercial enterprises, governmental agencies or private citizens. Environmental engineer is a term applied to engineering personnel who apply knowledge of chemical, civil, mechanical, or other engineering disciplines to preserve the quality of life by correcting and improving various areas of environmental concern, such as air, soil, or water pollution. Services include identifying and projecting potential environmental impact resulting from proposed projects, assessing the source, severity and extent of environmental damage resulting from human or natural causes, and recommending solutions to protect or regain the natural balance between organisms and their environment. Activities of environmental surveying/consulting establishments include, but are not limited to, locating archaeological sites for preservation, researching and collecting field data on birds and insects, preparing impact statement for landowners and

developers, stream and fish monitoring, botanical surveys, wetland surveys, soil and ground water testing for contamination, air monitoring including industrial hygiene services, monitoring and testing at hazardous waste sites, providing advice on pollution control at its source, and developing a plan for cleaning up already recognized problems such as waste disposal sites, radon or asbestos contamination. Other services provided may include helping clients develop a system for complying with various governmental regulations. This classification includes employees of the environmental surveying service who conduct field work as well as those who are assigned to act as project managers or project superintendents to oversee the work of remediation contractors.

This classification excludes all types of remediation work which is to be reported separately in the classification applicable to the type of remediation work being performed, and surveyors employed by construction companies or other types of businesses who are to be reported separately in the applicable classifications.

Special note: When assigning classifications 1007 or 4901, care must be taken to look beyond the words "consulting" or "engineering" to determine the actual nature of the activities being performed.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/09)

WAC 296-17A-1501 Classification 1501.**1501-00 Counties and taxing districts, N.O.C. - all other employees**

Applies to employees of counties and taxing districts, not covered by another classification (N.O.C.), who perform manual labor, or who supervise a work crew performing manual labor such as custodial or maintenance, and machinery or equipment operators including transit bus drivers. This classification includes administrative personnel such as engineers, safety inspectors, and biologists who have field exposure, and internal inventory and supply clerks. For purposes of this classification, field exposure is defined as any exposure other than the normal travel to or from a work assignment.

This classification excludes electric light and power public utility districts which are to be reported separately in classification 1301; privately owned and operated bus or transit systems which are to be reported separately in classification 1407; water distribution or purification system public utility districts which are to be reported separately in classification 1507; irrigation system public utility districts which are to be reported separately in classification 1507; port districts which are to be reported separately in classification 4201; school districts, library districts or museum districts which are to be reported separately in classifications 6103 or 6104; hospital districts which are to be reported separately in classification 6105; firefighters who are to be reported separately in classification 6904; law enforcement officers who are to be reported separately in classification 6905 and 6906, as appropriate; clerical office and administrative employees who are to be reported separately in classification 5306, and volunteers who are to be reported separately in classifications 6901 or 6906, as appropriate.

1501-01 Housing authorities, N.O.C. - all other employees

Applies to employees of housing authorities, not covered by another classification, who perform manual labor, or who supervise a work crew performing manual labor such as custodial or maintenance, and machinery or equipment operators. This classification includes all functional operations of a housing authority such as inspection, maintenance and repairs, including minor structural repairs, janitorial service, and building and grounds maintenance. Also included in this classification are meter readers, security personnel, other than those with law enforcement powers, administrative personnel such as engineers and safety inspectors who have field exposure, and internal inventory and supply clerks. For purposes of this classification, housing authorities are defined as nonprofit, public and political entities which serve the needs of a specific city, county or Indian tribe. The nature and objectives of some of the projects undertaken by housing authorities include providing decent, safe and sanitary living accommodations for low income persons, or providing group homes or halfway houses to serve developmentally or otherwise disabled persons or juveniles released from correctional facilities. A housing authority has the power to prepare, carry out, lease and operate housing facilities; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project; to sell or rent dwellings forming part of the project to or for persons of low income; to acquire, lease, rent or sell or otherwise dispose of any commercial space located in buildings or structures containing a housing project; to arrange or contract for the furnishing of the units; and to investigate into the means and methods of improving such conditions where there is a shortage of suitable, safe and sanitary dwelling accommodations for persons of low income.

This classification excludes new construction or major alteration activities which are to be reported separately in the appropriate construction classifications; clerical office and administrative employees who are to be reported separately in classification 5306; security personnel with law enforcement powers who are to be reported separately in classification 6905; and volunteers who are to be reported separately in classifications 6901 or 6906, as appropriate.

1501-08 Native American tribal councils - all other employees

Applies to employees of Native American tribal councils who perform manual labor, or who supervise a work crew performing manual labor such as custodial or maintenance, and machinery or equipment operators. This classification includes administrative personnel such as engineers, safety inspectors, and biologists who have field exposure, and internal inventory and supply clerks of the tribal council. For purposes of this classification, field exposure is defined as any exposure other than the normal travel to and from a work assignment.

This classification excludes electric light and power public utility districts which are to be reported separately in classification 1301; water distribution or purification system public utility districts which are to be reported separately in classification 1507; irrigation system public utility districts which are to be reported separately in classification 1507; school districts, library districts or museum districts which

are to be reported separately in classifications 6103 or 6104; hospital districts which are to be reported separately in classification 6105; firefighters who are to be reported separately in classification 6904; law enforcement officers who are to be reported separately in classifications 6905 and 6906; new construction or reconstruction activities which are to be reported separately in the appropriate construction classification; clerical office and administrative employees who are to be reported separately in classification 5306.

Special notes: Housing authorities operating under the name of, and for the benefit of, a particular tribe are not exempt from mandatory coverage. These housing authorities are federally funded and are not owned or controlled by a tribe.

Only those tribal operations which are also provided by county governments are subject to classification 1501. The following activities, such as but not limited to, visiting nurses and home health care, grounds keepers, building maintenance, park maintenance, road maintenance, and garbage and sewer works, are considered to be normal operations to be included in this classification. All other tribal council operations which are not normally performed by a county government shall be assigned the appropriate classification for the activities being performed. The following operations, such as but not limited to, meals on wheels, bingo parlors, casinos, liquor stores, tobacco stores, grocery stores, food banks, gift shops, restaurants, motels/hotels, Head Start programs, fish/shellfish hatcheries, logging, and tree planting/reforestation are outside the scope of classification 1501 and are to be reported separately in the applicable classifications.

1501-09 Military base maintenance, N.O.C.

Applies to establishments, not covered by another classification (N.O.C.), engaged in providing all support operations and services on a military base on a contract basis. Such services include, but are not limited to, data processing, photography, mail delivery (on post and to other military facilities), hotel/motel services, mess halls, recreational facilities, grounds and building maintenance, vehicle maintenance, and may also include the maintenance of such facilities as water works, sewer treatment plants and roads.

This classification excludes new construction or construction repair projects which are to be reported separately in the applicable construction classification for the work being performed; contracts for specific activities on a military base such as, but not limited to, building maintenance, club or mess hall operations, or vehicle maintenance, which are to be reported separately in the applicable classification for the work being performed; firefighters who are to be reported separately in classification 6904; law enforcement officers who are to be reported separately in classification 6905; and clerical office and administrative employees who are to be reported separately in classification 5306.

Special note: Classification 1501-09 is to be assigned to an establishment only when *all* support services on a military base are being provided by the contractor. Care should be taken when assigning classification 1501-09 to firms whose military support services include loading, unloading, repair or construction of vessels, or the repair of buildings or structures used for such activities as that firm may be subject to federal maritime law.

1501-20 Community action organizations - all other employees N.O.C.

Applies to organizations performing an array of services to support the local community and citizens in need. The services provided by community action organizations may include, but are not limited to: Child care; after school care; alternative schools; in home chore services; employment or independence training, counseling and assistance; drug and alcohol recovery programs; decent, safe and sanitary living accommodations for low-income or needy citizens; transitional or emergency housing; weatherization; food and clothing banks; meals; or medical services.

This classification applies to employees of community action organizations N.O.C. (not otherwise classified) who perform manual-type labor, or who supervise a work crew performing manual labor. Work in this classification includes, but is not limited to: Cooks, food banks, drivers, (~~chore workers/home service workers,~~) janitorial or maintenance and repair work, or weatherization services.

Excluded from this risk classification is new construction or major alteration activities which are to be reported separately in the appropriate construction classifications; office employees who work exclusively in an administrative office environment who are to be reported in classification 4904-20; professional or administrative employees who may also have duties outside of the office who are to be reported in classification 5308-20; chore workers/home service workers who are to be reported in classification 6511-20; housing authorities which are to be reported in 1501-01 and 5306-26; welfare special works programs which are to be reported in 6505; work activity centers which are to be reported in 7309; and volunteers who are to be reported in classification 6901.

See classifications 5308-20 and 4904-20 for other community action operations.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3403 Classification 3403.**3403-00 Aircraft: Manufacturing**

Applies to establishments engaged in the manufacture of aircraft. For the purposes of this classification "aircraft manufacturing" means the original manufacture of such aircraft as distinguished from rebuilding, modifying, or converting existing aircraft and applies *only* to the production of units that, when completed, are capable of in-air flight as distinguished from aircraft kits to be assembled by the purchaser that are not capable of air flight when sold. This classification includes aircraft operations incidental to the manufacture, such as test flights.

This classification excludes establishments engaged in the original manufacture of aircraft parts which are to be reported separately in classification 3405 or as otherwise provided for in WAC (~~(296-17-58201)~~) 296-17A-3405; the manufacture of aircraft kits which is to be reported separately in the classification applicable to the work being performed; modification, repair or conversions made to an existing aircraft which are to be reported separately in classification 6804; and the *assembly of aircraft kits into an airplane* which is to be reported separately in classification 6804.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/09)

WAC 296-17A-4904 Classification 4904.**4904-00 Clerical office, N.O.C.**

Applies to those employees whose job duties and work environment meet *all* the conditions of the general reporting rules covering clerical office standard exception employees who are not covered by another classification (N.O.C.) assigned to their employer's account. Duties of clerical office personnel contemplated by this classification are limited to answering telephones, handling correspondence, creating or maintaining financial, employment, personnel or payroll records, composing informational material on a computer, creating or maintaining computer software, and technical drafting.

Special note: When considering this classification, care must be taken to look beyond titles of employees. Employees with occupational titles such as, but not limited to, cashiers, clerks, or ticket sellers, may or may not qualify for this classification. This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

4904-13 Clerical office: Insurance companies, agents or brokers

Applies to clerical office employees of insurance companies, including insurance agents or brokers who perform duties exclusively of clerical nature and without an interchange of labor between clerical and nonclerical duties. This classification is limited to duties defined as responding to telephone inquiries, assisting walk-in customers, handling correspondence such as the preparation of insurance policies and billing, receiving and processing payments and invoices, maintaining personnel and payroll records, and performing the necessary computer work.

Special note: Individuals performing duties as an agent, broker, or solicitor (and hold a license as issued by the office of the insurance commissioner) are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010, 48.17.020, and 48.17.030. To elect voluntary coverage these individuals must submit a completed optional coverage form to the department. In addition, care should be exercised to determine if the insurance company employs individuals such as receptionists, bookkeepers, or claims clerks who perform clerical duties which may include the incidental taking of insurance applications and receiving premiums in the office of an agent or broker. Such individuals may or may not hold a license as issued by the office of the insurance commissioner, and are not deemed to be a solicitor, agent or broker when compensation is not related to the volume of such applications, insurance, or premiums. In these instances, the clerical individuals fall under mandatory workers' compensation coverage, and do not meet the requirements to be exempt from coverage as specified in RCW 51.12.020(11).

4904-17 Clerical office: Employee leasing companies

Applies to clerical office employees of employee leasing companies. This classification requires that clerical office employees perform duties exclusively of a clerical nature, without an interchange of labor between clerical and nonclerical

ical duties, and that these duties be performed in an area or areas separated from the operative hazards of the business. This classification is limited to duties defined as responding to telephone inquiries, receptionist and administrative duties, handling correspondence such as preparing and processing billing statements and forms, maintaining personnel and payroll records, and performing the necessary computer entry work.

Special note: This is a standard exception classification and is not to be assigned unless all the conditions of the general reporting rule covering clerical office standard exception employees have been met.

4904-20 Community action organizations - Clerical office employees

Applies to organizations performing an array of services to support the local community and citizens in need. The services provided by community action organizations include: Child care; after school care; alternative schools; in-home chore services; employment or independence training, counseling and assistance; drug and alcohol recovery programs; decent, safe and sanitary living accommodations for low-income or needy citizens; transitional or emergency housing; weatherization; food and clothing banks; meals; medical services.

This classification includes employees whose work duties include administrative office work such as answering phones, completing correspondence and forms, reception work, computer work, maintaining financial, personnel and payroll records, conducting meetings, providing counseling services within the offices of the organization. All work is performed exclusively in an office environment where no other types of work are conducted, and the office is separated from any other work activity by walls, partitions, or other physical barriers. Work performed outside of the office is limited to banking or post office type duties performed by workers who qualify for this classification. A worker's reported hours may not be divided between this classification and any other risk classifications.

Excluded from this risk classification are all other employees including: Medical, dental or nursing professionals, and administrative employees whose duties are not performed exclusively in an administrative office, who are to be reported in risk classification 5308-20; chore workers/home service workers who are to be reported in 6511-20; employees who perform labor such as (~~cooking, cleaning and chore services~~) food bank operations, driving, weatherization, janitorial, property management, maintenance and repair work which are to be reported in risk classification 1501-20; housing authorities which are to be reported in 1501-01 and 5306-26; welfare special works programs which are to be reported in 6505; work activity centers which are to be reported in 7309; and volunteers who are to be reported separately in classification 6901.

See classifications 1501-20 and 5308-20 for other community action operations.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/09)

WAC 296-17A-5308 Classification 5308.

5308-20 Community action organizations - Professional services and administrative employees

Applies to organizations performing an array of services to support the local community and citizens in need. The services provided by community action organizations include: Child care; after school care; alternative schools; in-home chore services; employment or independence training, counseling and assistance; drug and alcohol recovery programs; decent, safe and sanitary living accommodations for low-income or needy citizens; transitional or emergency housing; weatherization; food and clothing banks; meals; medical services.

This classification applies to professional services and administrative employees. Work duties in this classification are not performed exclusively in an administrative office environment. Travel may be necessary to perform work at an alternate work site for appointments with clients, patients, meetings, presentations, agency promotions, or other required out-of-office administrative type work. Work performed in this classification may include, but is not limited to, counselors or educators for various programs, medical, dental and nursing services; child care professionals or teachers, program coordinators and directors. Also included are estimators and project managers who do not supervise a work crew or perform any type of labor.

Excluded from this risk classification is any manual labor or supervision of a work crew that performs manual labor, construction or maintenance work, work in a food bank, delivery, (~~cooking, cleaning, chore services~~), or other similar work which is to be reported in risk classification 1501-20; chore workers/home service workers who are to be reported in 6511-20; office employees who work exclusively in an administrative office environment who are to be reported in risk classification 4904-20; housing authorities which are to be reported in 1501-01 and 5306-26; welfare special works programs which are to be reported in 6505; work activity centers which are to be reported in 7309; and volunteers who are to be reported in risk classification 6901.

See classifications 1501-20 and 4904-20 for other community action operations.

AMENDATORY SECTION (Amending WSR 09-20-039, filed 9/30/09, effective 1/1/10)

WAC 296-17A-6303 Classification 6303.

6303-00 Outside sales personnel, N.O.C.; messengers

Applies to those employees whose job duties and work environment meet *all* the conditions of the general reporting rules covering outside sales personnel, and who are not covered by another classification (N.O.C.) assigned to the employer's account. Duties of outside sales personnel contemplated by this classification are limited to soliciting new customers by telephone or in person, showing, selling, and explaining products or services, servicing existing accounts, completing correspondence, placing orders, performing public relations duties, and estimating. Duties of messengers are

limited to delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business.

This classification excludes the delivery of products or merchandise or the stocking of shelves which is to be reported separately as applicable; the demonstration or delivery of machinery or equipment which are to be reported separately as applicable, establishments engaged as collection agencies or public relations agencies which are to be reported separately in classification 5301; sales personnel engaged in home or door-to-door sales which are to be reported in classification 6309; establishments engaged in providing inspection and valuations exclusively for insurance companies which are to be reported separately in classification 4903; establishments engaged in process and legal messenger services which are to be reported separately in classification 6601.

