WSR 10-21-009

PERMANENT RULES

SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed October 7, 2010, 10:59 a.m., effective November 8, 2010]

Effective Date of Rule: November 8, 2010.

Purpose: Indicate that the board "may" vs. "shall" amend the fee schedule to more accurately recover program costs in Sections 10.06.B, 10.07, and 10.08.B; Section 10.04 - remove the fee waiver for financial hardship; Section 10.06.B - clarify that the per stack/per point fee may include fugitive emissions; Section 10.06.C.3 - reference the hourly fee of $67 per hour in the fee schedule versus $65 per hour to more accurately reflect actual costs; Section 10.07.A.2 - add a complex permit condition revision fee for best cost recovery; Section 10.11 - remove the section header since the requirements were repealed in 2005; Section 10.12 - reference agricultural burning fees in Chapter 173-430 WAC; Section 10.13 - move the outdoor burning fees to a fee schedule and decrease the hourly review fee from $65 per hour to $55 per hour to better reflect actual hourly costs for staff that perform this review; Section 10.14.A - move the paving waiver fees to a fee schedule and leave the filing fee at $50, but increase the hourly review fee from $50 per hour to $55 per hour after the first hour of review to more accurately reflect actual costs.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article X, Sections 10.04, 10.06-10.08, and 10.10-10.14.

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

Adopted under notice filed as WSR 10-17-008 on August 5, 2010.

Changes Other than Editing from Proposed to Adopted Version: Clarification was provided to footnote "B" in Section 10.06.B.1. With the addition of each "volatile organic compound" to this section, the reference to each "toxic air pollutant" should be each "non-VOC toxic air pollutant" emitted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: October 7, 2010.

Matt Holmquist
Compliance Administrator

Spokane Regional Clean Air Agency (SRCAA) Regulation I

AMENDATORY SECTION

SECTION 10.04 FEE WAIVER

((~~A. Except for air operating permit sources, the Control Officer may waive payment of all, or a portion, of any fee or service charge required by this Article upon a showing deemed sufficient by the Control Officer that payment of the fee would cause financial hardship upon the applicant.~~

~~B. The Control Officer may identify categories of sources, or groups of sources within a category, in Section 10.04.C. with similar emissions units and processes where the Control Officer determines that any of the following conditions exist:~~

~~1. Facility-wide emission rates are less than 1 ton per year of air contaminants; or~~

~~2. There are no specific regulations on the control of air contaminants; or~~

~~3. Compliance with control requirements is readily accomplished through nontechnical self inspection techniques; or~~

~~4. The primary purpose for registration, pursuant to Article IV, is to inventory air contaminant emissions.~~

~~As categories are so identified, the Control Officer may waive one-half of the annual registration fee for owners or operators of individual facilities who provide emission inventory data, and other required information relative to compliance with applicable regulations, within 30 days of the request by the Authority, in a format acceptable to the Authority. In so doing, the owner or operator shall certify to the best of his/her knowledge, on forms provided by the Authority, that the emission inventory data is accurate and the facility is in compliance with applicable regulations. Owners or operators who fail to return the information within 30 days of the request will not qualify for a fee waiver under this Section. Notwithstanding the provision of required data by the owner or operator, the Authority reserves the right to conduct inspections of the facility.~~

~~C. The following categories of sources are eligible for the fee waiver specified in Section 10.04.B. However, individual sources are not eligible if one or more Notices of Violation have been issued by the Authority, pursuant to Section 2.04 of this Regulation, to the facility in the previous 36-month period:~~

~~Source Category~~	~~Rating~~
~~Surface Coating Operations~~	~~<1 ton/yr VOC emitted~~
~~Gasoline Dispensing Facilities~~	~~Exempt from stage II vapor recovery requirements~~
~~Boilers & Other Fuel Burning Equipment, With Air Contaminant Emissions Exclusively From Natural Gas Combustion~~	~~<10^7 BTU/hr heat input~~

~~Source Category~~	~~Rating~~
~~Boilers & Other Fuel Burning Equipment, With Air Contaminant~~	~~<10^6 BTU/hr heat input~~
~~Emissions Exclusively From Other~~	
~~Fossil Fuel Combustion~~	~~<140 gal/yr solvent consumption~~
~~Dry Cleaning Plants~~	
~~Waste Oil Burners~~	~~<500,000 BTU/hr heat input~~
~~Tire Recapping Facilities~~	~~All units in the category~~
~~Grain Elevators~~	~~All units with no on-site processing capability~~))

AMENDATORY SECTION

SECTION 10.06 REGISTRATION AND OPERATING PERMIT FEES FOR AIR CONTAMINANT SOURCES

A. Each source required by Article IV, Section 4.01 to be registered, each air operating permit source, and each source required by Article V, Section 5.02 to obtain an approved Notice of Construction and Application for Approval is subject to an annual fee for each calendar year, or portion of each calendar year, during which it operates. The owner or operator shall pay the fee, pursuant to the requirements in Section 10.02. Fees received pursuant to the registration program or the operating permit program shall not exceed the actual costs of program administration.

B. The annual fee for each source required by Article IV, Section 4.01 to be registered and that is not subject to Section 10.06.C. of this Regulation shall be determined by adding all of the applicable fees below:

1.