Special note: When considering this classification care must be taken to look beyond titles of employees. Employees with occupational titles such as, but not limited to, collectors, counselors, consultants, or appraisers may or may not qualify for this classification. This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

6303-03 Insurance sales personnel and claims adjusters

Applies to insurance sales personnel and claims adjusters with outside duties. Duties of employees subject to this classification are limited to selling insurance policies at their place of business or at the client's home, or going to the scene of an accident or catastrophe to assess damage. Work may be performed within an office or away from the employer's premises.

Special note: Individuals performing duties as an agent, broker, or solicitor (and hold a license as issued by the office of the insurance commissioner) are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010, 48.17.020, and 48.17.030. To elect voluntary coverage these individuals must submit a completed optional coverage form to the department.

6303-21 Home health care services: Social workers and dietitians

Applies to social workers and dietitians employed by home health care service establishments who provide care for handicapped individuals. Duties of these employees include teaching physically or developmentally disabled individuals in their own home to manage daily living skills such as caring for themselves, dressing, cooking, shopping, and going to the doctor. This classification also includes dietitians, sometimes called nutritionists, who usually are referred to patients by their physicians. The dietitian assesses the patient's current nutritional status, including current food intake, medical background, family history, currently prescribed medications, and social and psychological needs, then develops a food plan to meet the patient's needs. Employees subject to this classification do no cooking.

This classification excludes nursing and home health care services which are to be reported separately in classification 6110; therapy services which are to be reported separately

in classification 6109; domestic servants who are to be reported separately in classification 6510; and chore workers who are to be reported separately in classification 6511.

Special note: This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met. *This classification is not to be assigned to any account that does not also have classification 6110 and/or 6511.*

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-7205 Classification 7205.

Life and rescue - Emergency workers

Applies to employees of nongovernmental employers provided in response to a request for assistance by a state or local official in the "life and rescue phase" of a declared emergency. This classification is only applicable for reporting the exposures (worker hours and claims) of nongovernmental employees occurring during this phase of the declared emergency. The phrase "life and rescue phase" is defined in RCW ((~~51.16.130(3)~~) 51.16.220) as being the first seventy-two hours after a natural or man-made disaster has occurred. To qualify for this special classification, a state or local official such as, but not limited to, the governor; a county executive; a mayor; a fire marshal; a sheriff or police chief must declare an emergency and must request help from private sector employers to assist in locating and rescuing disaster survivors.

WSR 10-18-025

PERMANENT RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 24, 2010, 10:43 a.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: Chapter 564, Laws of 2009 (ESHB 1244) gave the department the authority to raise fees for the electrical program in order to cover the program's operating expenses. The purpose of this rule making is to increase the electrical fees in order to cover the costs for ongoing services for the electrical program.

From February 2009 through January 2010, the department spent \$14,146,712 to staff field electrical inspection activity. For the same period, the electrical permit and compliance revenue was \$11,792,943. The difference between the expenditures for the field inspectors and the revenue is \$2,353,769 or 20%. The program needs to increase electrical permit fees over the fiscal growth factor in order to cover operating expenses and try to prevent further drops in inspection response time.

The program has eliminated forty-nine electrical inspectors and eleven support positions, which is a 31% reduction in staffing for the program. Even with the most recent layoff, the program must increase licensing fees by 4.17% and permit fees by 13% in order to remain solvent and provide essen-

tial services such as inspections, licensing, and regulatory compliance.

Citation of Existing Rules Affected by this Order: Amending WAC 296-46B-906, 296-46B-909, and 296-46B-911.

Statutory Authority for Adoption: Chapter 19.28 RCW and chapter 564, Laws of 2009 (ESHB 1244).

Adopted under notice filed as WSR 10-13-134 on June 22, 2010.

Changes Other than Editing from Proposed to Adopted Version:

- The master electrician exam application nonrefundable fee was changed to \$32.00 from \$30.80.
- The zero percent supervision modified training certificate nonrefundable fee was changed to \$49.10 from \$51.30.

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

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

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

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

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

Date Adopted: August 24, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

WAC 296-46B-906 Inspection fees. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) Residential.

(a) Single- and two-family residential (New Construction).

Notes:

- (1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
- (2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
- (3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.

(4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	\$((76-70)) <u>86.60</u>
Each additional 500 sq. ft. or portion of	\$((24-60)) <u>27.70</u>
(ii) Each outbuilding or detached garage - inspected at the same time as a dwelling unit on the property	\$((32-00)) <u>36.10</u>
(iii) Each outbuilding or detached garage - inspected separately	\$((50-60)) <u>57.10</u>
(iv) Each swimming pool - inspected with the service	\$((50-60)) <u>57.10</u>
(v) Each swimming pool - inspected separately	\$((76-70)) <u>86.60</u>
(vi) Each hot tub, spa, or sauna - inspected with the service	\$((32-00)) <u>36.10</u>
(vii) Each hot tub, spa, or sauna - inspected separately	\$((50-60)) <u>57.10</u>
(viii) Each septic pumping system - inspected with the service	\$((32-00)) <u>36.10</u>
(ix) Each septic pumping system - inspected separately	\$((50-60)) <u>57.10</u>

(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).

Each service and/or feeder		
Ampacity	Service/Feeder	Additional Feeder
0 to 200	\$((82-70)) <u>93.40</u>	\$((24-60)) <u>27.70</u>
201 to 400	\$((102-80)) <u>116.10</u>	\$((50-60)) <u>57.10</u>
401 to 600	\$((141-20)) <u>159.50</u>	\$((70-30)) <u>79.40</u>
601 to 800	\$((181-20)) <u>204.70</u>	\$((96-50)) <u>109.00</u>
801 and over	\$((258-40)) <u>291.90</u>	\$((193-80)) <u>218.90</u>

(c) Single or multifamily altered services or feeders including circuits.

(i) Each altered service and/or altered feeder		
Ampacity	Service/Feeder	
0 to 200	\$((70-30)) <u>79.40</u>	
201 to 600	\$((102-80)) <u>116.10</u>	
601 and over	\$((155-00)) <u>175.10</u>	
(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)		\$((38-10)) <u>43.00</u>

(d) Single or multifamily residential circuits only (no service inspection).

Note:

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above)	\$((50-60)) <u>57.10</u>
(ii) Each additional circuit (see note above)	\$((5-50)) <u>6.20</u>

(e) Mobile homes, modular homes, mobile home parks, and RV parks.

(i) Mobile home or modular home service or feeder only	\$((50-60)) <u>57.10</u>
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(ii) Mobile home service and feeder ~~\$(82.70)~~
93.40

(f) Mobile home park sites and RV park sites.

Note:

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

(i) First site service or site feeder ~~\$(50.60)~~
57.10

(ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder ~~\$(32.00)~~
36.10

(2) Commercial/industrial.

(a) New service or feeder, and additional new feeders inspected at the same time (includes circuits).

Note:

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$(82.70) 93.40	\$(50.60) 57.10
101 to 200	\$(100.70) 113.70	\$(64.40) 72.70
201 to 400	\$(193.80) 218.90	\$(76.70) 86.60
401 to 600	\$(225.90) 255.20	\$(90.20) 101.90
601 to 800	\$(292.10) 330.00	\$(122.90) 138.80
801 to 1000	\$(356.60) 402.90	\$(148.70) 168.00
1001 and over	\$(389.00) 439.50	\$(207.50) 234.40

(b) Altered services/feeders (no circuits).

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	\$(82.70) 93.40
201 to 600	\$(193.80) 218.90
601 to 1000	\$(292.10) 330.00
1001 and over	\$(324.40) 366.50

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) ~~\$(70.30)~~
79.40

(c) Circuits only.

Note:

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

(i) First 5 circuits per branch circuit panel ~~\$(64.40)~~
72.70

(ii) Each additional circuit per branch circuit panel ~~\$(5.50)~~
6.20

(d) Over 600 volts surcharge per permit. ~~\$(64.40)~~
72.70

(3) Temporary service(s).

Notes:

(1) See WAC 296-46B-590 for information about temporary installations.
(2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections shall be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	\$(44.30) 50.00	\$(22.70) 25.60
61 to 100	\$(50.60) 57.10	\$(24.60) 27.70
101 to 200	\$(64.40) 72.70	\$(32.00) 36.10
201 to 400	\$(76.70) 86.60	\$(38.20) 43.10
401 to 600	\$(102.80) 116.10	\$(50.60) 57.10
601 and over	\$(116.60) 131.70	\$(58.10) 65.60

(4) Irrigation machines, pumps, and equipment.

Irrigation machines.

(a) Each tower - when inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL ~~\$(5.50)~~
6.20

(b) Towers - when not inspected at the same time as a service and feeder - 1 to 6 towers ~~\$(76.70)~~
86.60

(c) Each additional tower ~~\$(5.50)~~
6.20

(5) Miscellaneous - commercial/industrial and residential.

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

(i) First thermostat ~~\$(38.20)~~
43.10

(ii) Each additional thermostat inspected at the same time as the first ~~\$(11.90)~~
13.40

(b) Class 2 or 3 low-voltage systems and telecommunications systems.

Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

(i) First 2500 sq. ft. or less ~~\$(44.30)~~
50.00

(ii) Each additional 2500 sq. ft. or portion thereof ~~\$(11.90)~~
13.40

(c) Signs and outline lighting.

(i) First sign (no service included) ~~\$(38.20)~~
43.10

(ii) Each additional sign inspected at the same time on the same building or structure ~~\$(18.10)~~
20.40

(d) Berth at a marina or dock.

Note:

Five berths or more shall be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

(i) Berth at a marina or dock ~~\$(50.60)~~
57.10

(ii) Each additional berth inspected at the same time ~~\$(32.00)~~
36.10

- (e) **Yard pole, pedestal, or other meter loops only.**
- (i) Yard pole, pedestal, or other meter loops only \$((~~50.60~~)
57.10)
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations \$((~~41.90~~)
13.40)
- (f) **Emergency inspections requested outside of normal working hours.**
- Regular fee plus surcharge of: \$((~~96.50~~)
109.00)

(g) **Generators.**

Note:

Permanently installed generators: Refer to the appropriate residential or commercial new/alterd service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators \$((~~70.30~~)
79.40)

(h) **Electrical - annual permit fee.**

Note:

See WAC 296-46B-901(14).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	\$((1,857.30) <u>2,098.70</u>)
4 to 6 plant electricians	24	\$((3,716.50) <u>4,199.60</u>)
7 to 12 plant electricians	36	\$((5,574.40) <u>6,299.00</u>)
13 to 25 plant electricians	52	\$((7,433.60) <u>8,399.90</u>)
More than 25 plant electricians	52	\$((9,292.80) <u>10,500.80</u>)

(i) **Telecommunications - annual permit fee.**

Notes:

(1) See WAC 296-46B-901(13).

(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum \$((~~153.60~~)
173.50)

Each additional hour, or portion thereof, of portal-to-portal inspection time \$((~~76.70~~)
86.60)

(j) **Permit requiring ditch cover inspection only.**

Each 1/2 hour, or portion thereof \$((~~38.20~~)
43.10)

(k) **Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.** \$((~~64.40~~)
72.70)

(6) **Carnival inspections.**

(a) **First carnival field inspection each calendar year.**

(i) Each ride and generator truck \$((~~18.10~~)
20.40)

(ii) Each remote distribution equipment, concession, or gaming show \$((~~5.50~~)
6.20)

(iii) If the calculated fee for first carnival field inspection above is less than \$((~~89.00~~) 100.50, the minimum inspection fee shall be: \$((~~96.50~~)
109.00)

(b) **Subsequent carnival inspections.**

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show \$((~~96.50~~)
109.00)

(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show \$((~~5.50~~)
6.20)

(c) **Concession(s) or ride(s) not part of a carnival.**

(i) First field inspection each year of a single concession or ride, not part of a carnival \$((~~76.70~~)
86.60)

(ii) Subsequent inspection of a single concession or ride, not part of a carnival \$((~~50.60~~)
57.10)

(7) **Trip fees.**

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.) \$((~~76.70~~)
86.60)

(b) Submitter notifies the department that work is ready for inspection when it is not ready. \$((~~38.20~~)
43.10)

(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection. \$((~~38.20~~)
43.10)

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work. \$((~~38.20~~)
43.10)

(e) Each trip necessary to remove a noncompliance notice. \$((~~38.20~~)
43.10)

(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted. \$((~~38.20~~)
43.10)

(g) Installations that are covered or concealed before inspection. \$((~~38.20~~)
43.10)

(8) **Progress inspections.**

Note:

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour. \$((~~38.20~~)
43.10)

(9) **Plan review.**

Fee is thirty-five percent of the electrical work permit fee as determined by WAC 296-46B-906, plus a plan review submission and shipping/handling fee of: \$((~~64.40~~)
72.70)

(a) Supplemental submissions of plans per hour or fraction of an hour of review time. \$((~~76.70~~)
86.60)

(b) Plan review shipping and handling fee. \$((~~18.10~~)
20.40)

(10) **Out-of-state inspections.**

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

(11) **Other inspections.**

Inspections not covered by above inspection fees must be charged portal-to-portal per hour: \$((~~76.70~~)
86.60)

(12) Variance request processing fee.

Variance request processing fee. This fee is nonrefundable once the transaction has been validated. \$((76.70))
86.60

(13) Marking of industrial utilization equipment.

(a) Standard(s) letter review (per hour of review time). \$((76.70))
86.60

(b) Equipment marking - charged portal-to-portal per hour: \$((76.70))
86.60

(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.

(14) Class B basic electrical work labels.

(a) Block of twenty Class B basic electrical work labels (not refundable). \$((210.40))
237.70

(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5). \$((38.20))
43.10

(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5). \$((38.20))
43.10

(15) Provisional electrical work permit labels.

Block of twenty provisional electrical work permit labels. \$((210.40))
237.70

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees.

- Notes:**
- (1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.
 - (2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.
 - (3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

(1) General or specialty contractor's license per twenty-four month period. (Nonrefundable after license has been issued.)

(a) Initial application or renewal made in person, by mail, or by fax \$((245.00))
255.20

(b) Renewal fully completed using the on-line web process \$((221.00))
230.20

(c) Reinstatement of a general or specialty contractor's license after a suspension \$((49.70))
51.70

(2) Master electrician/administrator/electrician/trainee certificate.

(a) Examination application (nonrefundable)

Administrator certificate examination application. \$((30.80))
32.00
(Required only for department administered examinations.) (Not required when testing with the department's contractor.)

(b) Examination fees (nonrefundable)

Note:

Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.

(i) Master electrician or administrator first-time examination fee (when administered by the department) \$((74.10))
77.10

(ii) Master electrician or administrator retest examination fee (when administered by the department) \$((86.70))
90.30

(iii) Journeyman or specialty electrician examination fee (first test or retest when administered by the department) \$((55.70))
58.00

(iv) Certification examination review fee \$((114.80))
119.50

(c) Original certificates (nonrefundable after certificate has been issued)

(i) Electrical administrator original certificate (except 09 telecommunication) \$((110.80))
115.40

(ii) Telecommunications administrator original certificate (for 09 telecommunications) \$((73.80))
76.80

(iii) Master electrician exam application (includes original certificate and application processing fee) \$((141.70))
147.60

32.00 is nonrefundable after application is submitted)

(iv) Journeyman or specialty electrician application (includes original certificate and application processing fee) \$((79.50))
82.80

32.00 is nonrefundable after application is submitted)

(v) Training certificate

(A) Initial application made in person, by mail, or by fax \$((39.00))
40.60

(B) Initial application fully completed on-line using the on-line web process \$((35.00))
36.40

(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) \$((70.90))
73.80

49.10 is nonrefundable after application is submitted)

(D) 75% supervision modified training certificate. \$((47.20))
49.10

(E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b). \$((23.50))
24.40

(d) Certificate renewal (nonrefundable)

(i) Master electrician or administrator certificate renewal

(A) Renewal made in person, by mail, or by fax \$((140.10))
145.90

(B) Renewal fully completed using the on-line web process \$((127.00))
132.20

(ii) Telecommunications (09) administrator certificate renewal

(A) Renewal made in person, by mail, or by fax \$((93.40))
97.20

(B) Renewal fully completed using the on-line web process \$((84.00))
87.50

(iii) Late renewal of master electrician or administrator certificate

(A) Renewal made in person, by mail, or by fax \$((280.20))
291.80

(B) Renewal fully completed using the on-line web process \$((254.00))
264.50

(iv) Late renewal of telecommunications (09) administrator certificate

(A) Renewal made in person, by mail, or by fax \$((186.80))
194.50

(B) Renewal fully completed using the on-line web process	\$(168.00) <u>175.00</u>
(v) Journeyman or specialty electrician certificate renewal	
(A) Renewal made in person, by mail, or by fax	\$(73.80) <u>76.80</u>
(B) Renewal fully completed using the on-line web process	\$(67.00) <u>69.70</u>
(vi) Late renewal of journeyman or specialty electrician certificate	
(A) Renewal made in person, by mail, or by fax	\$(147.60) <u>153.70</u>
(B) Renewal fully completed using the on-line web process	\$(134.00) <u>139.50</u>
(vii) Trainee update of hours outside of renewal period (i.e., submission of affidavit of experience outside of the timeline in WAC 296-46B-965 (7)(d))	\$(47.20) <u>49.10</u>
(viii) Trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	\$(47.20) <u>49.10</u>
(B) Renewal fully completed using the on-line web process when the affidavit of experience is submitted per WAC 296-46B-965 (7)(d)	\$(43.00) <u>44.70</u>
(ix) Late trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	\$(66.20) <u>68.90</u>
(B) Renewal fully completed using the on-line web process	\$(60.00) <u>62.50</u>
(e) Certificate - reinstatement (nonrefundable)	
(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)	\$(49.70) <u>51.70</u>
(ii) Reinstatement of suspended journeyman, or specialty electrician certificate (in addition to normal renewal fee)	\$(23.50) <u>24.40</u>
(f) Assignment/unassignment of master electrician/administrator designation (nonrefundable)	\$(36.80) <u>38.30</u>
(3) Certificate/license.	
(a) Replacement for lost or damaged certificate/license. (Nonrefundable.)	\$(16.20) <u>16.80</u>
(b) Optional display quality General Master Electrician certificate.	\$(26.30) <u>27.30</u>
(4) Continuing education courses or instructors. (Nonrefundable.)	
(a) If the course or instructor review is performed by the electrical board or the department	
The course or instructor review	\$(47.30) <u>49.20</u>
(b) If the course or instructor review is contracted out by the electrical board or the department	
(i) Continuing education course or instructor submittal and approval (per course or instructor)	As set in contract
(ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial	\$(115.10) <u>119.80</u>
(5) Copy fees. (Nonrefundable.)	
(a) Certified copy of each document (maximum charge per file):	\$(52.30) <u>54.40</u>
(i) First page:	\$(23.50) <u>24.40</u>
(ii) Each additional page:	\$2.10
(b) Replacement RCW/WAC printed document:	\$(5.20) <u>5.40</u>

(6) Training school program review fees. Initial training school program review fee. (Nonrefundable.)	
(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	\$(542.80) <u>565.40</u>
(b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	\$(271.40) <u>282.70</u>

AMENDATORY SECTION (Amending WSR 06-05-028, filed 2/7/06, effective 5/1/06)

WAC 296-46B-911 Electrical testing laboratory and engineer accreditation fees. The amount of the fee due is calculated based on the fee effective at the date payment is made.

Electrical testing laboratory	
Initial filing fee: (Nonrefundable)	\$(516.00) <u>537.50</u>
Initial accreditation fee:	
1 product category	\$(258.00) <u>268.70</u>
Each additional category for the next 19 categories	\$(103.20) <u>107.50 each</u>
Maximum for 20 categories or more	\$(2,218.80) <u>2,311.30</u>
Renewal fee: (Nonrefundable)	50% of initial filing fee
Renewal of existing accreditations	
Each additional category for the next 19 categories	\$(103.20) <u>107.50 each</u>
Maximum for 20 categories or more	\$(2,218.80) <u>2,311.30</u>
Engineer for evaluating industrial utilization equipment	
Initial filing fee: (Nonrefundable)	\$(516.00) <u>537.50</u>
Renewal fee: (Nonrefundable)	50% of initial filing fee

WSR 10-18-034
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed August 25, 2010, 11:08 a.m., effective September 25, 2010]

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

Purpose: The department is amending these rules to recognize provisions of SB 6855, chapter 281, Laws of 2010, which exempts community centers from property taxation and imposes leasehold excise tax on such property. This legislation defines "community center" to be property, including a building or buildings, determined to be surplus to the needs of a district by a local school board, and purchased or acquired by a nonprofit organization for the purpose of conversion into community facilities for the delivery of nonresidential coordinated services for community members.

Citation of Existing Rules Affected by this Order: Amending WAC 458-29A-100 Leasehold excise tax—Overview and definitions, 458-29A-200 Leasehold excise tax—Taxable rent and contract rent, 458-29A-400 Leasehold excise tax—Exemptions, and 458-29A-500 Leasehold excise tax—Liability.

Statutory Authority for Adoption: RCW 82.29A.140.

Adopted under notice filed as WSR 10-13-065 on June 11, 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 4, 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 4, 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: August 25, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-20-053, filed 10/1/99, effective 11/1/99)

WAC 458-29A-100 Leasehold excise tax—Overview and definitions. (1) **Introduction.** Chapter 82.29A RCW establishes an excise tax on the act or privilege of occupying or using publicly owned real or personal property or property of a community center which is exempt from property tax through a leasehold interest. The intent of the law is to ensure that lessees of property owned by public entities bear their fair share of the cost of governmental services when the property is rented to someone who would be subject to property taxes if the lessee were the owner of the property. The tax is an excise tax triggered by the private use and possession of the public property or property of a community center which is exempt from property tax. RCW 82.29A.030.

(2) **Definitions.** For the purposes of chapter 458-29A WAC, the following definitions apply unless the context requires otherwise.

(a) "Department" means the department of revenue.

(b) "Community center which is exempt from property tax" means a community center as defined in RCW 84.36.010 (2)(a) that is exempt from property tax under RCW 84.36.010 (1).

(c) "Concession" means the right to operate a business in an area of public property or property of a community center which is exempt from property tax.

~~((e))~~ (d) "Contract rent" means that portion of the payment made by a lessee (including a sublessee) to a ~~((public))~~ lessor (or to a third party for the benefit of that lessor) for a

leasehold interest in land and improvements or tangible personal property.

~~((e))~~ (e) "Franchise" means a right granted by a public entity or community center which is exempt from property tax to a person to do certain things that the person could not otherwise do. A franchise is distinguishable from a leasehold interest even when its exercise and value is inherently dependent upon the use and possession of publicly owned property or property of a community center which is exempt from property tax.

~~((e))~~ (f) "Improvement" means a modification to real property, resulting in an actual change in the nature of the property or an increase in the value of the property. It is distinguishable from routine repair and maintenance, which are activities resulting from normal wear and tear associated with the use of property, and which do not result in a change in the nature or value of the property itself. For example, replacing worn boards in a stairway is repair and maintenance; removing the stairway and replacing it with an elevator or a ramp is an improvement.

~~((e))~~ (g) "Leasehold interest" means an interest granting the right to possession and use of publicly owned real or personal property or real or personal property of a community center which is exempt from property tax as a result of any form of agreement, written or oral, without regard to whether the agreement is labeled a lease, license, or permit.

(i) Regardless of what term is used to label an agreement providing for the use and possession of public property or property of a community center which is exempt from property tax by a private party, it is necessary to look to the actual substantive arrangement between the parties in order to determine whether a leasehold interest has been created.

(ii) Both possession and use are required to create a leasehold interest, and the lessee must have some identifiable dominion and control over a defined area to satisfy the possession element. The defined area does not have to be specified in the agreement but can be determined by the practice of the parties. This requirement distinguishes a taxable leasehold interest from a mere franchise, license, or permit.

For example, Sam sells hot dogs from his own trailer at varying sites within a county fairgrounds during events. Sam is not assigned a particular place to set up his trailer nor does he store his trailer on the fairground between events. Sam's right to sell and his use of the property is considered a franchise and not a leasehold interest. The necessary element of possession, involving a greater degree of dominion and control over a more defined area, is lacking.

(iii) The use or occupancy of public property or property of a community center which is exempt from property tax where the purpose of such use or occupancy is to render services to the public owner or community center which is exempt from property tax does not create a leasehold interest. The lessee's possession and use of the property is in furtherance of the purposes of the public ~~((owner's purposes))~~ owner or community center which is exempt from property tax, and it is the public owner ~~((who))~~ or community center which is exempt from property tax which benefits from the governmental services rendered in respect to the property.

For example, Contractor A operates a snack bar at a publicly owned facility where food and beverages are sold to

members of the public, and derives a profit from the proceeds of the snack bar sales. Contractor B operates a cafeteria where food is provided at no charge to persons with appropriate I.D., and is reimbursed on a cost-plus basis. Contractor A is engaged in a business enterprise the same as any other restaurateur. Contractor A is using the public property for a private purpose, and has a taxable leasehold interest on the premises. Contractor B is merely providing a service to government personnel that the government agency would otherwise provide. Contractor B is using public property for a public purpose, and does not have a taxable leasehold interest.

(iv) "Leasehold interest" includes the use and occupancy by a private party of property that is owned in fee simple, held in trust, or controlled by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if:

(A) The property is within a special review district established by ordinance after January 1, 1976; or

(B) The property is listed on, or is within a district listed on, any federal or state register of historical sites in existence after January 1, 1987.

(v) "Leasehold interest" does not include:

(A) Road or utility easements;

(B) Rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from a public owner or community center which is exempt from property tax or the lessee of a public owner or community center which is exempt from property tax, including permits to graze livestock, cut brush, pick wild mushrooms, or mine ore; and

(C) Any right to use personal property (excluding land or buildings) owned by the United States (as a trustee or otherwise), or by a foreign government, when the right to use the property is granted by a contract solely to manufacture or produce articles for sale to the United States or the foreign government.

~~((g))~~ (h) "Lessee" means a private person or entity with a leasehold interest in public property ~~((who))~~ or property of a community center which is exempt from property tax which would be subject to property tax if the person or entity owned the property in fee.

~~((h))~~ (i) "Lessor" ~~((or "public lessor"))~~ means an entity exempted from property tax obligations pursuant to Article 7, section 1 of the state Constitution or, for the property tax exempt period of forty years after acquisition, a community center as defined by RCW 84.36.010 (2)(a) that is exempt from property tax under RCW 84.36.010(1) that grants a leasehold interest in public property or property of a community center which is exempt from property tax to a private person or entity.

~~((i))~~ (j) "License" means permission to enter on land for some purpose, without conferring any rights to the land upon the person granted the permission. For example, a permit to enter federal lands to launch rafts into the water for the purpose of conducting whitewater river rafting tours is a license, not a leasehold interest.

~~((j))~~ (k) "Management agreement" means a written agency agreement between a public property owner or community center which is exempt from property tax and a private person or entity for the use and possession of public

property or community center which is exempt from property tax under the following circumstances:

(i) The public property owner or community center which is exempt from property tax retains all liability for payment of business operating costs and business related damages (other than costs and damages attributable to the activities of the private party);

(ii) The public property owner or community center which is exempt from property tax has title and ownership of all receipts from sales of services or products relating to the management agreement (whether such amounts are collected by the private party on behalf of the public owner or community center which is exempt from property tax or whether the public owner or community center which is exempt from property tax permits the private party to retain a portion of the receipts as payment for services rendered by the private party), and the full discretion of whether to eliminate, reduce or expand the business activity conducted on the property; and

(iii) The public property owner or community center which is exempt from property tax has full control of the prices to be charged for the goods or services provided in the course of use of the property.

If each of these criteria is met, the arrangement between the parties is considered a "true" management agreement which does not, by itself, create a taxable leasehold interest in the property.

~~((k))~~ (l) "Permit" means a written document creating a license to enter land for a specific purpose.

~~((m))~~ (m) "Product lease" means a lease of public property or property of a community center which is exempt from property tax which will be used to produce agricultural or marine products (aquaculture) wherein the lease or agreement requires that:

(i) The leasehold payment be made by delivering a stated percentage of the agricultural or marine products to the credit of the lessor; or

(ii) The lessor be paid a stated percentage of the proceeds from the sale of the agricultural or marine products.

~~((n))~~ (n) "Public property" means all property owned by an entity exempted from property tax obligations pursuant to Article 7, section 1 of the state Constitution (and, in some instances, property held in trust by the United States).

~~((o))~~ (o) "Renegotiated" means a change in the leasehold agreement, other than one specifically required by the terms of the agreement itself, which alters:

(i) The agreed time of possession and use of the property;

(ii) The restrictions on the manner in which the property may be used; or

(iii) The rate of cash rental or other consideration paid by the lessee to or for the benefit of the lessor.

The term also includes the continued possession of the property by the lessee beyond the original date when, according to the terms of the agreement, the lessee had the right to vacate the premises without incurring further liability to the lessor.

~~((p))~~ (p) "Taxable rent" means the amount of rent upon which the measure of leasehold excise tax is based. It is either the contract rent or an amount established by the department

in accordance with the procedures set forth in RCW 82.29A-020(2). (See also WAC 458-29A-200.)

~~((p))~~ (q) "Utility easement" means the right to use publicly owned land or land owned by a community center which is exempt from property tax for the purpose of providing access or installation of publicly regulated utilities.

AMENDATORY SECTION (Amending WSR 99-20-053, filed 10/1/99, effective 11/1/99)

WAC 458-29A-200 Leasehold excise tax—Taxable rent and contract rent. (1) **Introduction.** Ordinarily, the amount of taxable rent is the amount of contract rent paid by a lessee for a taxable leasehold interest. The law does authorize the department to establish a taxable rent different from the contract rent in certain cases. This rule explains the exclusions of certain moneys and other property received by or on behalf of a lessor from the measure of contract rent. It also explains the conditions under which the department is authorized to establish a taxable rent different from the contract rent.

(2) **Contract rent exclusions.** Even when a leasehold interest is present, not all payments made to a lessor constitute taxable contract rent. For example, payments made to or on behalf of the lessor for actual utility charges, janitorial services, security services, repairs and maintenance, and for special assessments such as storm water impact fees attributable to the lessee's space or prorated among multiple lessees, are not included in the measure of contract rent, if the actual charges are separately stated and billed to the lessee(s). "Utility charges" means charges for services provided by a public service business subject to the public utility tax under chapter 82.16 RCW, and, for the purpose of this section only, also includes water, sewer, and garbage services and cable television services.

In some circumstances a private lessee that is occupying or using public property or property of a community center which is exempt from property tax may collect fees from third parties and remit them to the ~~((public))~~ lessor. In those situations where:

(a) The fee structure, rate, or amount collected by the private party is established by or subject to the review and approval of the ~~((public))~~ lessor or other public entity; and

(b) The amounts received by the private entity from third parties are remitted entirely to the public lessor or credited to the account of the ~~((public))~~ lessor, those amounts are not considered part of the contract rent under this chapter, provided that nothing in this section shall preclude or prevent the imposition of tax, as appropriate, under any other chapter of Title 82 RCW on any amounts retained by or paid to the private entity as consideration for services provided to the public property owner or the community center which is exempt from property tax.

Notwithstanding the provisions of this subsection, if such deductions are determined by the department to reduce the amount of contract rent to a level below market value, the department may establish a taxable rent in accordance with ~~((section))~~ subsection (6) ~~((below))~~ of this section.

For example, Dan leases retail space in a building owned by the Port of Whistler. He pays \$800 per month for the

space, which includes building security services. Additionally, he is assessed monthly for his pro rata share of actual janitorial and utility services provided by the Port. The Port determines Dan's share of these charges in the following manner: The average annual amount actually paid by the Port for utilities in the prior year is divided by 12. Dan's space within the building is approximately ten percent of the total space in the building, so the averaged monthly charge is multiplied by .10 (Dan's pro rata share based upon the amount of space he leases), and that amount is added to Dan's monthly statement as a line item charge for utilities, separate from the lease payment. The charges for janitorial services are treated in the same manner. In this case, Dan's payment for utilities and janitorial services are not included in the measure of contract rent. His payments for security services are included in the measure of contract rent, and subject to the leasehold excise tax, because they are not calculated and charged separately from the lease payments.