Registration Fee Categories	Fee	Fee Applicability
Facility Fee [A]	Per the Fee Schedule	Per Source
Emissions Fee [B]	Per the Fee Schedule	Per Ton
Emission Point Fee [C]	Per the Fee Schedule	Per Stack/Point
((~~Burn Out Oven/Incinerator Fee~~ [D]	~~Per the Fee Schedule~~	~~Per Source~~))
Synthetic Minor Fee ((~~E~~))D	Per the Fee Schedule	Per Source
WEDS Fee ((~~F~~))E	Per the Fee Schedule	Per Hour

((~~a.~~)) [A] Each source is subject to the fee listed in the fee schedule.

((~~b.~~)) [B] The additional fee ((~~listed~~)) applies to each ton (rounded to the nearest one-tenth of a ton) of each criteria pollutant, volatile organic compound (VOC), and non-VOC toxic air pollutant emitted.

((~~c.~~)) [C] The additional fee applies to each stack and other emission points, including sources of fugitive emissions (e.g., fugitive dust emissions from crushing operations; storage piles; mixing and clean-up associated with surface coating). For gasoline stations, each gasoline tank vent is an emission point.

((~~d. The additional fee listed applies to each source which operated at least one incinerator or burn out oven during the registration period~~)).

((~~e.~~)) [D] The additional fee ((~~listed~~)) applies to each Synthetic Minor ((~~source as defined in SRCAA Regulation I, Article I, Section 1.04~~)).

((~~f.~~)) [E] The additional fee ((~~listed~~)) applies to each source required by the ((~~Authority~~)) Agency to submit an annual emissions inventory for entry into the Washington Emission Data System (WEDS). SRCAA staff time spent processing and reviewing WEDS will be tracked in 15 minute increments and charged at the hourly rates provided ((~~above~~)) in the fee schedule.

2. The Board shall periodically review the fee schedule for registered sources 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, including employee costs and overhead. 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.

C. The annual fee for each air operating permit source shall be determined as follows:

1. The Board shall periodically review the fees for air operating permit sources 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, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fees to more accurately recover program costs.

2. For sources that are subject to the air operating permit (AOP) program during any portion of the calendar year:

a. Annual base fee of $3,000;

b. Emission fee of $31.11 per ton of actual emissions from the previous calendar year;

c. SRCAA time fee, as determined by the following formula:

$$TF_I = \frac{(H_I + H_G) \times RPC}{H_T}$$

Where,

TF_I is the SRCAA time fee for AOP source, I;

H_I is the total SRCAA staff hours spent on AOP source, not including time spent on Notice of Construction application reviews, I;

H_G is the total general hours SRCAA staff spent on the AOP program divided by the total number of sources subject to the AOP program during any portion of the calendar year;

RPC is the remaining SRCAA AOP program cost, calculated by subtracting the sum of the Section 10.06.C.2.a and b. fees from the total SRCAA AOP program costs; and

H_T is the total number of hours SRCAA staff spent on the AOP program, including total time spent on the AOP sources and general hours spent on the AOP program.

Note: H_I, H_G, H_T, and RPC are for the most recent SRCAA fiscal year.

Note: H_I, H_G, and H_T are obtained from SRCAA time accounting records.

d. AOP Program Cost Correction, as determined by the following formula:

$$PCC_I = \text{AOP Program Cumulative Deficit or Surplus} \times \frac{F_I}{F_T}$$

Where,

PCC_I is the AOP Program Cost Correction assessed to each AOP source, I;

AOP Program Cumulative Deficit or Surplus is the cumulative financial deficit or surplus for SRCAA's AOP program at the end of the most recent SRCAA fiscal year;

F_I is the total individual fee assessed pursuant to Section 10.06.C.2.a., b., and c., of this Regulation; and

F_T is the sum of all the individual fees assessed pursuant to Sections 10.06.C.2.a., b., and c. of this Regulation.

e. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:

$$I = \frac{F_I x A_E}{F_T}$$

Where,

I is the individual share of the assessment;

F_I is the total individual fee assessed pursuant to Section 10.06.C.2.a., b., and c. of this Regulation;

A_E is the total Ecology assessment pursuant to RCW 70.94.162(3); and

F_T is the sum of all the individual fees assessed pursuant to Sections 10.06.C.2.a., b., and c. of this Regulation.

3. For affected units under Section 404 (Acid Deposition Standards) of the Federal Clean Air Act (42 USC 7401 et seq):

a. ((~~A fee of $65 per hour of~~)) For time expended in carrying out the fee eligible activities specified in RCW 70.94, an hourly fee will be assessed pursuant to the fee schedule.; and

b. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:

$$I = \frac{F_I x A_E}{F_T}$$

Where,

I is the individual share of the assessment;

F_I is the total individual fee assessed pursuant to Section 10.06.C.3.a. of this Regulation;

A_E is the total Ecology assessment pursuant to RCW 70.94.162(3); and

F_T is the sum of all the individual fees assessed pursuant to Sections 10.06.C.3.a. of this Regulation.

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 10.07 APPLICATION AND PERMIT FEES FOR NOTICE OF CONSTRUCTION AND APPLICATION FOR APPROVAL (NOC) AND FOR NOTICE OF INTENT TO INSTALL AND OPERATE A TEMPORARY STATIONARY SOURCE (NOI)

A. NOC and NOI Fees

1. Base Fee

a. For each project required by Article V to file a NOC or a NOI, the applicant shall pay a base fee pursuant to the fee schedule. Base fee classes are listed below.