Contract rent also does not include:

(a) Expenditures made by the lessee for which the lease agreement requires the lessor to reimburse the lessee;

(b) Expenditures made by the lessee for improvements and protection if the lease or agreement requires the improved property to be open to the general public (e.g., a public boat launch) and prohibits the lessee from enjoying any profit directly from the lease;

(c) Expenditures made by the lessee to replace or repair the facilities due to fire or other catastrophic event including, but not necessarily limited to, payments:

(i) For insurance to reimburse losses;

(ii) To a public or private entity to protect the property from damage or loss; or

(iii) To a public or private entity for alterations or additions made necessary by an action of government which occurred after the date the lease agreement was executed.

(d) Improvements added to public property or property of a community center which is exempt from property tax if the improvements are taxed as any person's personal property.

(3) **Combined payments.** When the payment for a leasehold interest is made in combination with payment for concession, franchise or other rights granted by the ~~((public))~~ lessor, only that part of the payment which represents consideration for the leasehold interest is considered part of the contract rent. For example, if the payment made by the lessee to the ~~((public))~~ lessor exceeds the fair market rental value for comparable property with similar use, the excess is generally attributable to payment for a concession or other right.

(4) **Lease payments based on a percentage of sales.** The measure of contract rent subject to the leasehold excise tax may be based upon a lease which provides that the rent shall be a percentage of business proceeds. The manner in which the rent is calculated does not, in itself, determine the character of the underlying right or interest for which the payment is made.

(5) **Expenditures for improvements.** Expenditures by the lessee for nonexcludable improvements (see WAC 458-29A-200(2)) with a useful life of more than one year will be treated as prepaid contract rent if the expenditures were intended by the parties to be included as part of the contract

rent. Such intention may be demonstrated by a contract provision granting ownership or possession and use to the public owner of the underlying property or the community center which is exempt from property tax that owns the underlying property and/or by the conduct of the parties. These expenditures should be prorated over the useful life of the improvement, or over the remaining term of the lease or agreement if the useful life of the improvement exceeds that term. If the lessee vacates prior to the end of the lease without the agreement of the lessor, thereby defaulting on the lease, no additional LET is due for the term remaining pursuant to the contract between the lessor and that lessee.

(6) **Department's authority to establish taxable rent.** RCW 82.29A.020(2) authorizes the department to establish a "taxable rent" that is different from contract rent in some situations.

(a) If the department determines that a lessee has a leasehold interest in publicly owned property or property of a community center which is exempt from property tax and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted under chapter 82.29A RCW. The department shall base its computation on the following criteria:

(i) Consideration shall be given to rent being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; or

(ii) Consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(b) If the department establishes taxable rent pursuant to RCW 82.29A.020(2), and the contract rent was established in accordance with the procedures set forth in that section, but the lease is ten or more years old and has not been renegotiated, the taxable rent for leasehold excise tax purposes shall be prospective only. However, if upon examination the department determines that the contract rent was not set in accordance with the statutory provisions of RCW 82.29A.020(2) and the rent is below fair market rate, the department may (and in most instances, will) apply the taxable rental rate retroactively for purposes of determining the leasehold excise tax, subject to the provisions of RCW 82.32.050(3).

(c) The department will not establish taxable rent if one of the following four situations apply:

(i) The leasehold interest has been established or renegotiated through competitive bidding;

(ii) The rent was set or renegotiated according to statutory requirements;

(iii) Public records demonstrate that the rent was the maximum attainable; or

(iv) A lease properly established or renegotiated in compliance with (6)(c)(i), (ii), or (iii) has been in effect for ten years or less without renegotiation.

(d) Where the contract rent has been established in accordance with one of the first three criteria set forth above, and the lease agreement has not been in effect for ten years or more, or has been properly renegotiated within the past ten years, the taxable rent is deemed to be the stated contract rent.

(e) If land on the Hanford reservation is subleased to a private or public entity by the state of Washington, "taxable rent" means only the annual cash rental payment made by the sublessee to the state and specifically referred to as rent in the sublease agreement.

AMENDATORY SECTION (Amending WSR 10-07-039, filed 3/10/10, effective 4/10/10)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) **Introduction.** This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(2) **Operating properties of a public utility.** All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

For example, tracks leased to a railroad company at the Port of Seaside are exempt from leasehold excise tax because the railroad is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(3) **Student housing at public and nonprofit schools and colleges.** All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

For example, the leasehold interest associated with a building used as a dormitory for Public University students is exempt from the leasehold excise tax.

(4) **Subsidized housing.** All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

For example, a leasehold interest in an apartment house that is subsidized by the United States Department of Housing and Urban Development is exempt from leasehold excise tax if the property is owned by the state of Washington and residents are subject to income qualification requirements.

(5) **Nonprofit fair associations.** All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit asso-

ciation subleases exempt property to a third party, the sublease is a taxable leasehold interest.

For example, a leasehold interest held by the Local Non-profit Fair Association is considered exempt from leasehold excise tax. However, if buildings on the fairgrounds are rented to private parties for storage during the winter, these rentals may be subject to the leasehold excise tax.

(6) **Public employee housing.** All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call twenty-four hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(b) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(c) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not

required for her to perform properly the duties of her employment.

(7) **Interests held by enrolled Indians.** Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax. For example, if an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery, the leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

(8) **Leases on Indian lands to non-Indians.** Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(b) and WAC 458-29A-200.

For example, Harry leases land held in trust by the United States for the Yakama Nation for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

(9) **Annual taxable rent is less than two hundred fifty dollars.** Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same ((public)) lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease

for a period of less than one year will not be projected on an annual basis.

The following examples identify a number of facts and then state a conclusion. 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) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(b) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(c) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(d) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays \$125 to the port to rent the lot for 6 weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed \$250 per year in taxable rent.

(10) Leases for a continuous period of less than thirty days. Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than thirty days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the ((public)) lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(11) Month-to-month leases in residential units to be demolished or removed. Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has

acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

For example, State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(12) Public works contracts. Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

For example, during construction of a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction, any leasehold interest in real or personal property created for Tinker solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

(13) Correctional industries in state adult correctional facilities. Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

For example, a profit or nonprofit organization operating and managing a business within a state prison under an agreement between it and the department of corrections is exempt from leasehold excise tax for its use and possession of state property.

(14) Camp facilities for persons with disabilities. Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for persons with disabilities of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

For example, a county park with camping facilities leased to a nonprofit charitable organization is exempt from leasehold excise tax if the nonprofit allows the property to be used by the general public for recreational activities through-

out the year, and to be used as a camp for disabled persons for two weeks during the summer.

(15) **Public or entertainment areas of certain baseball stadiums.** Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

"Public or entertainment areas" for the purposes of this exemption include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(16) **Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this exemption, the term "public and entertainment areas" has the same meaning as set forth in subsection (15) above.

(17) **Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(18) **State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

(19) **Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. This exemption is effective July 28, 2000. RCW 82.29A.134.

(20) **Interests consisting of three thousand or more residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. This exemption is effective January 1, 2002. RCW 82.29A.136.

(21) **Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property ~~((that))~~ listed on any federal or state register of his-

torical sites are exempt from leasehold excise tax if the property is:

(a) Owned by the United States government or a municipal corporation; and

(b) ~~((Listed on any federal or state register of historical sites; and~~

~~((e)))~~ Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(22) **Amphitheaters.** All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" ~~((does))~~ do not include office areas used predominantly by the lessee.

(23) **Military housing.** All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities~~((s))~~ are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

AMENDATORY SECTION (Amending WSR 99-20-053, filed 10/1/99, effective 11/1/99)

WAC 458-29A-500 Leasehold excise tax—Liability.
(1) **Introduction.** The event triggering a leasehold excise tax liability is the use by a private person or entity of publicly

owned, tax-exempt property or property of a community center which is exempt from property tax.

Where a lessee is also a tax-exempt government entity, the tax will apply against a private sublessee, even though no contractual arrangement exists between the sublessee and the ((public)) lessor.

(2) **Lessor's responsibility to collect and remit tax.** The ((public)) lessor is responsible for collecting and remitting the leasehold excise tax from its private lessees. If the ((public)) lessor collects the leasehold excise tax but fails to remit it to the department, the ((public)) lessor is liable for the tax.

(a) Where the ((public)) lessor has attempted to collect the tax, but has received neither contract rent nor leasehold excise tax from the lessee, the department will proceed directly against the lessee for payment of the tax and the lessee shall be solely liable for the tax, provided, the lessor notifies the department in writing when the lessor is unable to collect rent and/or taxes, and the amount of the leasehold excise tax arrearage is \$1000 or greater. If the lessor fails to notify the department, the department may, in its discretion, look to the ((public)) lessor for payment of the tax.

(b) If, upon examining all of the facts and circumstances, the department determines that the ((public)) lessor in good faith believed the lessee to be exempt from all or part of the leasehold excise tax, the department will look to the ((public)) lessor for assistance in collection of the tax due, but will not hold the ((public)) lessor personally liable for payment of such tax. To satisfy the requirement of "good faith" the ((public)) lessor must have acted with reasonable diligence and prudence to determine whether the leasehold excise tax was due from the lessee.

(3) The following examples, while not exhaustive, illustrate some of the circumstances in which a ((public)) lessor may or may not be held liable for the leasehold excise tax. 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) Doug has been newly hired in the accounting department at City Port and is assigned the responsibility for its rental accounts. He is unaware of the leasehold excise tax laws and fails to bill new tenants for the leasehold excise tax. In this situation, City Port does not avoid possible liability for the tax. Accounting errors and lack of knowledge regarding City Port's responsibility to collect and remit the leasehold excise tax do not qualify as reasonable diligence and prudence.

(b) Sybil rents an apartment in a building owned by State University but she is not a student of the University and the building is not used for student housing. She pays \$900 per month in rent. The terms of the lease require her to give at least thirty days' notice of intent to vacate. In the month of March, she fails to pay her rent, and State University serves her with a notice to pay or quit the premises. On April 1, she sends a check to State University for \$2016 (two months' rent, plus leasehold excise tax). The bank does not honor the check, and Sybil abandons the premises in mid-April without notice. When State University discovers that she has left, it timely notifies the department of the unpaid rent and leasehold excise tax. State University has acted with reasonable

prudence and diligence and will not be held liable for the unpaid leasehold excise tax. In serving Sybil with a notice to pay or quit when she first defaulted, State University attempted to mitigate the amount of rent and taxes which were unpaid, and it complied with all other requirements regarding its duty to report the arrearages to the department.

(c) Sonata City owns several houses on property which may be used in the future for office buildings, a fire station, or perhaps a park, depending on its future needs. The city leases the houses on six-month terms, mainly to students who attend the local college. Over the past four years that the city has rented the properties, it has not collected leasehold excise tax from the tenants, because city officials believed the property to be exempt since they planned someday to use the property for a public purpose. Following an audit, it is determined that there is no definite plan for destruction of the houses nor any funds allocated for construction of public buildings on the site. Further, the houses were not rented on a month-to-month basis. Therefore, leasehold excise tax is due. Most of the prior tenants have left the area, and there is no convenient way for the city to collect the unpaid leasehold tax. Sonata City is liable for the tax because although its managers did not believe the tax was due, the lack of knowledge regarding the city's responsibility to collect and remit the leasehold excise tax does not qualify as reasonable diligence and prudence. Sonata City had a duty to make a good faith effort to determine its obligations under the applicable leasehold excise tax statutes and rules.

WSR 10-18-036

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed August 25, 2010, 1:47 p.m., effective September 25, 2010]

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

Purpose: To implement corrections in the regular rule-making process:

- Correction of a numerical citation and clarify that a specific section of the International Residential Code is not adopted within WAC 51-51-0313.
- Correction of several cross references within WAC 51-51-0325.
- Correction of a single cross reference within WAC 51-51-0408.
- Correction/deletion of a misplaced section title in WAC 51-51-0602.
- Correction of several cross references within WAC 51-51-0612.

Citation of Existing Rules Affected by this Order: Amending WAC 51-51-0313, 51-51-0325, 51-51-0408, 51-51-0602, and 51-51-0612.

Statutory Authority for Adoption: Chapter 19.27 RCW. Adopted under notice filed as WSR 10-13-183 on June 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 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: August 24, 2010.

John Cochran
Chair

AMENDATORY SECTION (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10)

WAC 51-51-0313 Section R313—Automatic fire sprinkler systems.

~~((R313.1 Automatic Fire Sprinkler Systems.))~~ This section ~~((is))~~ not adopted.

AMENDATORY SECTION (Amending WSR 09-04-023, filed 1/27/09, effective 7/1/10)

WAC 51-51-0325 Section R325—Adult family homes.

**SECTION R325
ADULT FAMILY HOMES**

R325.1 General. This section shall apply to all newly constructed adult family homes and all existing single family homes being converted to adult family homes. This section shall not apply to those adult family homes licensed by the state of Washington department of social and health services prior to July 1, 2001.

R325.2 Submittal Standards. In addition to those requirements in Section 106.1, the submittal shall identify the project as a Group R-3 Adult Family Home Occupancy. A floor plan shall be submitted identifying the means of egress and the components in the means of egress such as stairs, ramps, platform lifts and elevators. The plans shall indicate the rooms used for clients and the sleeping room classification of each room.

R325.3 Sleeping Room Classification. Each sleeping room in an adult family home shall be classified as:

1. Type S - where the means of egress contains stairs, elevators or platform lifts.
2. Type NS1 - where one means of egress is at grade level or a ramp constructed in accordance with R325.9 is provided.
3. Type NS2 - where two means of egress are at grade level or ramps constructed in accordance with R325.9 are provided.

R325.4 Types of Locking Devices. All bedroom and bathroom doors shall be openable from the outside when locked.

Every closet shall be readily openable from the inside.

Operable parts of door handles, pulls, latches, locks and other devices installed in adult family homes shall be operable with one hand and shall not require tight grasping, pinching or twisting of the wrist. The force required to activate operable parts shall be 5.0 pounds (22.2 N) maximum. Exit doors shall have no additional locking devices.

R325.5 Smoke Alarm Requirements. All adult family homes shall be equipped with smoke alarms installed as required in Section ~~((R313))~~ R314. Alarms shall be installed in such a manner so that the fire warning may be audible in all parts of the dwelling upon activation of a single device.

R325.6 Escape Windows and Doors. Every sleeping room shall be provided with emergency escape and rescue windows as required by Section R310. No alternatives to the sill height such as steps, raised platforms or other devices placed by the openings will be approved as meeting this requirement.

R325.7 Fire Apparatus Access Roads and Water Supply for Fire Protection. Adult family homes shall be served by fire apparatus access roads and water supplies meeting the requirements of the local jurisdiction.

R325.8 Grab Bars. Grab bars shall be installed for all water closets and bathtubs and showers. The grab bars shall comply with ICC/ANSI A117.1 Sections 604.5 and 607.4 and 608.3.

EXCEPTION: Grab bars are not required for water closets and bathtubs and showers used exclusively by staff of the adult family home.

R325.9 Ramps. All interior and exterior ramps, when provided, shall be constructed in accordance with Section ~~((R311.6))~~ R311.8 with a maximum slope of 1 vertical to 12 horizontal. The exception to ~~((R311.6.1))~~ R311.8.1 is not allowed for adult family homes. Handrails shall be installed in accordance with R325.9.1.

R325.9.1 Handrails for Ramps. Handrails shall be installed on both sides of ramps between the slope of 1 vertical to 12 horizontal and 1 vertical and 20 horizontal in accordance with R311.6.3.1 through R311.6.3.3.

R325.10 Stair Treads and Risers. Stair treads and risers shall be constructed in accordance with ~~((R311.5.3.2))~~ R311.7.4. Handrails shall be installed in accordance with R325.10.1.

R325.10.1 Handrails for Treads and Risers. Handrails shall be installed on both sides of treads and risers numbering from one riser to multiple risers. Handrails shall be installed in accordance with ~~((R311.5.6.1))~~ R311.7.7 through ~~((R311.5.6.3))~~ R311.7.7.4.

AMENDATORY SECTION (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10)

WAC 51-51-0408 Section R408—Under-floor space.

R408.1 Ventilation. The under-floor space between the bottom of the floor joists and the earth under any building

(except space occupied by a basement) shall have ventilation openings through foundation walls or exterior walls.

R408.2 Openings for under-floor ventilation. The minimum net area of ventilation openings shall not be less than 1 square foot (0.0929 m²) for each 300 square feet (28 m²) of under-floor area. One ventilating opening shall be within 3 feet (914 mm) of each corner of the building, except one side of the building shall be permitted to have no ventilation openings. Ventilation openings shall be covered for their height and width with any of the following materials provided that the least dimension of the covering shall not exceed 1/4 inch (6.4 mm):

1. Perforated sheet metal plates not less than 0.070 inch (1.8 mm) thick.
2. Expanded sheet metal plates not less than 0.047 inch (1.2 mm) thick.
3. Cast-iron grill or grating.
4. Extruded load-bearing brick vents.
5. Hardware cloth of 0.035 inch (0.89 mm) wire or heavier.
6. Corrosion-resistant wire mesh, with the least dimension being 1/8 inch (3.2 mm).

EXCEPTION: The total area of ventilation openings shall be permitted to be reduced to 1/1,500 of the under-floor area where the ground surface is covered with an approved Class I vapor retarder material and the required openings are placed to provide cross ventilation of the space. The installation of operable louvers shall not be prohibited. If the installed ventilation is less than 1/300, or if operable louvers are installed, a radon vent shall be installed to originate from a point between the ground cover and soil. The radon vent shall be installed in accordance with the requirements of Appendix F (Radon) of this code.

R408.3 Unvented crawl space. Ventilation openings in under-floor spaces specified in Sections R408.1 and R408.2 shall not be required where:

1. Exposed earth is covered with a continuous Class I vapor retarder. Joints of the vapor retarder shall overlap by 6 inches (152 mm) and shall be sealed or taped. The edges of the vapor retarder shall extend at least 6 inches (152 mm) up the stem wall and shall be attached and sealed to the stem wall; and a radon system shall be installed that meets the requirements of Appendix F (Radon) of this code.
2. Continuously operated mechanical exhaust ventilation is provided at a rate equal to 1 cubic foot per minute (0.47 L/s) for each 50 square feet (4.7 m²) of crawlspace floor area. Exhaust ventilation shall terminate to the exterior.

EXCEPTION: Plenum in existing structures complying with Section ((M1601.4)) M1601.5, if under-floor space is used as a plenum.

AMENDATORY SECTION (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10)

WAC 51-51-0602 Section R602—Wood wall framing.

R602.9 Foundation cripple walls. Foundation cripple walls shall be framed of studs not smaller than the studding above. When exceeding 4 feet (1219 mm) in height, such walls shall

be framed of studs having the size required for an additional story.

Cripple walls supporting bearing walls or exterior walls or interior braced wall panels as required in Sections R403.1.2 and R602.10.7.1 with a stud height less than 14 inches (356 mm) shall be sheathed on at least one side with a wood structural panel that is fastened to both the top and bottom plates in accordance with Table R602.3(1), or the cripple walls shall be constructed of solid blocking. Cripple walls shall be supported on continuous footings or foundations.

EXCEPTION: Footings supporting cripple walls used to support interior braced wall panels as required in Sections R403.1.2 and R602.10.7.1 shall be continuous for the required length of the cripple wall and constructed beyond the cripple wall for a minimum distance of 4 inches and a maximum distance of the footing thickness. The footings extension is not required at intersections with other footings.

R602.10.1.2 Length of bracing. The length of bracing along each braced wall line shall be the greater of that required by the design wind speed and braced wall line spacing in accordance with Table R602.10.1.2(1) as adjusted by the factors in the footnotes or the Seismic Design Category and braced wall line length in accordance with Table R602.10.1.2(2) as adjusted by the factors in Table R602.10.1.2(3). Braced wall panel locations shall comply with the requirements of Section R602.10.1.4. Only walls that are parallel to the braced wall line shall be counted toward the bracing requirement of that line, except angled walls shall be counted in accordance with Section R602.10.1.3. In no case shall the minimum total length of bracing in a braced wall line, after all adjustments have been taken, be less than 48 inches (1219 mm) total.

R602.10.1.5 Braced wall line spacing for Seismic Design Categories D₀, D₁ and D₂. Spacing between braced wall lines in each story shall not exceed 25 feet (7620 mm) on center in both the longitudinal and transverse directions.

EXCEPTION: In one-story and two-story buildings, spacing between two adjacent braced wall lines shall not exceed 35 feet (10,668 mm) on center in order to accommodate one single room not exceeding 900 square feet (84 m²) in each dwelling unit or accessory structure. Spacing between all other braced wall lines shall not exceed 25 feet (7 620 mm). A spacing of 35 feet (10,668 mm) or less shall be permitted between braced wall lines where the length of wall bracing required by Table R602.10.1.2(2) is multiplied by the appropriate adjustment factor from Table R602.10.1.5, the length-to-width ratio for the floor/roof diaphragm does not exceed 3:1, and the top plate lap splice face nailing is twelve 16d nails on each side of the splice.

~~(R602.10.2 Cripple wall bracing.)~~

R602.10.2.3 Redesignation of cripple walls. In any Seismic Design Category, cripple walls are permitted to be redesignated as the first story walls for purposes of determining wall bracing requirements. If the cripple walls are redesignated, the stories above the redesignated story shall be counted as the second and third stories, respectively.

R602.10.7.1 Braced wall panel support for Seismic Design Category D₂. In one-story buildings located in Seismic Design Category D₂, braced wall panels shall be supported on

continuous foundations at intervals not exceeding 50 feet (15,240 mm). In two-story buildings located in Seismic Design Category D₂, all braced wall panels shall be supported on continuous foundations.

R602.10.9 Cripple wall bracing. In Seismic Design Categories other than D₂, cripple walls supporting bearing walls or exterior walls or interior braced wall panels as required in R403.1.2 and R602.10.7.1 shall be braced with a length and type of bracing as required for the wall above in accordance with Tables R602.10.1.2(1) and R602.10.1.2(2) with the following modifications for cripple wall bracing:

1. The length of bracing as determined from Tables R602.10.1.2(1) and R602.10.1.2(2) shall be multiplied by a factor of 1.15, and
2. The wall panel spacing shall be decreased to 18 feet (5486 mm) instead of 25 feet (7620 mm).

R602.10.9.1 Cripple wall bracing in Seismic Design Categories D₀, D₁ and D₂. In addition to the requirements of Section R602.10.9, where braced wall lines at interior walls occur without a continuous foundation below, the length of parallel exterior cripple wall bracing shall be 1 1/2 times the length required by Tables R602.10.1.2(1) and R602.10.1.2(2). Where cripple walls braced using Method WSP of Section R602.10.2 cannot provide this additional length, the capacity of the sheathing shall be increased by reducing the spacing of fasteners along the perimeter of each piece of sheathing to 4 inches (102 mm) on center.

In Seismic Design Category D₂, cripple walls supporting bearing walls or exterior walls or interior braced wall panels as required in Sections R403.1.2 and R602.10.7.1 shall be braced in accordance with Tables R602.10.1.2(1) and R602.10.1.2(2).

AMENDATORY SECTION (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10.)

WAC 51-51-0612 Section R612—Exterior windows and glass doors.

R612.6 Testing and labeling. Exterior windows and sliding doors shall be tested by an approved independent laboratory, and bear a label identifying manufacturer, performance characteristics and approved inspection agency to indicated compliance with AAMA/WDMA/CSA 101/I.S.2/A440. Exterior side-hinged doors shall be tested and labeled as conforming to AAMA/WDMA/CSA 101/I.S.2/A440 or comply with Section ((~~R613.6~~) R612.6).

EXCEPTIONS:

1. Decorative glazed openings.
2. Custom exterior windows and doors manufactured by a small business shall be exempt from all testing requirements in Section ((~~R613~~) R612) of the International Residential Code provided they meet the applicable provisions of Chapter 24 of the International Building Code.

WSR 10-18-048

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 26, 2010, 1:15 p.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: The department is amending Basic Food work requirement rules to:

- Change the name "Food stamp employment and training" program to "Basic Food Employment and Training" program or BF E&T;
- Convert the BF E&T program to an all-volunteer program as allowed under federal regulations;
- Expand the definition of BF E&T to include any Supplemental Nutrition Assistance Program (SNAP) E&T activities or services provided in Washington state;
- Define and clarify which Basic Food recipients are mandatory Basic Food work registrants;
- Define and clarify which Basic Food recipients can volunteer for BF E&T activities; and
- Align rules with current federal regulations on E&T requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-444-0020; and amending WAC 388-444-0005, 388-444-0010, 388-444-0015, 388-444-0025, 388-444-0050, 388-444-0055, and 388-444-0060.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, and 74.08A.903.

Other Authority: 7 U.S.C. 2015 (d)(1); 7 C.F.R. § 273.7.

Adopted under notice filed as WSR 10-15-115 on July 21, 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 7, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 1.

Date Adopted: August 26, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-04-009, filed 1/22/09, effective 2/22/09)

**WAC 388-444-0005 ((~~Food stamp employment and training (FS E&T) program—General requirements.~~))
Am I required to work or look for work in order to be eli-**

gible for Basic Food? ((1) To receive Basic Food some people must register for work and participate in the food stamp employment and training (FS E&T) program.

(2) We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:

(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.

(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt, you may choose to receive services through the FS E&T program.

(3) If you are nonexempt from FS E&T requirements,))

Some people must register for work to receive Basic Food.

(1) If you receive Basic Food, we register you for work if you are:

(a) Age sixteen through fifty-nine with dependents;

(b) Age sixteen or seventeen, not attending secondary school and not the head-of-household;

(c) Age fifty through fifty-nine with no dependents; or

(d) Age eighteen through forty-nine, able-bodied and with no dependents as provided in WAC 388-444-0030.

(2) Unless you are exempt from work registration under WAC 388-444-0010, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

((4) If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:

(a) We define good cause for not meeting FS E&T requirements under WAC 388-444-0050; and

(b) We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.

(5)) (3) If ((you are nonexempt)) we register you for work, you must:

(a) ((Report to)) Contact us ((or your FS E&T service provider and participate)) as required;

(b) Provide information regarding your employment status and availability for work ((when)) if we ask for it;

(c) Report to an employer ((when)) if we refer you; ((and))

(d) Not quit a job unless you have good cause under WAC 388-444-0070; and

(e) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

((6) If you are nonexempt, you must participate in one or more of the following FS E&T activities:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(7) If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:

(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and

(b) If your IRP includes unpaid community service or work experience, we use your TANF grant and the Basic Food benefits received by members of your TANF assistance unit to determine the maximum hours of unpaid work we include in your plan.

(8) Exempt or nonexempt FS E&T participants **will not be required** to participate more than one hundred and twenty hours per month, but exempt or nonexempt FS E&T participants may **volunteer** to participate beyond one hundred and twenty hours))

(4) If we register you for work, you must meet all of the requirements under subsection (3) of this section. If you do not meet these requirements, we disqualify you from receiving benefits as described in WAC 388-444-0055, unless you meet the good cause conditions as defined in WAC 388-444-0050.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-444-0010 ((Clients who are required to register for work and must participate in FS E&T)) Who is exempt from work registration while receiving Basic Food? ((The following clients are nonexempt, must register for work and are required to participate in FS E&T:

(1) Age sixteen through fifty-nine with dependents;

(2) Age sixteen or seventeen, not attending secondary school and not the head-of-household;

(3) Age fifty through fifty-nine with no dependents;

(4) Age eighteen to fifty, able-bodied and with no dependents as provided in WAC 388-444-0030)) If you receive Basic Food, you are exempt from work requirements in chapter 388-444 WAC if you meet any of the following conditions:

(1) You are age sixteen or seventeen, not the head-of-household, and:

(a) Attend school such as high school or GED programs;

or

(b) Are enrolled at least half time (using the institutions definition) in an employment and training program under:

(i) The Workforce Investment Act (WIA);

(ii) Section 236 of the Trade Act of 1974; or

(iii) Another state or local employment and training program.

(2) You are a student age eighteen or older enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) A training program; or

(c) An institution of higher education. If you are enrolled in higher education, you must meet the requirements under WAC 388-482-0005 to be eligible for Basic Food benefits.

(3) You are an employed or self-employed person working thirty hours or more per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty;

(4) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(5) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;

(6) You are responsible to care for:

(a) A dependent child under age six; or

(b) Someone who is incapacitated.

(7) We determine that you are physically or mentally unable to work; or

(8) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program.

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

AMENDATORY SECTION (Amending WSR 06-24-026, filed 11/29/06, effective 1/1/07)

WAC 388-444-0015 ((Who is not required to register for work or participate in FS E&T)) How can the Basic Food employment and training (BF E&T) program help me find work? ((Some people do not have to register for work or participate in the Food Stamp Employment and Training Program (FS E&T). These people are exempt from FS E&T.

(1) You are exempt from FS E&T requirements in chapter 388-444 WAC if you meet any of the following conditions:

(a) You are age sixteen or seventeen, not the head of household, and:

(i) Attend school such as high school or GED programs; or

(ii) Are enrolled at least half time (using the institutions definition) in an employment and training program under:

(A) The Workforce Investment Act (WIA);

(B) Section 236 of the Trade Act of 1974; or

(C) Another state or local employment and training program.

(b) You are a student age eighteen or older enrolled at least half time as defined by the institution in:

(i) Any accredited school;

(ii) A training program; or

(iii) An institution of higher education. If you are enrolled in higher education, you meet the requirements under WAC 388-482-0005 to be eligible for Basic Food benefits.

(c) you are an employed or self-employed person working thirty hours or more per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty.

(d) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;

(e) You are responsible to care for:

(i) A dependent child under age six; or

(ii) Someone who is incapacitated.

(f) We determine that you are physically or mentally unable to work; or

(g) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program.

(2) If you are exempt, you may choose to receive services through the FS E&T program)) The Basic Food employment and training (BF E&T) program is the name for Washington's voluntary supplemental nutrition assistance program (SNAP) employment and training program.

(1) If you receive federally-funded Basic Food benefits, you may choose to receive services through the BF E&T pro-

gram in one or more of the following activities, if we currently provide the service in the county where you live:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(2) If you are eligible to participate in a BF E&T activity, there is no limit to the number of hours you can participate.

(3) If you receive benefits under the state-funded food assistance program (FAP), you are not eligible to participate in BF E&T.

AMENDATORY SECTION (Amending WSR 07-21-075, filed 10/16/07, effective 11/16/07)

WAC 388-444-0025 ((Payments for FS E&T related expenses.)) What expenses will the department pay to help me participate in BF E&T? (1) ((Some of a client's actual expenses needed to participate in the FS E&T program may be paid by the department. Allowable expenses are)) The department pays certain actual expenses needed for you to participate in the BF E&T program. We will pay for the following expenses:

(a) Transportation related costs; and

(b) Dependent care costs for each dependent through twelve years of age.

(2) ((Dependent care payments are not paid)) We do not pay your dependent care costs if:

(a) The child is thirteen years of age or older unless ((the child is)) they are:

(i) Physically and/or mentally ((incapable of self-care)) unable to care for themselves; or

(ii) Under court order requiring adult supervision; or

(b) Any member in the food assistance unit provides the dependent care.

(3) ((Dependent care payments paid by the department cannot be claimed as an expense and used in calculating the dependent care deduction as provided in)) We do not use the cost of dependent care the department pays for as an income deduction for your household's dependent care costs under WAC 388-450-0185.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-444-0050 ((Good cause for failure to register for work or for not participating in the FS E&T program.)) What is good cause for failing to meet Basic Food work requirements? (1) ((A nonexempt client may have good cause for refusing or failing to register for work or to participate in the FS E&T program)) If we have registered you to work, you may have a good reason (good cause) for refusing or failing to meet work requirements under WAC 388-444-0005.

(2) Good cause reasons include, but are not limited to:

(a) ((Illness of the client)) You were injured or ill;

(b) ((Illness of another household member requiring the help of the client)) A household member who needs your help was injured or ill;

(c) A household emergency;

(d) The unavailability of transportation; or
 (e) Lack of adequate dependent care for children six through twelve years of age.

(3) ~~((A client who is determined by the department to lack good cause for failing or refusing to participate in FS E&T is disqualified and is not eligible to receive food assistance))~~ If we determine that you do not have good cause for failing or refusing to meet the work requirements under WAC 388-444-0005, you will be disqualified from receiving Basic Food as described under WAC 388-444-0055.