1) Class I - Notice of Intent Permit

Notice of Intent permits for portable stationary sources and temporary stationary sources include the following:

Source/Source Category Description	Article IV, Exhibit R Category
(a) Asphalt plant	15
(b) Concrete batch plant/ready mix plant	22
(c) Rock crusher	36

2) Class II - Simple Notice of Construction Permit

Simple permits generally conform to a template and involve minimal off-site impact evaluation. They include the following:

Source/Source Category Description	Article IV, Exhibit R Category
(a) Boiler and other fuel-burning equipment	27
(b) Coffee roaster	20
(c) Concrete batch plant/ready mix plant	22
(d) Dry cleaner	23
(e) Emergency generator	52
(f) Gasoline dispensing facility	28
(g) Lithographic printing/screen printing	9.e.5
(h) Material handling that exhausts ≥ 1,000 acfm	24
(i) Rock crusher	36
(j) Spray booth/surface coating operation	57
(k) Stationary internal combustion engine	53
(l) Sterilizer	9.e.8
(m) Stump/wood waste grinder	54

3) Class III - Standard Notice of Construction Permit

Standard permits generally include those that don't conform to a template and involve minimal off-site impact evaluation. They include the following:

Source/Source Category Description	Article IV, Exhibit R Category
(a) Soil and groundwater remediation operation	9.e.7
(b) Burn out oven	43
(c) Chrome plating	35
(d) Incinerator/crematory	31

4) Class IV - Complex Notice of Construction Permit

Complex permits generally include those that don't conform to a template and involve more complex off-site impact evaluation. They include the following:

Source/Source Category Description	Article IV, Exhibit R Category
(a) Asphalt plant	15
(b) Composting	21
(c) Refuse systems	48
(d) Rendering	49
(e) Sewerage systems	50

b. For sources/source categories not listed in Section 10.07.A.1.a, above, NOI and NOC application review will be assigned to Class I, II, II or IV by the Control Officer on a case-by-case basis.

c. For sources with one or more emission points under one NOC application, as allowed in Section 5.02.G, a separate base fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

2. Modification/Revision Fee

a. Equipment Modification Fee

Applicants of sources requesting a change in equipment (e.g., replacement or substantial alteration of emission control technology) pursuant to Section 5.10.C of this Regulation shall pay an equipment modification fee pursuant to the fee schedule.

b. Permit Condition Revision Fee

Applicants of sources requesting a change in conditions pursuant to Section 5.10.C of this Regulation shall pay a permit condition revision fee pursuant to the fee schedule, except when a complex permit condition revision fee is required pursuant to Section 10.07.A.2.c.

c. Complex Permit Condition Revision Fee

Applicants of sources requesting a change in conditions pursuant to Section 5.10.C of this Regulation shall pay a complex permit condition revision fee pursuant to the fee schedule when dispersion modeling, impact analysis, or emission calculations are required which are not covered under Section 10.07.A.3.

3. Additional Fees (for each application)

a. SEPA Review Fee

Where review of an Environmental Impact Statement (EIS), Environmental Checklist, or an Addendum to, or adoption of, an existing environmental document pursuant to the State Environmental Policy Act (SEPA) Chapter 197-11 WAC is required, in association with a NOC or a NOI, the applicant shall pay a SEPA or EIS review fee pursuant to the fee schedule.

b. Toxics Review Fee

For any new source of air pollution which requires review pursuant to Chapter 173-460 WAC, a toxic air pollutant review fee shall be paid. For sources with one or more emission points under one NOC application, as allowed in Section 5.02.G, a separate toxic air pollutant review fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units. The toxic air pollutant review fee shall be as follows:

1) Small Quantity Emission Rate (SQER)

For a new source using WAC 173-460-080 (2)(e), SQER, to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070 & WAC 173-460, the applicant shall pay a SQER review fee pursuant to the fee schedule.

2) Dispersion Modeling

For a new source using dispersion screening models (e.g., EPA SCREEN or TSCREEN) under WAC 173-460-080 (2)(c) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, the applicant shall pay a dispersion modeling review fee pursuant to the fee schedule.

3) Advanced Modeling

For a new source using more refined dispersion models (e.g., EPA ISC3) under WAC 173-460-080 (2)(c) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070; or for a new or modified source using a second tier analysis under WAC 173-460-090 or a risk management decision under WAC 173-460-100 to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, the applicant shall pay the advanced modeling review fee in the fee schedule.

c. New Source Performance Standards (NSPS) Review Fee

Applicants of any new air pollution source subject to WAC 173-400-115 (NSPS) and 40 CFR Parts 60 shall pay a NSPS review fee according to the fee schedule.

d. National Emission Standard for Hazardous Air Pollutants (NESHAP) Review Fee

Applicants of any new air pollution source subject to WAC 173-400-075 (NESHAP) and 40 CFR Parts 61 and 63 shall pay a NESHAP fee according to the fee schedule.

e. Best Available Control Technology (BACT) Review Fee

1) Generic BACT

Where no BACT review is required (e.g., the applicant demonstrates there is an established and/or recognized BACT

standard for the source category type), a BACT review fee is not applicable.

2) Non-Generic BACT Review

A non-generic BACT review is one where a generic BACT standard is not applicable and a top-down BACT review is not required. Applicants of any new air pollution source subject to a non-generic BACT review shall pay a non-generic BACT review fee according to the fee schedule.

3) Top-Down BACT Review (as described in EPA's Draft New Source Review Workshop Manual from October 1990 and as summarized below)

A top-down BACT review is one that requires available control technologies be ranked in descending order of control effectiveness. The most stringent or "top" control technology is first examined. That control technology is established as BACT unless the applicant demonstrates, and the Agency concurs, that technical considerations, energy, environmental, or economic impacts justify a conclusion that the most stringent technology is not achievable in for the project being proposed. If the most stringent control technology is eliminated in this fashion, the next most stringent control technology is considered, and so on. Applicants of any new air pollution source subject to a top-down BACT review shall pay a top-down BACT review fee according to the fee schedule.

B. Payment of Fees

1. At the Time of Application

The base fee shall be paid at the time of application. Review of the application will not commence until the applicable base fee is received.

2. After Application

a. Payment of Fees for Complete Applications

The Agency will invoice the owner, operator, or applicant for all other applicable fees without regard to whether the request(s) associated with this section are approved or denied.

b. Payment of Fees for Incomplete Applications

If an owner, operator, or applicant notifies SRCAA in writing that an incomplete application will not be completed or cancels the application (i.e., the application is neither approved or denied), applicable fees for review performed pursuant to A.2 and A.3 of this section shall be invoiced. If an application remains incomplete for more than 3 months, the owner, operator, or applicant shall be invoiced applicable fees for review performed pursuant to A.2 and A.3 of this section. If review of the application recommences, applicable review fees apply.

C. Incomplete Applications

Applications not accompanied by the base fee will be considered incomplete. In addition, if information requested by the Agency is not provided, the application will be considered incomplete and review of the application will be suspended. Review of the application will commence, or recommence when applicable, when all required fees and information requested by the Agency is received. An application will be cancelled if it remains incomplete for more than 18 months from initial receipt. For review of the cancelled application to resume, the applicant must pay all outstanding invoice fees, if applicable, and resubmit the applicable base fee.

D. Compliance Investigation Fee

Where a compliance investigation is conducted pursuant to Section 5.12 of this Regulation, the compliance investigation fee shall be assessed pursuant to the fee schedule. The fee shall be assessed for each emissions unit, or group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

E. Periodic Fee Review

The Board shall periodically review the fee schedule and determine if the total actual fee revenue collected and 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, including employee costs and overhead. If the Board determines that the total project 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. In general, fees will be greater for permits that are typically more complex or take more time to review and process.

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 10.08 MISCELLANEOUS FEES

A. Miscellaneous Fees

1. Emission Reduction Credit

Review of emission reduction credits pursuant to WAC 173-400-131 shall require the applicant to pay an emission reduction credit fee pursuant to the fee schedule.

2. Variance Request

Processing a variance request pursuant to RCW 70.94.181 or Article III of this Regulation shall require the applicant to pay a fee pursuant to the fee schedule.

3. Alternate Opacity

Review of an alternate opacity limit pursuant to RCW 70.94.331 (2)(c) shall require the applicant to pay an alternate opacity fee pursuant to the fee schedule.

4. Other

Applicants of other services including those listed below shall pay a fee pursuant to the fee schedule.

a. Requests pursuant to the following sections of this Regulation: Sections 6.13.E.3.j; 6.13.F.4; 6.13.F.6; 6.13.F.9; 6.13.F.10; and 6.13.F.11.

b. Registration exemption requests.

c. Other.

B. Periodic Fee Review

The Board shall periodically review the fee schedule and determine if the total actual fee revenue collected and 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, including employee costs and overhead. If the

Board determines that the total project 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. Fees in the fee schedule will be based on actual and projected employee costs and overhead. Fees will be set at an hourly rate.

AMENDATORY SECTION

SECTION 10.10 SOLID FUEL BURNING DEVICE EXEMPTIONS

A. An initial nonrefundable fee of $25 shall be paid for review of any exemption request to use solid fuel combustion device during periods of impaired air quality. An annual nonrefundable renewal fee of $10 will be required each year thereafter. These fees may be waived ((~~per Section 10.04 or~~)) for emergency situations.

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

AMENDATORY SECTION

SECTION 10.11 (Reserved) ((~~**OXYGENATED GASOLINE** (Repealed 9/1/05, Res. 05-19)~~))

AMENDATORY SECTION

SECTION 10.12 AGRICULTURAL BURNING FEES

A. For agricultural burning permits issued by the ((~~Authority~~)) Agency pursuant to Section 6.11 of this Regulation, a ((~~nonrefundable~~)) fee equal to the maximum fee provided for in Chapter 173-430 WAC shall be submitted with a complete agricultural burning permit application. ((~~shall be paid by the applicant according to the following:~~))

~~1. Portion for local administration: a fee of $1.25 per acre; and~~

~~2. The state administration and research portions, pursuant to 70.94.650 RCW and WAC 173-430-040 (3)(b).~~))

B. Refunds of fees collected by the ((~~Authority may~~)) Agency will be provided ((~~at the discretion of the Authority~~)) for ((~~portions of acreage, of equivalent, un~~)) acres or tons permitted but not burned, provided that the total ((~~adjusted~~)) nonrefundable fee is no less than ((~~$25~~)) the minimum fee specified in Chapter 173-430 WAC.

C. Acreage equivalency, if applicable, shall be in accordance with the determination of the agricultural burning practices and research task force pursuant to Chapter 173-430 WAC ((~~173-430-040 (3)(d)~~)).