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-444-0055 What are the penalties ~~((for refusing or failing to comply))~~ if I refuse or fail to meet Basic Food work requirements? (1) ~~If we register you ((are nonexempt)) for work you must ((follow the food assistance)) meet the work requirements ((as defined in)) under WAC 388-444-0005 or 388-444-0030 unless you have good cause as defined in WAC 388-444-0050. If you do not follow these rules, you will become an ineligible assistance unit member as ((provided in WAC 388-450-0140)) described under WAC 388-408-0035. The remaining members of the assistance unit continue to be eligible for ((food assistance)) Basic Food.~~

(2) ~~If you do not ((follow these rules unless you have good cause)) meet work requirements and we find that you did not have good cause, you cannot receive ((food assistance)) Basic Food for the following periods of time and until you ((comply with)) meet program requirements:~~

(a) For the first failure ~~((to comply))~~, one month;
 (b) For the second failure ~~((to comply))~~, three months; and
 (c) For the third or subsequent failure ~~((to comply))~~, six months.

(3) ~~If you become exempt under WAC ((388-444-0015)) 388-444-0010 and are otherwise eligible, you may begin to receive ((food assistance)) Basic Food.~~

(4) ~~If ((you are nonexempt and)) you do not comply with the work requirements of the following programs, you cannot receive ((food assistance)) Basic Food unless you meet one of the conditions described under WAC 388-444-0010 except subsections (1)(d) or (1)(e):~~

(a) WorkFirst;
 (b) Unemployment compensation;
 (c) The refugee cash assistance program.
 (5) ~~Within ten days after learning of your refusal to participate in your program, the financial worker will send you a notice that your ((food assistance)) Basic Food benefits will end unless you comply with your program requirements.~~

(6) ~~If you do not comply within ten days, you will be issued a notice disqualifying you from receiving ((food assistance)) Basic Food until you comply with your program, or until you meet the ((FS E&T)) work registration disqualification requirements in subsection (2) of this section.~~

(7) ~~After the penalty period in subsection (2) of this section is over, and you ((have complied with your program)) meet work requirements((-)) and you are otherwise eligible, you may receive ((food assistance)) Basic Food:~~

(a) ~~If you are alone in the assistance unit and apply to reestablish eligibility; or~~

(b) ~~If you are a member of an assistance unit, you may resume receiving ((food assistance)) Basic Food.~~

(8) ~~During the penalty period, if you begin to participate in one of the programs listed in subsection (4)(a) through (c) and that penalty is removed, the ((FS E&T)) work registration disqualification also ends. If you are otherwise eligible, you may begin to receive ((food assistance)) Basic Food.~~

~~((9) You have a right to a fair hearing as provided in chapter 388-02 WAC.)~~

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-444-0060 ~~((FS E&T))~~ What is unsuitable employment for Basic Food work requirements. ~~((Nonexempt clients participating in FS E&T))~~ If we register you for work, you must accept a bona fide offer of suitable employment in order to be eligible for Basic Food. We consider employment ((is considered)) unsuitable when:

(1) The wage offered is less than the federal or state minimum wage, whichever is highest;

(2) The job offered is on a piece-rate basis and the average hourly yield expected is less than the federal or state minimum wage, whichever is highest;

(3) The employee, as a condition of employment, ~~((is required to))~~ must join, resign from, or is barred from joining any legitimate labor union;

(4) The work offered is at a site subject to strike or lock-out at the time of offer unless:

(a) The strike is enjoined under the Taft-Hartley Act; or
 (b) An injunction is issued under section 10 of the Railway Labor Act.

(5) The employment has an unreasonable degree of risk to health and safety ~~((is unreasonable))~~;

(6) ~~((The client is))~~ You are physically or mentally unable to perform the job as documented by medical evidence or reliable information from other sources;

(7) The employment offered within the first thirty days of Basic Food work registration ~~((for FS E&T))~~ is not in ~~((the client's))~~ your major field of experience;

(8) The distance from ~~((the client's))~~ your home to the job is unreasonable considering the wage, time and cost of commute:

(a) The job is not suitable when daily commuting time exceeds two hours per day, not including transporting a child to and from child care; and

(b) The job is not suitable when the distance to the job prohibits walking and public or private transportation is not available.

(9) The working hours or nature of the job interferes with ~~((the client's))~~ your religious observances, convictions, or beliefs.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-444-0020 When must clients register for work but are not required to participate in the food stamp employment and training program (FS E&T)?

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 26, 2010.

Katherine I. Vasquez
Rules Coordinator

WSR 10-18-050
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 26, 2010, 3:21 p.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule adopts federally approved standards that must be annually adjusted under Title 7 C.F.R. § 273.9 (d)(6)(3) and implemented effective October 1, 2010, as directed by USDA Food and Nutrition Service.

Purpose: The department is amending WAC 388-450-0195 related to the standard utility allowance (SUA) used when determining eligibility and benefit levels for Basic Food and WASHCAP.

This standard, which must be updated annually as required under Title 7 of the Code of Federal Regulations § 273 [273.9] (d)(6)(3). FNS has approved the new standards to be used from October 1, 2010, through September 30, 2011. The department will provide this same SUA standard to all households regardless of the number of persons in the household.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0195.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. § 273.9 (d)(6)(3).

Adopted under notice filed as WSR 10-15-113 on July 21, 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 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 Mak-

AMENDATORY SECTION (Amending WSR 09-24-001, filed 11/18/09, effective 12/19/09)

WAC 388-450-0195 (~~Utility allowances for Basic Food programs.~~) Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits? (1) (~~For Basic Food, "utilities" include the following~~) We use a standard utility allowance (SUA) of three hundred eighty-five dollars instead of your actual utility costs when we determine your assistance unit's:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) We considered the average cost of the following utilities to determine the value of the SUA:

(a) Heating (~~or~~) and cooling fuel such as electricity, oil, or gas;

(b) Electricity (~~or gas~~);

(c) Water (~~or~~) and sewer;

(d) Well or septic tank installation/maintenance;

(e) Garbage/trash collection; and

(f) Telephone service.

(~~(2)~~) (3) The department uses the (~~amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits~~) SUA if you have utility costs separate from your rent or mortgage payment or if you receive a low income home energy assistance program (LIHEAP) benefit during the year.

(~~(a) If you have heating or cooling costs or receive a low income home energy assistance program (LIHEAP) benefit during the year you get a standard utility allowance (SUA) that depends on your assistance unit's size.~~)

<u>((Assistance Unit (AU) Size))</u>	<u>((Utility Allowance))</u>
<u>((1))</u>	<u>(((\$352))</u>
<u>((2))</u>	<u>(((\$362))</u>
<u>((3))</u>	<u>(((\$373))</u>
<u>((4))</u>	<u>(((\$384))</u>
<u>((5))</u>	<u>(((\$394))</u>
<u>((6 or more))</u>	<u>(((\$405))</u>

(~~(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred seventy-six dollars.~~

(~~(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of forty-two dollars.~~)

WSR 10-18-051
PERMANENT RULES
HEALTH CARE AUTHORITY

[Order 10-01—Filed August 27, 2010, 9:20 a.m., effective September 27, 2010]

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

Purpose: Amendment of the Washington health care authority's (HCA) rules administering requests for access to public records. Amendments are needed to reflect changes in state law, technology and HCA processes.

Citation of Existing Rules Affected by this Order: Amending chapter 182-04 WAC.

Statutory Authority for Adoption: RCW 41.05.160, 42.56.040, and 70.02.050.

Adopted under notice filed as WSR 10-15-090 on July 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 3, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 11, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 11, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 27, 2010.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-010 Purpose. The purpose of this chapter shall be to insure compliance by the Washington state health care authority (HCA) with the provisions of chapter ~~((42.17))~~ 42.56 RCW dealing with public records.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-015 Definitions. The following definitions shall apply:

(1) "HCA" means the Washington state health care authority, created pursuant to chapter 41.05 RCW.

(2) "Public record" is defined in RCW 42.56.010. Except as otherwise provided by law, public records include(s) any ~~((writing))~~ written or recorded communication containing information relating to the conduct of ~~((government))~~ the HCA or the performance of any governmental ~~((agency or the performance of any governmental))~~ or proprietary ~~((information))~~ function prepared, owned, used, or retained by the HCA.

(3) "Writing" ~~((means all means of recording any form of communication or representation as defined in RCW 42.17.020(28)))~~ is defined in RCW 42.56.010. It includes handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

NEW SECTION

WAC 182-04-020 Whom should I contact about a public records request? The HCA public records officer is in charge of responding to all records requests made to the HCA. The public records officer is responsible for overseeing the release of public records and coordinating HCA public disclosure staff.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-025 How will the HCA respond to my public records~~((s))~~ request? (1) Except as provided by law, all public records of the HCA as defined in WAC 182-04-015(2) ~~((shall))~~ will be made available upon public request for inspection and copying ~~((pursuant to these rules, except however as provided by law)).~~

(2) ~~((The public disclosure officer, or designee, shall respond promptly to requests for disclosure.))~~ Within five business days after receiving a request, the HCA public disclosure officer, or designee ~~((shall respond by))~~ will:

(a) ~~((Providing))~~ Provide the record(s);

(b) ~~((Acknowledging the))~~ Acknowledge your request and ~~((providing))~~ give you a reasonable estimate of ~~((the time it will take to respond to the request))~~ how long the HCA will need to provide the records. If the request is not clear, the public disclosure officer may ask you for more information (see WAC 182-04-027). If you fail to clarify the request, the public disclosure officer need not respond to it; or

(c) ~~((Denying))~~ Deny all or part of the public record request in writing with the reason(s) for the denial (see WAC 182-04-050 and 182-04-053).

(3) ~~((In acknowledging receipt of a public record request that is unclear, the public disclosure officer may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the public disclosure officer need not respond to it.))~~ At his or her discretion, the public records officer may send the requested records to you by e-mail, fax, or regular mail. The records may be delivered on computer or compact disks, or by use of other methods of transmittal or storage.

NEW SECTION

WAC 182-04-027 Why might the HCA need to extend the time to respond to a public record request?

The HCA may need to extend the time to respond to a public record request to:

- (1) Locate and gather the information requested;
- (2) Notify an individual or organization affected by the request;
- (3) Determine whether the information requested is exempt from disclosure and whether all or part of the public record requested can be released; or
- (4) Contact you to clarify the intent, scope or specifics of the request. If you fail to clarify the request, the HCA may not have to respond to your request.

NEW SECTION

WAC 182-04-029 What records can I request and/or copy? You may inspect or get copies of all public records unless they are exempted by chapter 42.56, 19.183 or 70.02 RCW, or other applicable law.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-035 (~~Office hours~~) When can I inspect or obtain copies of documents? ~~((Public records shall be made available upon request only during working hours of the HCA. For the purpose of this chapter, the working hours shall be from 9:00 a.m. until noon, and from 1:00 p.m. until 4:00 p.m., Monday through Friday, excluding legal holidays.))~~ You can inspect public records at the HCA in Thurston County from 9:00 a.m. until noon, and from 1:00 p.m. until 4:00 p.m., Monday through Friday. Records are not available on legal holidays or when the HCA offices are closed for other reasons such as inclement weather or emergencies. The HCA reserves the right to restrict your ability to examine public records when the HCA determines it is necessary to preserve public records or prevent interference with the performance of HCA duties. This does not prevent the HCA from providing you with copies of the public records or limit the duty of the HCA to provide you with copies of the public records.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-040 (~~Request for~~) How do I make a public record(~~s~~) request? In accordance with the requirements of chapter ~~((42.17))~~ 42.56 RCW that agencies prevent unreasonable invasion of privacy, and to protect public records from damage or disorganization, and to 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 the public, ~~((upon compliance with))~~ by using the following procedures:

- (1) ~~((A request shall be made in writing or upon the form prescribed in WAC 182-04-070, which shall be available at the HCA. The form shall be presented to the public disclosure officer, or to any member of the agency's staff, if the public disclosure officer is not available, at the office of the agency during customary office hours.))~~ Public record requests should be made in writing. The HCA accepts written public record requests made in person or sent by e-mail, fax, or mail.

To assist members of the public to make a formal request, forms are available on the HCA web site or by contacting the public records officer. A request need merely identify with reasonable certainty the record sought to be disclosed. ~~((If the matter requested is referred to within the current index maintained by the public disclosure officer, a reference to the requested record as it is described in such current index is desirable.))~~

(2) If the HCA form is not used, the public record request should be in writing and include all of the following information:

(a) The name and contact information of the person requesting the record;

(b) The calendar date on which the request was made;

(c) A statement that the requested records are not to be used for commercial purposes; and

(d) A detailed description of the record requested sufficient to make it identifiable.

(3) In all cases in which a member of the public is making a request, ~~((it shall be the obligation of))~~ the public disclosure officer or staff member ~~((to))~~ will assist ~~((the member of the public in))~~ to appropriately ~~((identifying))~~ identify the public record requested, if necessary.

~~((3) When the law makes a record disclosable to a specific person, a requestor may be required to provide personal identification.))~~

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-041 Preserving requested records. If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the public disclosure officer ~~((shall))~~ will retain possession of the record, and ~~((may))~~ will not destroy or erase the record until the request is resolved.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-045 Copying costs. (1) No fee ~~((shall be))~~ is charged for the inspection of public records.

(2) The ~~((agency shall))~~ HCA collects the following fees to reimburse the ~~((agency))~~ HCA for its actual costs incident to providing copies of public records:

(a) Fifteen cents per page for black and white photocopies ~~((, plus sales tax))~~; and

(b) The cost of postage, if any.

(3) Copies of some records may be provided electronically or on disk to the requestor at no charge.

(4) The public disclosure officer is authorized to waive the foregoing costs. ~~((Factors considered in deciding whether to waive costs include, but are not limited to: Providing the copy will facilitate administering the program, and/or the expense of processing the payment exceeds the copying and postage cost.))~~

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-050 ((Exemptions.)) **What happens if the record I requested is exempt from disclosure?** ((+) The HCA reserves the right to determine whether a public record requested in accordance with the procedures outlined in WAC 182-04-040 is exempted under statutory provisions.

(2) Pursuant to RCW 42.17.260, the HCA reserves the right to delete identifying details when it makes available or publishes any public record, in any case where there is reason to believe that disclosure of such details would be an invasion of personal privacy or vital governmental interest protected by chapter 42.17 RCW. The public disclosure officer will fully justify such deletion in writing in such a way so that the nature of the deleted information is made known.

(3) If disclosure is denied, the requestor is entitled to a written explanation of the denial which cites the relevant exemption and an explanation of how it applies to the record being denied.)) Certain records that you wish to review or copy are exempt from disclosure because of federal or state laws. If a record is exempt from disclosure, you will be informed in writing of the reasons why the HCA is withholding the record.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-055 **Will the HCA review ((of) the denial((s)) of ((public records)) my request((:))?** ((+) Any person who objects to the denial of request for public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public disclosure officer or other staff member which constituted or accompanied the denial.

(2)) If the HCA denies your public record request, you may ask the HCA to review the denial. To request a review, you must make your request in writing.

Following receipt of a written request for review of a decision denying a public record request, the disclosure officer ((shall immediately)) will consider the matter and either affirm or reverse ((such)) the denial. ((Such review shall be deemed completed at the end of the second business day following the receipt by the disclosure officer of the request for review.)) This shall constitute final ((agency)) HCA action for the purposes of judicial review, pursuant to RCW ((42.17.320)) 42.56.520.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-060 **Protection of public records.** Following are guidelines which shall be adhered to by any person inspecting such public records:

(1) Inspection of any public records shall be conducted only during working hours as specified in WAC 182-04-035 ((with)) in the presence of an HCA employee;

(2) ((No public record shall be removed from the main office without the approval of the public disclosure officer or his/her designee;)) Original records cannot be removed from

the HCA building. The HCA has a duty to protect public records (see RCW 42.56.100);

(3) Public records shall not be marked, torn, or otherwise damaged;

(4) Public records must be maintained as they are in file or in a chronological order, and shall not be dismantled except for purposes of copying and then only by an HCA employee;

(5) Access to file cabinets and other places where public records are kept is restricted((, and shall be used by employees of the HCA)).

AMENDATORY SECTION (Amending WSR 98-17-063, filed 8/17/98, effective 9/17/98)

WAC 182-04-070 **Request for inspection of records.** The HCA hereby adopts for use by all persons requesting inspection and/or copying of its records, the form set out below, entitled "Request for Inspection of Records."

The information requested in Blocks 4 through 6 is not mandatory, however, the completion of these blocks will enable this office to expedite your request and contact you should the record you seek not be immediately available.

1. Name	4. Phone Number
.....
2. Address	5. Representing (if applicable)
.....
3. Zip Code	6. If urgent - date needed
.....

Below please state what record(s) you wish to inspect and be as specific as possible. If you are uncertain as to the type or identification of specific record or records we will assist you.

I certify that the information requested from the above record(s) will not be part of a list of individuals to be used for commercial purposes.

(Signed)

Date

Return the request for inspection of records to:

Public Disclosure Office
Health Care Authority
676 Woodland Square Loop S.E.
Post Office Box ((42705)) 42700
Olympia, Washington ((98504-2705)) 98504-2700

WSR 10-18-058
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed August 30, 2010, 8:29 a.m., effective September 30, 2010]

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

Purpose: Update the model traffic ordinance, chapter 308-330 WAC, to incorporate statutory changes made from 2004 to 2009, inclusive.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-197, 308-330-316, 308-330-320, 308-330-415, 308-330-464, and 308-330-700.

Statutory Authority for Adoption: RCW 46.90.010.

Adopted under notice filed as WSR 10-15-058 on July 15, 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 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 6, Repealed 0.

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

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

Date Adopted: August 30, 2010.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles. The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.09.020, 46.09.040, 46.09.050, 46.09.085, 46.09.115, 46.09.117, 46.09.120, 46.09.130, 46.09.140, 46.09.180, and 46.09.190.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184,

46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.395, 46.37.400, 46.37.410, 46.37.420, 46.37.4215, 46.37.4216, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.465, 46.37.467, 46.37.470, 46.37.480, 46.37.490, 46.37.495, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.518, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.37.630, 46.37.640, 46.37.650, ((and)) 46.37.660, 46.37.670, 46.37.671, 46.37.672, 46.37.673, 46.37.674, 46.37.675, and 46.37.680.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-320 RCW sections adopted—Size, weight, load. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle size, weight, and load as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.44.010, 46.44.013, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.043, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.105, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, and 46.44.190.

AMENDATORY SECTION (Amending WSR 00-18-067, filed 9/1/00)

WAC 308-330-415 RCW sections adopted—Right of way. The following sections of the Revised Code of Washington (RCW) pertaining to vehicles and pedestrians use of roadways, right of way, rights and duties as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.100, 46.61.105, 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, 46.61.135, 46.61.140, 46.61.145, 46.61.150, 46.61.155, 46.61.160, 46.61.165, 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.195, 46.61.200, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.230, 46.61.235, 46.61.240, 46.61.245, 46.61.250, 46.61.255, 46.61.260, 46.61.261, 46.61.264, 46.61.266, and 46.61.269.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-464 RCW sections adopted—Operation and restrictions. The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this

chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.667, 46.61.668, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.710, 46.61.720, 46.61.723, 46.61.725, 46.61.730, 46.61.735, and 46.61.740.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-700 RCW sections adopted—Disposition of traffic infractions. The following sections of the Revised Code of Washington (RCW) pertaining to the disposition of traffic infractions as now or hereafter amended are hereby adopted by such reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.63.010, 46.63.020, 46.63.030, 46.63.040, 46.63.060, 46.63.070, 46.63.073, 46.63.075, 46.63.080, 46.63.090, 46.63.100, 46.63.110, 46.63.120, 46.63.130, 46.63.140, 46.63.151, ~~((and))~~ 46.63.160, and 46.63.170.

WSR 10-18-066

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed August 30, 2010, 11:44 a.m., effective September 30, 2010]

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

Purpose: A transfer of development rights (TDR) program is a market-based mechanism that encourages the voluntary transfer of growth from places where a community would like to see less development (referred to as sending areas) to places where a community would like to see more development (referred to as receiving areas). Chapter 43.362 RCW directs the department of commerce to implement a regional TDR program in central Puget Sound - King, Pierce, Kitsap and Snohomish counties and the cities and towns within them. The focus of the program is on transfers of development rights from counties to cities. These transfers normally occur pursuant to an interlocal agreement between the county and a city or town. To facilitate participation in the regional TDR program, the department of commerce is directed by RCW 43.362.050 to develop and adopt by rule terms and conditions of an interlocal agreement for transfers of development rights between counties, cities, and towns. The option to adopt these terms and conditions by reference is provided as an alternative to entering into an interlocal agreement.

Statutory Authority for Adoption: RCW 43.362.050.

Adopted under notice filed as WSR 10-12-126 on June 2, 2010.

Changes Other than Editing from Proposed to Adopted Version: Based on a comment received by the department, the rule has been revised to clarify the process for how and when a city or town notifies the transferring county that a TDR credit has been used. WAC 365-198-040 [(1)](d) now requires the city or town to consult with the county to ensure

the TDR credit is valid prior to development approval. This is not a significant change from the draft rule.

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 7, 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: August 30, 2010.

Rogers Weed
Director

Chapter 365-198 WAC

Interlocal Terms and Conditions for the Transfer of Development Rights

NEW SECTION

WAC 365-198-010 Authority and purpose (1) Chapter 43.362 RCW establishes a regional transfer of development rights program in central Puget Sound, including King, Pierce, Kitsap, and Snohomish Counties and the cities and towns within these counties. A transfer of development rights program is a market-based exchange mechanism that encourages the voluntary transfer of development rights from sending areas that a community wants to conserve to receiving areas where growth and the infrastructure to support growth are planned. Participation in the regional transfer of development rights program by counties, cities and towns is optional.

(2) The purpose of this chapter is to make it easy to transfer development rights from counties to cities and towns in the regional transfer of development rights program. The purpose of the regional transfer of development rights program is to conserve resource, rural and other land prioritized for conservation consistent with RCW 43.362.040 and county transfer of development right programs, and to encourage growth in cities and towns consistent with the state growth management act under chapter 36.70A RCW.

(3) The purpose of this chapter is to adopt by rule terms and conditions of an interlocal agreement for transfers of development rights between counties, cities, and towns. Counties, cities, and towns participating in the regional transfer of development rights program have the option of adopting the terms and conditions by reference to transfer development rights across jurisdictional boundaries as an alternative to entering into an interlocal agreement under chapter 39.34 RCW. If a city or county chooses to adopt the terms and conditions provided in this rule, nothing in this chapter prohibits

the city or county from adopting additional terms and conditions in the adopting ordinance or resolution.

(4) This chapter shall be deemed to provide an alternative method to an interlocal agreement for transferring development rights between a county and city or town under the regional transfer of development rights program, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in counties, cities and towns. Nothing in this chapter prohibits a county, city, or town from entering into an interlocal agreement under chapter 39.34 RCW to transfer development rights under the regional program.

NEW SECTION

WAC 365-198-020 Applicability (1) This chapter applies to transfers of development rights between King, Pierce, Kitsap and Snohomish Counties and the cities and towns within these counties. This chapter only applies to transfers from county-designated sending areas consistent with RCW 43.362.040 to city or town-designated receiving areas. Transfers of development rights may be between any county and any city or town within the four-county region. A transferring county shall consult in good faith with the county in which a city is located in regards to transfers of development rights between counties and cities, and the subsequent designated receiving area and receiving area ratio in the city or town.

(2) Utilization of this chapter for transfers of development rights between King, Pierce, Kitsap and Snohomish Counties and the cities and towns within these counties is optional.

(3) Prior to using this chapter for transfers of development rights, a county must adopt transfer of development rights policies or regulations that designate sending areas consistent with RCW 43.362.040 and procedures to implement the regional transfer of development rights program.

(4) Prior to using this chapter for receiving development rights, a city or town must adopt policies or regulations that designate receiving areas and state the receiving area ratio or ratios for rights to be received.

(5) The terms and conditions that are adopted by reference by a city or town in sections 4 and 6 are not binding on the city or town unless the transferring county has also adopted required language in sections 5 and 6 by reference. Conversely, the terms and conditions that are adopted by reference by a transferring county in sections 5 and 6 are not binding on the county unless the receiving city or town has also adopted required language in sections 4 and 6 by reference.

NEW SECTION

WAC 365-198-030 Definitions The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of commerce.

(2) "Development rights credit" means the tradable good representing development rights. Development rights credits are purchased and sold, either on the open market or through a transfer of development rights bank. For sending site land-

owners, credits are assigned and certified by the transferring county based on the number of development rights assigned to their property pursuant to the county's transfer of development rights program. For developers, credits are based on the receiving area ratio.

(3) "Receiving area ratio" means the number or character of development rights that are assigned to a development right for use in a receiving area. Development rights in a receiving area may be used at the discretion of the receiving area jurisdiction, including but not limited to additional residential density, additional building height, additional commercial floor area, or to meet regulatory requirements. The receiving area jurisdiction exercises its discretion regarding the use of development rights when it adopts policies or regulations to allow the use of development rights.

(4) "Receiving areas" are lands within and designated by a city or town in which transferable development rights from the regional transfer of development rights program established by this chapter and certified by the transferring county may be used.

(5) "Receiving cities and towns" mean the cities and towns that have chosen to participate in the regional transfer of development rights program by receiving development rights pursuant to RCW 43.362.060.

(6) "Regional transfer of development rights program" means the regional transfer of development rights program established by RCW 43.362.030 in central Puget Sound, including King, Pierce, Kitsap, and Snohomish Counties and the cities and towns within these counties.

(7) "Sending area" includes those lands designated by the county as sending areas from which transferable development rights can be sold, and that meet conservation criteria as described in RCW 43.362.040 as follows:

(a) Land designated as agricultural or forest land of long-term commercial significance;

(b) Land designated rural that is being farmed or managed for forestry;

(c) Land whose conservation meets other state and regionally adopted priorities; and

(d) Land that is in current use as a manufactured/mobile home park as defined in chapter 59.20 RCW.

(8) "Sending area ratio" means the number of development rights that a sending area landowner can sell per the transferring county's transfer of development rights program.

(9) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to a receiving area for the purpose of increasing development density or intensity in the receiving area.

(10) "Transfer of development rights bank" means an entity operated by a county or other public agency or private organization for the purpose of buying, selling, and holding development rights or facilitating private development right transactions between landowners and developers.

(11) "Transferable development right" means a right to develop one or more residential units, including fractions of residential units, in sending areas that have been certified by the transferring county, and can be sold and transferred for use consistent with:

(a) A transferring county's adopted program and the regional transfer of development rights program; and

(b) A receiving ratio adopted by the city or town for development in a designated receiving area.

(12) "Transferring county" means the county that has agreed to participate in the regional transfer of development rights program pursuant to RCW 42.362.060.

NEW SECTION

WAC 365-198-040 Terms and conditions for cities and towns (1) Cities and towns that choose to use this chapter as an alternative to an interlocal agreement must adopt the following terms and conditions by reference to this chapter in an ordinance or resolution:

(a) The city or town has adopted policies or regulations for receiving areas per attached ordinance(s) or resolution(s);

(b) Upon good faith consultation with the transferring county, and the county from within which the city is located, the city or town has designated receiving areas in the city or town within which transferable development rights or development rights credits may be used per attached ordinance(s) or resolution(s);

(c) Upon good faith consultation with the transferring county, and the county from within which the city is located, the city or town has adopted receiving area ratio or ratios for the transferable development rights or development rights credits to be received per attached ordinance(s) or resolution(s);

(d) The city or town, in consultation with the county from within which the city or town is located and the transferring county, shall develop a process to notify the transferring county when it has approved the use of transferable development rights or development rights credits for a specific project in the designated receiving area to allow the transferring county to track and extinguish credits as they are used. For purposes of this chapter, a city's or town's approval under this subsection occurs when the city or town planning department has issued the first building permit for a project using development rights credits. Prior to development approval, the city or town shall consult with the transferring county to ensure the development rights credit or credits proposed for development use in the designated receiving area are valid. The county shall respond to the city or town as to whether the development rights credits are valid within a reasonable time; and

(e) The city or town shall work with the transferring county and the department to identify performance measures consistent with RCW 43.362.070 to report to the transferring county and the department.

(2) Optional terms that a city or town may adopt verbatim or by reference are:

(a) Upon good faith consultation with the transferring county, the city or town shall identify the sending areas from which the city or county agrees to accept transferable development rights.

(b) The city or town has estimated the capacity for development with transferable development rights (or development rights credits) from the transferring county per attached ordinance(s) or resolution(s).

(c) The city or town shall establish and operate a transfer of development rights bank to purchase, sell, and hold development rights.

NEW SECTION

WAC 365-198-050 Terms and conditions for counties (1) Counties that choose to use this chapter as an alternative to an interlocal agreement must adopt the following terms and conditions by reference to this chapter in an ordinance or resolution:

(a) The county has adopted policies, regulations and administrative procedures to implement the regional transfer of development rights program, including but not limited to:

(i) Facilitating and promoting the qualification and certification of transferable development rights to eligible property owners for the sale of their transferable development rights from properties in the county's designated sending areas consistent with RCW 43.362.040;

(ii) Establishing procedures to facilitate the sale of transferable development rights or development rights credits; and

(iii) Establishing procedures to require, maintain, and enforce deed restrictions on a sending site from which transferable development rights or development rights credits are purchased in order to prohibit those sites from being developed in violation of deed restrictions.

(b) The county shall notify receiving cities and towns by December 31 of each year the number of available development rights credits remaining in designated sending areas.

(i) If the city or town, in consultation with the transferring county, has identified the sending area or areas from which it has agreed to accept transferable development rights the notification shall indicate the number of credits remaining in that sending area for the respective city or town.

(ii) If the county administers a transfer of development rights bank, annual notification of transactions shall be provided.

(2) Optional terms that a county may adopt by reference to this chapter in an ordinance or resolution:

(a) The county shall establish and operate a transfer of development rights bank to purchase, sell, and hold development rights.

(b) The county shall facilitate private transferable development rights transactions between willing sellers and buyers.

NEW SECTION

WAC 365-198-060 Joint terms and conditions for counties, cities and towns Counties, cities, and towns that choose to use this chapter as an alternative to an interlocal agreement must adopt the following joint terms and conditions by reference to this chapter in an ordinance or resolution:

(1) The county and city or town shall establish an evaluation and monitoring program based on quantitative and qualitative performance measures developed by the department for monitoring the regional transfer of development rights program under RCW 43.362.070.

(2) The county and city or town shall enter into a dispute resolution process through mediation, with an agreed upon

mediator and process, if agreement cannot be reached regarding interpretation or implementation of any terms and conditions in this chapter adopted by reference. The parties shall use the mediation process in good faith to attempt to come to agreement early in the process, and prior to any appeals or litigation that they might otherwise be entitled to bring.

(3) The terms and conditions in this chapter adopted by reference shall become effective on the effective date of the adopting ordinance or resolution.

(4) The county, city or town may repeal the provisions of this chapter adopted by reference upon 90 days' written notice by the transferring county to the cities or towns or by cities and towns to the transferring county if:

(a) The city or town's development regulations allowing the use of development rights credits, or the provisions of the county's development regulations allowing transfer of development rights to cities are held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or

(b) The county, city or town materially defaults in the performance of the obligations as set forth in provisions of this chapter adopted verbatim or by reference, and fails to cure the default within thirty (30) days' of receipt of written notice from the county, city or town.

(5) A city or town's repeal of the terms and conditions in this chapter adopted by reference shall not affect the use of development rights credits previously certified by the county. Development credits certified by the county prior to repeal by the city or town that have not been used in the city or town's receiving area may be used in the county's or another city or town's designated receiving area.

(6) The city or town shall indemnify and hold harmless the transferring county and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the city or town, its officers, agents, and employees, or any of them, in performing obligations pursuant to this chapter. In the event that any suit based upon such a claim, action, loss, or damage is brought against the county, the city or town shall defend the same at its sole cost and expense, provided that the transferring county retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the transferring county and its officers, agents, employees, or any of them, or jointly against the city or town and transferring county and their respective officers, agents, and employees or any of them, the city or town shall satisfy the same.