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

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

AMENDATORY SECTION

SECTION 10.13 OUTDOOR BURNING PERMIT FEES

For outdoor burning permit applications, submitted to the ((~~Authority~~)) Agency pursuant to Section 6.01 of this Regulation, a nonrefundable fee shall accompany the application. Fees shall be paid without regard to whether the associated request(s) are approved or denied. The applicant shall pay a fee at the time of application (except for hourly fees, which will result in a billing invoice being sent to the applicant from the Agency) pursuant to the fee schedule ((~~as indicated in the table below~~)) and shall submit a complete application pursuant to the advance application period indicated in the table below.

Type of Outdoor Burning	**Advance Application Period**	**((~~Fee~~**
Residential Land Clearing	10 working days	~~$200~~
((~~Recreational~~)) Social Event Fires (>3' in diameter or >2' in height)	3 working days	~~$50~~
Storm or Flood Debris	5 working days	~~$200~~
Other Outdoor Burning as defined in Chapter 173-425 WAC	10 working days	~~$65/hr~~))

AMENDATORY SECTION

SECTION 10.14 PAVING WAIVER FEES

A. A minimum nonrefundable filing and review fee as specified in the fee schedule ((~~of $50~~)) shall accompany all paving waiver requests submitted to the ((~~Authority~~)) Agency. After the first hour of filing and review, an additional hourly fee as specified in the fee schedule ((~~of $50 per hour~~)) shall be paid by the applicant for each hour of time expended by the ((~~Authority~~)) Agency in carrying out the review.

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

WSR 10-22-008
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed October 21, 2010, 7:28 a.m., effective November 21, 2010]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The revision of the marketing order, chapter 16-520 WAC, was approved in a referendum of affected seed potato producers pursuant to RCW 15.66.090.

Purpose: During past legislative sessions, significant amendments were made to the Washington state seed potato commission's enabling statute, chapter 15.66 RCW. These statutory changes prompted amendments to its marketing

order, chapter 16-520 WAC. Proposed amendments expand the commission's policy and purpose statements, update definitions, add additional power and duties to benefit the industry, and update meeting and administrative procedures as well as improve the readability and clarity of the marketing order. In addition, proposed amendments change the method by which seed potato commission board members are chosen with the director of agriculture appointing a majority of board members. The number of affected producers required to sign a nominating petition is reduced from five to three. The definition of "commercial quantities" is also revised to increase the amount of seed potatoes a grower must produce in order to be subject to the marketing order.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-520-002, 16-520-030 and 16-520-070; and amending WAC 16-520-005, 16-520-010, 16-520-020, 16-520-040, and 16-520-050.

Statutory Authority for Adoption: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.

Adopted under notice filed as WSR 10-14-106 on July 6, 2010.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 3, Amended 5, Repealed 3.

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Date Adopted: October 21, 2010.

Dan Newhouse
Director

AMENDATORY SECTION (Amending Marketing Order for Washington Seed Potatoes, effective 10/1/56)

WAC 16-520-005 Marketing order—Policy ((~~and purpose~~)) statement. ((~~The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of the "act" and of this "Washington seed potato marketing order" to promote the general welfare of the state by enabling seed potato producers to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing and standardizing of the seed potatoes they produce, and in promoting and increasing the sale of such seed potatoes.~~)) (1) The marketing of seed potatoes within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its seed potatoes be properly promoted by:

(a) Enabling producers of seed potatoes to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the seed potatoes they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of seed potatoes within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the seed potato industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that the seed potatoes be promoted individually, and as part of a comprehensive agriculture industry to:

(a) Enhance the reputation and image of Washington state's seed potatoes.

(b) Increase the sale and use of Washington state's seed potatoes in local, domestic, and foreign markets.

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's seed potatoes.

(d) Increase the public's knowledge of the qualities and value of Washington state's seed potatoes.

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of seed potatoes produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.66 RCW through this marketing order.

(4) The Washington state seed potato commission exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the commission is authorized to speak on behalf of Washington state government with regard to seed potatoes under the provisions of this marketing order.

NEW SECTION

WAC 16-520-006 Marketing order purposes. This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; ensuring a fair regulatory environment; and increasing production efficiency of seed potatoes in Washington state. The Washington state seed potato commission is designated by the director to conduct the following programs in accordance with chapter 15.66 RCW:

(1) **Research.** The commission may research or enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of seed potatoes.

(2) **Marketing and sales promotion plans.**

(a) Subject to the provisions of the act, the commission is hereby authorized to prepare plans, administer and conduct programs and expend moneys for marketing and sales promotion for promoting the sale of seed potatoes including, but not necessarily limited to, the following:

(i) Increasing the sales of Washington produced seed potatoes through the use of the press, radio, television and all other marketing media.

(ii) Trade promotion, publicity, market development and expansion activities.

(iii) Presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of seed potatoes produced in this state, and such other activities and programs which are consistent with the objectives of this marketing order and the act.

(b) In carrying out any marketing and sales promotion plans or programs, the commission may engage or hire such marketing medias as may be necessary to accomplish the purposes of the act and this order, arrange for marketing space, display material and other advertising material, or may use any other methods consistent with the act and this marketing order which the commission considers appropriate in promoting or creating new and larger domestic or foreign markets for seed potatoes, or in maintaining existing markets. The commission may also engage in cooperative efforts in the domestic or foreign marketing of seed potato food products.

(c) Programs and plans adopted by the commission under this marketing order shall be directed towards promoting the sale of seed potatoes without reference to any particular private brand or trade name. Sales promotion and marketing programs shall not disparage the value, quality, sale or use of any other agricultural commodity or make use of any unwarranted or false claims regarding seed potatoes.

(d) Marketing plans, programs and projects developed by the commission shall be submitted for director review and approval as required under RCW 15.66.141.

(3) **Labeling.**

(a) Under chapter 15.66 RCW, the commission may adopt rules, subject to the provisions of chapter 34.05 RCW, to define, establish and provide labeling requirements for improving standards and grades of seed potatoes, and may expend money for such purposes. Such requirements shall not be inconsistent with the horticultural laws of this state with respect to seed potatoes.

(b) The commission shall be authorized to cooperate with state and federal agencies or departments responsible for revising and modernizing grades and standards and labeling of seed potatoes.

(c) Nothing in this section shall be construed as authorizing the commission to set minimum grades, sizes or maturity of seed potatoes which a producer may sell, offer for sale or ship.

(4) **Unfair trade practices.** The commission may investigate and take necessary action to prevent unfair trade practices and to correct, where possible, trade practices which hinder marketing of Washington produced seed potatoes. To the extent permitted under the Public Records Act, chapter 42.56 RCW, information acquired in an investigation shall be confidential and shall be released only to the extent necessary to effectuate the purposes of the act.

(5) **Standards, grades, labels, trade practices.** The provisions covering standards, grades, labels and trade practices shall apply with respect to seed potatoes produced in Washington state.

(6) The commission is authorized to provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of seed potatoes produced in Washington state to any elected official or officer or employee of any agency.

(7) **Information and education.** The commission may conduct programs for the purpose of providing information and education including:

(a) Marketing information and services for producers of seed potatoes.

(b) Information and services enabling producers to meet their resource conservation objectives.

(c) Seed potato-related education and training.

(8) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of seed potatoes.

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of seed potatoes may be encouraged, expanded, improved or made more efficient.

AMENDATORY SECTION (Amending Marketing Order, Article I, effective 10/1/56)

WAC 16-520-010 Definitions. ((~~As used in this marketing order, the following terms shall have the following meanings~~)) Definitions for terms used in this chapter are also found in chapter 15.66 RCW, Washington State Agricultural Commodity Commissions Act. For the purposes of the seed potato marketing order, the following definitions shall apply:

(1) "Director" means the director of agriculture of the state of Washington or ((~~his duly appointed representative~~)) any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this marketing order or chapter 15.66 RCW;

(2) "Act" means the Washington ((~~Agricultural Enabling~~)) State Agricultural Commodity Commissions Act, ((~~being~~)) chapter 15.66 RCW;

(3) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government;

(4) "Producer" means any person ((~~who is~~)) engaged in the business of producing or causing to be produced for market in the state of Washington seed potatoes in commercial quantities ((~~seed potatoes as herein defined grown in the state of Washington~~)). "To produce" means to act as a producer;

(5) "Commercial quantities" ((~~shall~~)) means ((~~and include~~)) five thousand hundred weight or more;

(6) "Hundredweight" or "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of seed potatoes;

(7) "Seed potatoes" means and include all kinds and varieties of Irish seed potatoes grown in the state of Washington and marketed, sold or intended for use for seed purposes;

(8) "Seed potato commission" or "commission" are synonymous and mean the commission established ((~~pursuant to the provisions of~~)) under WAC 16-520-020 consistent with chapter 15.66 RCW;

(9) "Marketing season" or "fiscal year" are synonymous and mean the twelve month period beginning July 1 of any

year and ending upon the last day of June, both dates inclusive;

(10) "Handler" means any person ((~~engaged in the business of handling, selling, processing, storing, shipping, or distributing seed potatoes which he has purchased or acquired from a producer, or which he is shipping for or on behalf of a producer, and shall include any lending agencies for commodity credit corporation loan to producers, but shall not include a producer engaged in transporting seed potatoes produced by him for grading, washing, sorting, sacking, or otherwise preparing for marketing or market~~)) who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of seed potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

(11) "Sale" means a transaction wherein the property in or to seed potatoes ((~~in~~)) is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

(12) "Affected area" ((~~or "area of production" are synonymous and~~)) means and includes all of the state of Washington.

(13) "Affected producer" means any producer who is subject to this marketing order.

AMENDATORY SECTION (Amending Order 1808, filed 10/25/83, effective 12/1/83)

WAC 16-520-020 Seed potato commission—Structure, powers, duties, and procedure. (1) **Establishment and membership.** A seed potato commission is hereby established to administer this marketing order ((~~which~~)). The commission shall be composed of ((~~five~~)) three members who shall be affected producers elected by the producers as provided in the act, and ((~~two~~)) four members who shall be appointed by the ((~~elected producer members~~)) director. In addition, the director shall be ((~~an ex officio~~)) a voting member of the commission.

(a) Elected producer positions on the board shall be designated as positions 2, 3, and 4.

(b) Director-appointed positions on the board shall be designated as positions 1, 5, 6, and 7.

(c) The position representing the director shall be designated as position 8.

(2) **Membership qualifications.** Commission members shall be citizens and residents of this state, over the age of ((~~twenty-five~~)) eighteen years and producer members of the commission shall be producers of seed potatoes in the state of Washington. The qualifications of producer members of the commission as herein set forth must continue during their term of office. Members appointed by the ((~~elected producers~~)) director shall be either ((~~seed potato~~)) producers((~~,~~)) or others active in matters relating to seed potatoes ((~~or persons not so related~~)).