(7) The transferring county shall indemnify and hold harmless the city or town and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the transferring county, its officers, agents, and employees, or any of them, in performing obligations pursuant to this chapter. In the event that any suit based upon such a claim, action, loss, or damage is brought against the city or town, the transferring county shall defend the same at its sole cost and expense, provided that the city or town retains the right to participate in said suit if any principle of government-

tal or public law is involved, and if final judgment be rendered against the city or town and its officers, agents, and employees, or any of them, or jointly against the city or town and county and their respective officers, agents, and employees, or any of them, the county shall satisfy the same.

(8) The county and city or town acknowledge that if the claims, actions, suits, liability, loss, costs, expenses and damages referenced in subsections (6) and (7) of this section are caused by or result from the concurrent negligence of the city or town, its agents, employees, and/or officers and the county, its agents, employees, and/or officers, the provisions of this chapter adopted by reference shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

NEW SECTION

WAC 365-198-070 Template for adopting terms and conditions The department shall provide an ordinance or resolution template for adopting terms and conditions verbatim by reference consistent with this chapter for use by counties, cities and towns participating in the regional transfer of development rights program.

WSR 10-18-067

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed August 30, 2010, 10:50 a.m., effective September 30, 2010]

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

Purpose: The department is amending WAC 458-20-143 to reflect several recent legislative changes:

- 2ESSB 6143 (chapter 23, Laws of 2010) provides that advertising revenues earned by publishers of newspapers, periodicals, and magazines are to be apportioned to this state for tax purposes.
- EHB 2122 (chapter 461, Laws of 2009) provides a preferential B&O tax rate for newspaper publishers. This legislation also requires such newspaper publishers to file tax returns electronically and filing annual reports;
- ESHB 2075 (chapter 535, Laws of 2009) explains the application of the retail sales tax and use tax on the sale of magazines and periodicals that are transferred to the buyer electronically;
- SB 6173 (chapter 563, Laws of 2009) changes the use of a resale certificate to a resellers permit to document a wholesale sale;
- SHB 2585 (chapter 273, Laws of 2008) provides amended definitions of "newspaper" and "supplement;" and

The department is also incorporating:

- The statutory definition of "periodical or magazine" provided in RCW 82.04.280; and
- The sales tax and use tax exemptions for computer equipment used in printing or publishing of printed material provided by RCW 82.08.806 and 82.12.806.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-143 Publishers of newspapers, magazines, periodicals.

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

Adopted under notice filed as WSR 10-13-064 on June 11, 2010.

Changes Other than Editing from Proposed to Adopted Version: Language has been added to subsection (1) Introduction, to recognize and cite to 2ESSB 6143 (chapter 23, Laws of 2010), which provides that advertising revenues earned by publishers of newspapers, periodicals, and magazines are to be apportioned to this state for tax purposes.

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: August 30, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending Order ET 83-5, filed 8/1/83)

WAC 458-20-143 Printers and publishers of newspapers, magazines, and periodicals.

~~((Business and Occupation Tax~~

~~**Printing and publishing.** Publishers of newspapers, magazines and periodicals are taxable under the printing and publishing classification upon the gross income derived from the publishing business.~~

~~Persons))~~ **(1) Introduction.** This section explains the application of the business and occupation (B&O), retail sales, and use taxes to printers and/or publishers of newspapers, magazines, periodicals, and other printed materials. ~~The department of revenue (department) has adopted other sections providing tax reporting information to persons printing, publishing, or selling these publications and other printed materials.~~

~~• Persons selling newspapers, magazines, and periodicals that are not printed and/or published by the seller should also refer to WAC 458-20-127;~~

~~• For information regarding the printing industry in general, see WAC 458-20-144;~~

~~• For information regarding the tax-reporting responsibilities of persons selling direct mail or engaging in business as a mailing bureau, see WAC 458-20-141;~~

~~• For information regarding the tax-reporting responsibilities of persons duplicating printed materials for others, see WAC 458-20-141;~~

~~• For information regarding potential litter tax liability, see WAC 458-20-243.~~

(2) Definitions. The following definitions apply throughout this section:

(a) "Newspaper."

(i) Effective July 1, 2008, "newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper; and an electronic version of a printed newspaper that:

• Shares content with the printed newspaper; and

• Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper. See RCW 82.04.214.

(ii) Prior to July 1, 2008, "newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind.

(b) "Supplement" means a printed publication, including a magazine or advertising section, that is:

(i) Labeled and identified as part of the printed newspaper; and

(ii) Circulated or distributed:

• As an insert or attachment to the printed newspaper; or

• Separate and apart from the printed newspaper so long as the distribution is within the general circulation area of the newspaper.

(c) "Periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated interval at least once every three months, including any supplement or special edition of the publication.

(d) For purposes of this section, "other printed material" refers to printed materials other than newspapers, magazines, or periodicals.

(3) General tax guidance.

(a) Publishing newspapers. Effective July 1, 2009, publishers of newspapers are taxable under the publication of newspapers classification of the B&O tax upon the gross income (including advertising income) derived from publishing newspapers. See (d) of this subsection and RCW 82.04.260(13). Prior to July 1, 2009, publishers of newspapers are taxable under the printing and publishing classification of the B&O tax upon the gross income (including advertising income) derived from publishing newspapers.

Persons reporting income under the publication of newspapers classification of the B&O tax must file a complete annual report with the department. In addition, such persons must electronically file with the department all surveys, reports, returns, and any other forms. Refer to RCW 82.32.600 and WAC 458-20-267 for the specific guidelines and requirements.

Retail sales of newspapers, whether by publishers or others, are exempt from retail sales tax. See RCW 82.08.0253.

(b) Publishing periodicals or magazines. Publishers of periodicals or magazines are taxable under the printing and publishing classification of the B&O tax upon the gross income (including advertising income) derived from publishing periodicals or magazines. See (d) of this subsection and RCW 82.04.280(1).

Retail sales of printed magazines and periodicals are subject to retail sales tax. Magazines and periodicals transferred electronically to the end user are also subject to the retail sales tax regardless of how they are accessed. For more information on the sale of digital products, refer to RCW 82.04.050, 82.04.192, and 82.04.257.

(c) Publishing other printed materials. Retail and wholesale sales of other printed materials by persons who both print and publish ((books, music, circulars, etc., or any other)) the items, are ((hikewise)) taxable under the printing and publishing classification. ((However,)) Persons((, other than publishers of newspapers, magazines or periodicals,)) who publish ((such things and)) but do not print ((the same)) other printed materials, are ((taxable under either)) subject to:

- Either the wholesaling or retailing ((classification)) B&O tax, measured by gross sales(;) of the other printed materials; and ((taxable under))

- The service ((classification)) and other activities B&O tax, measured by the gross income received from advertising.

((Retail Sales Tax

Sales of newspapers, whether by publishers or others, are specifically exempt from the retail sales tax.

However, sales of magazines, periodicals, and all publications other than newspapers are subject to the retail sales tax when made to consumers.

"Newspaper" defined. The word "newspaper" means a publication of general circulation bearing a title, issued regularly at stated intervals of at least once every two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of publication, where such newspapers are distributed regularly to a paid subscription list.))

(d) Doing business inside and outside the state. RCW 82.04.460 requires that advertising income earned by printers and by publishers of newspapers, periodicals, and magazines derived from business activities performed within Washington be apportioned to this state for tax purposes. Refer to chapter 23 (E2SSB 6143), Laws of 2010 1st sp. sess. Part I for information on apportioning advertising income.

(e) Wholesale sales of printed materials. Sales of magazines, periodicals, and other printed materials by the publisher to newsstands, book stores, department stores, and others who resell such items are wholesale sales. Such sales are not subject to retail sales tax when the buyer provides a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010, to the seller.

(4) Sales to publishers.

(a) Sales to newspaper(s), magazine and periodical publishers of paper and printers ink which become a part of

the publications sold, and sales by printers of printed publications to publishers for sale, are wholesale sales ((for resale)) and are not subject to the retail sales tax when the buyer provides a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010, to the seller.

(b) With respect to community newspapers which are distributed free of charge, where the publisher has a contract with his advertisers to distribute the newspaper to the subscriber in consideration for the payments made by the advertisers, it will be construed that the publisher sells the newspaper to the advertiser, and, therefore, the retail sales tax will not apply with respect to the charge made by the printer to the publisher for printing the newspaper or with respect to the purchase of ink and paper when the publisher prints his own newspaper.

(c) Sales to newspaper, magazine or periodical publishers of equipment and of supplies and materials which do not become a part of the finished publication ((which)) that is sold are subject to the retail sales tax unless specifically exempt (see subsection (5) of this section). This includes, among others, sales of ((engravings,)) fuel, furniture, lubricants, ((machinery, negatives and plates used in offset printing, photographs, stationery)) and ((writing ink. Sales of engravings to publishers are subject to the retail sales tax unless the publisher resells such engravings without intervening use)) office supplies.

(d) Sales to newspaper, magazine or periodical publishers of baseball bats, bicycles, dolls and other articles of tangible personal property which are to be distributed by the publisher as gifts, premiums or prizes are sales for consumption and subject to the retail sales tax.

((So-called "sales")) (e) Sales by authors and artists to publishers of the right to publish scripts, paintings, illustrations and cartoons are mere licenses to use, not sales of tangible personal property and((, therefore,)) are not subject to the retail sales tax.

(5) Exemption for sales of computer equipment to printers and/or publishers. RCW 82.08.806 and 82.12.806 provide printers and publishers retail sales and use tax exemptions for computer equipment that is used primarily in the printing or publishing of any printed material. The exemption includes repair parts and replacement parts for such equipment and sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. The exemption also includes maintenance agreements (service contracts), as defined in WAC 458-20-257, on such equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(6) **Use tax.** Publishers of newspapers, magazines and periodicals are subject to tax upon the value of articles printed or produced for use in conducting such business. Tax also applies to materials, supplies, and other items which do not become part of the finished publication or which are not resold. Where retail sales tax is not paid, the publisher must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the use tax line of the buyer's excise tax return.

For detailed information about use tax, refer to WAC 458-20-178, Use tax.

WSR 10-18-088

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 1, 2010, 8:10 a.m., effective October 2, 2010]

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

Purpose: This rule-making order amends chapter 16-662 WAC, Weights and measures—National handbooks, by adopting:

(1) Modifications to the biodiesel labeling requirements specified in the National Institute of Standards and Technology (NIST) Handbook 130;

(2) The 2010 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195; and

(3) Effective June 1, 2011, the 2010 amendments to Section 2.1. (Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation) of the 2009 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality).

Citation of Existing Rules Affected by this Order: Amending WAC 16-662-105, 16-662-110, and 16-662-115.

Statutory Authority for Adoption: Chapters 19.94, 19.112, and 34.05 RCW; chapter 96, Laws of 2010.

Adopted under notice filed as WSR 10-15-122 on July 21, 2010.

Changes Other than Editing from Proposed to Adopted Version: As a result of the testimony received during the comment period, the department decided to mitigate impacts to the affected industry stakeholders by delaying the effective date for part of the amendments in order to allow a phase-in period for compliance with the national standard. Amendments to WAC 16-662-105 (3)(a), (b), (c), and (d) now have an effective date of June 1, 2011.

The intent of revising WAC 16-662-115 (3) and (10) is to align the rule with recently enacted changes to the authorizing statute (chapter 19.112 RCW). Testimony indicated the amended statute and proposed rule text appeared to be in conflict. As a result, amendments to WAC 16-662-115 (3) and (10) were modified to more clearly reflect the associated statute.

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 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 3, Repealed 0.

Date Adopted: September 1, 2010.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 09-19-007, filed 9/3/09, effective 10/4/09)

WAC 16-662-105 What national weights and measures standards are adopted by the Washington state department of agriculture (WSDA)? The WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((2009)) <u>2010</u> Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>
(2) The procedures for checking the accuracy of the net contents of packaged goods	Fourth Edition (January 2005) of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>
(3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	2009 Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> (:). <u>Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1 Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation. Specifically:</u>
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, 2009 Edition, Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation</i>

National standard for:	Contained in the:
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, 2009 Edition, Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation</i>
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, 2009 Edition, Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation</i>
(d) Definitions and requirements for standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, 2009 Edition, Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation</i>

AMENDATORY SECTION (Amending WSR 09-19-007, filed 9/3/09, effective 10/4/09)

WAC 16-662-110 Does the WSDA modify NIST Handbook 44? The WSDA adopts the following modifications to *NIST Handbook 44*, which is identified in WAC 16-662-105(1):

Modified Section:	Modification:
General Code: Section G-UR.4.1. Maintenance of Equipment	In the last sentence of G-UR.4.1., Maintenance of Equipment, change the words "device user" to "device owner or operator." As a result of this modification, the last sentence of G-UR.4.1. will read: "Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator (see also <u>Introduction, Section Q</u>) shall not be considered "maintained in a proper operating condition.""
Liquid-Measuring Devices: Section S.1.6.4.1. Unit Price	Modify subsection (b) under section S.1.6.4.1. Unit Price, to read: Whenever a grade, brand, blend, or mixture is offered for sale from a device at more than one unit price, then all of the unit prices at which that product is offered for sale shall be displayed or shall be capable of being displayed on the dispenser using controls available to the consumer prior to the delivery of the product or after prepayment for the product but prior to its delivery. It is not necessary that all of the unit prices for all grades, brands, blends, or mixtures be simultaneously displayed prior to the delivery of the product. This subsection shall not apply to fleet sales, other contract sales, or truck refueling sales (e.g., sales from dispensers used to refuel trucks).

AMENDATORY SECTION (Amending WSR 09-19-007, filed 9/3/09, effective 10/4/09)

WAC 16-662-115 Does the WSDA modify NIST Handbook 130? The WSDA adopts the following modifications to the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
(1) Section 2.20. Gasoline-Oxygenate Blends	Modify section 2.20.1. Method of Retail Sale. Type of Oxygenate must be Disclosed, to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.)
	Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine

Modified Section:	Modification:
	the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.
(2) Section 2.23. Animal Bedding	Add a new subsection which reads: 2.23.1. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof.
(3) Section 2.31.2 Labeling of Retail Dispensers	Add a new subsection which reads: 2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing not ((less than two percent and not)) more than five percent biodiesel must be labeled " <u>May contain</u> (s) up to 5% Biodiesel." ((Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends.)) Add a new subsection which reads: 2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend).
(4) Section 2.31.4. Exemption	Delete section 2.31.4.

The WSDA adopts the following modifications to the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
(1) Section 2.12. Motor Oil	Delete section 2.12.
(2) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
(3) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
(4) Section 3.2.6. Method of Retail Sale. Type of Oxygenate must be Disclosed	Modify section 3.2.6 to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).

Modified Section:	Modification:
(5) Section 3.2.7. Documentation for Dispenser Labeling Purposes	Modify section 3.2.7 to read: The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.
(6) Section 3.8.2. Labeling Requirements	Add a new subsection which reads: (c) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).
(7) Section 3.9.2. Retail Dispenser Labeling	Add a new subsection which reads: (c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol.)
(8) Section 3.13. Oil	Delete section 3.13.
(9) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.
(10) Section 3.15.2. Labeling of Retail Dispensers	Add a new subsection which reads: 3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not (less than two percent and not) more than five percent biodiesel must be labeled " <u>May contain</u> (s) up to 5% Biodiesel." ((Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends.)) Add a new subsection which reads: 3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend).
(11) Section 3.15.4. Exemption	Delete section 3.15.4.
(12) Section 7. Test Methods and Reproducibility Limits	Add a new subsection which reads: 7.3. Biodiesel Blends. The test method for determining the percent biodiesel in a blend of biodiesel and diesel fuel shall be EN 14078 "Liquid petroleum products - Determination of fatty methyl esters (FAME) in middle distillates - Infrared spectroscopy method." When ASTM develops a comparable standard test method, the ASTM method will become the standard method for purposes of this rule.

**WSR 10-18-100
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed September 1, 2010, 9:23 a.m., effective October 2, 2010]

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

Purpose: WAC 246-830-460 is being repealed because it is no longer necessary. All the continuing education requirements for massage therapists have been consolidated into WAC 246-830-475.

Citation of Existing Rules Affected by this Order:
Repealing WAC 246-830-460.

Statutory Authority for Adoption: RCW 18.108.025.

Adopted under notice filed as WSR 10-07-109 on March 22, 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 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 0, Amended 0, Repealed 1.

Date Adopted: May 25, 2010.

Kris Waidely
Program Manager
Mary C. Selecky
Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-830-460	Continuing education requirement—Amount.
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