(3) **Term of office((~~, initial commission~~)).**

(a) The term of office of commission members shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified so that one-third of the terms will commence as nearly as practicable each year ((~~provided, however, that the initial members of the commission shall serve from the effective date of this marketing order in terms terminating as follows: Two producer members, being positions 1 and 2 shall be elected for one year terms terminating June 30, 1957; two producer members, being positions 3 and 4 shall be elected for 2 year terms terminating June 30, 1958; and one producer member, being position 5 shall be elected for a 3 year term terminating June 30, 1959.~~

~~The appointed members of the initial commission shall be elected by a majority of the elected commissioners at the first meeting of said commission. One appointed member being position 6, shall be appointed for a two year term expiring June 30, 1958, and one appointed member, being position 7, shall be appointed for a three year term, expiring June 30, 1959~~)).

(b) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the prior marketing order's elected board members in positions 1, 5, 6, and 7 shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order to serve out the remainder of their terms.

(4) **Nomination, appointment and election of commission members.** Nomination, appointment, and election of commission members shall be as set forth in the act and specified by the director. Dates for this process are as follows:

(a) Not earlier than March 19 and not later than April 3 of each year, the director shall give notice by mail to all affected producers that ((~~a vacancy or vacancies~~)) an open commission position(s) will occur in the commission and call for nominations. Nominating petitions shall be signed by ((~~five~~)) three persons qualified to vote for ((~~such~~)) the candidates. ((~~Such~~)) The notice shall state the final date for filing ((~~said~~)) nominating petitions which shall be not earlier than April 7 and not later than April 12 of such year.

(b) The director shall ((~~submit ballots~~)) conduct an election or advisory vote by mail to all affected producers in the district wherein the ((~~vacancy~~)) open commission position(s) will occur not earlier than April 17 and not later than May 2 of each year. Ballots shall be returned not later than June 1 of ((~~such~~)) each year. ((~~Such mailed ballot~~)) An election or advisory vote shall be conducted in a manner so that it shall be a secret ballot in accordance with rules ((~~and regulations to be promulgated~~)) adopted by the director. An affected producer is entitled to one vote.

(c) ((~~With respect to the initial seed potato commission, the director shall call for nominations in the notice of his decision following the hearing designated in the act. The ballot specified herein shall be forwarded to the producers at the time the director's proposed marketing order is mailed to the producers for their referendum assent.~~)) When only one nominee is nominated by the affected producers for a director-appointed position, RCW 15.66.120 shall apply.

(d) Except with respect to the initial seed potato commission, the members of the commission not elected by the producers or appointed by the director shall be elected by a majority of the commission within ninety days prior to the expiration of the term.

(5) **Vacancies.**

(a) ((~~To fill any vacancy occasioned by the failure to qualify of any person elected by the producers as a member of the commission, or in the event of the death, removal, resignation or disqualification of any member, the director shall call for nominations and conduct such election in the manner provided in subsection (4) of this section.~~)) In the event of a vacancy in an elected position, the remaining members shall select a qualified person to fill the term. The appointment shall be made at the commission's first or second meeting after the position becomes vacant.

(b) ((~~To fill nonelective vacancies caused by other reasons than the expiration of the term, the new members shall be elected by the commission at its first meeting after the occurrence of the vacancy.~~

(6) **~~Powers and duties of commission.~~** ~~The commission shall have the following powers and duties:~~

~~(a) To administer, enforce, direct and control the provisions of this marketing order and of the act relating thereto;~~

~~(b) To elect a chairman and such other officers as the commission may deem advisable; and to select subcommittees of commission members;~~

~~(c) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this marketing order;~~

~~(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;~~

~~(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;~~

~~(f) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of the act and of this marketing order;~~

~~(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the department and other legal agencies of the state and make annual reports therefrom to the state auditor;~~

~~(h) To borrow money and incur indebtedness;~~

~~(i) To make necessary disbursements for routine operating expenses;~~

~~(j) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the act and this marketing order.~~

~~(k) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year;~~

~~(l) To accept and receive gifts and grants and expend the same to effectuate the purposes of the act and this order;~~

~~(m) To exercise such other powers and perform such other duties as are necessary and proper to effectuate the purposes of the act and of this order.~~

~~(7) **Procedure for commission.**~~

~~(a) The commission may by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.~~

~~(b) The commission shall hold at least two regular meetings during each fiscal year with the time and date thereof to be fixed by the resolution of the commission.~~

~~(c) The commission may hold such special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice to the members, provided, however, that the notice of any special meeting may be waived by a waiver thereof signed by not less than a quorum of the membership.~~

~~(d) Any action taken by the commission shall require the majority vote of the members present provided a quorum is present.~~

~~(e) A quorum of the commission shall consist of at least four members.~~

~~(f) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which rate shall not exceed $20.00 per day for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and travel expense of the rate allowed by law to state employees.~~

~~(8) **Limitation of liability of commission members and employees.**~~ ~~Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in his individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.~~)) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in chapter 15.66 RCW.

NEW SECTION

WAC 16-520-025 Powers and duties of commission. The commission shall have the following powers and duties:

(1) To administer, enforce, direct and control the provisions of this marketing order and of the act relating thereto;

(2) To elect a chairman and such other officers as the commission may deem advisable; and to select subcommittees of commission members;

(3) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this marketing order;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of the act and of this marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the department and other legal agencies of the state and make annual reports therefrom to the state auditor;

(8) To borrow money and incur indebtedness;

(9) To make necessary disbursements for routine operating expenses;

(10) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the act and this marketing order;

(11) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least sixty days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget;

(12) To accept and receive gifts and grants from private persons or private and public agencies and expend the same to effectuate the purposes of the act and this order;

(13) To work cooperatively with other local, state, and federal agencies, universities, and national organizations for the purposes set forth in this marketing order;

(14) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes set forth in this marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(15) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use or distribution of seed potatoes;

(16) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(17) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this marketing order;

(18) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, manufacture, regulation, transportation, distribution, sale, or use of seed potatoes including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(19) To maintain a list of names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.66.140;

(20) To maintain a list of names and addresses of persons who handle seed potatoes within the affected area and data on the amount and value of seed potatoes handled for a minimum three-year period by each person pursuant to RCW 15.66.140;

(21) To maintain a list of names and addresses of all affected producers and the amount, by unit, of seed potatoes produced during the past three years pursuant to RCW 15.66.143;

(22) To maintain a list of all persons who handle seed potatoes and the amount of seed potatoes handled by each person during the past three years pursuant to RCW 15.66.-143;

(23) To establish a foundation using commission funds as grant money for the purposes established in this marketing order;

(24) To request records and audit the records of producers or handlers of seed potatoes during normal business hours to determine whether the appropriate assessment has been paid;

(25) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to seed potatoes; and

(26) To exercise such other powers and perform such other duties as are necessary and proper to effectuate the purposes of the act and of this order.

NEW SECTION

WAC 16-520-027 Procedure for commission. (1) The commission may by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(2) The commission shall hold at least two regular meetings during each fiscal year with the time and date thereof to be fixed by the resolution of the commission. Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be provided in compliance with chapter 42.30 RCW, the Open Public Meetings Act.

(3) The commission may hold special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice to the members, provided, that the notice to a member of any special meeting may be waived by a waiver

from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

(4) Any action taken by the commission shall require the majority vote of the members present provided a quorum is present.

(5) A quorum of the commission shall consist of at least five members.

(6) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which rate shall not exceed the compensation rate set by RCW 43.03.230 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and travel expenses in accordance with RCW 43.03.050 and 43.03.060. The commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

NEW SECTION

WAC 16-520-035 Limitation of liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in his or her individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for his or her own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

AMENDATORY SECTION (Amending WSR 92-22-007, filed 10/21/92, effective 12/1/92)

WAC 16-520-040 Assessments and assessment funds. (1) **Assessments levied.** ((~~Beginning December 1, 1983,~~)) There is hereby levied and there shall be collected by the commission, as provided in chapter 15.66 RCW, upon all seed potatoes of commercial quantities grown in the state an annual assessment which shall be paid by the producer thereof upon each and every hundredweight of seed potatoes sold, processed, delivered for sale or processing by him or her or stored or delivered for storage when such storage or delivery for storage is outside the boundaries of this state. The assessment shall be three cents per hundredweight ((~~from December 1, 1983, until August 31, 1984~~)). The assessment shall then be set by the seed potato commission at a regular meeting before July 15th of each year, to become effective from September 1st of the same year to August ((~~connote~~)) 31st of the following year. The assessment shall not be less than one cent or more than five cents per hundredweight. No assessment may be collected on the following:

(a) Seed potatoes of a producer's own production used by him or her on his or her own premises for seed, feed or personal consumption;

(b) Seed potatoes donated or shipped for relief or charitable purposes; or

(c) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of seed potatoes from a producer's own production.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such seed potatoes sold, processed or delivered for sale or processing by all producers of seed potatoes for the fiscal year to which the assessment applies.

(2) **Collection of assessment.**

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. To collect ((~~such~~)) the assessments, the commission may require:

(i) Stamps to be known as "Washington seed potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any ((~~such~~)) stamps shall be canceled immediately upon being attached or fixed and the date of ((~~such~~)) the cancellation shall be placed thereon;

(ii) Handlers receiving seed potatoes from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at ((~~such~~)) the times as required by rule ((~~and regulation required~~)), file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of seed potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(iii) In the event payment of producer assessments occur before the seed potatoes are shipped off the farm or ((~~payments of assessments~~)) occur at different or later times ((~~and in~~)), such ((~~event, any~~)) person subject to the assessment shall give ((~~such~~)) adequate assurance or security for its payment as the commission shall require.

(b) The commission is authorized to make reasonable rules ((~~and regulations~~)) in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No ((~~affected~~)) hundredweight unit or units of seed potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment ((~~herein provided for~~)) has been paid and the receipt issued or stamp canceled, but no liability ((~~hereunder~~

~~shall attach~~)) or obligation applies to common carriers in the regular course of their business. When any seed potatoes for which an exemption is claimed, as provided for in subsection (1) of this section ((~~is claimed~~)), are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for ((~~such~~)) the exemption(s).

(d) Any producer or handler who fails to comply with the provisions of this section as herein provided shall be guilty of a violation of this order.

(3) **Funds.**

(a) Moneys collected by the seed potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all seed potatoes sold, processed, delivered for sale or processing or delivered for storage or stored when such storage or delivery for storage was outside the boundaries of this state during that period. Refund may be made only upon satisfactory proof given by the producer ((~~in accordance with reasonable rules and regulations prescribed by the director~~)) which may include, bills of lading, bills of sale or receipts.

AMENDATORY SECTION (Amending Marketing Order, Article V, effective 10/1/56)

WAC 16-520-050 Information reports. All persons subject to the provisions of this marketing order shall make and render ((~~such~~)) reports and furnish such information to the director or the commission as may be necessary or required under the act or this order to effectuate the purposes thereof. Any financial or commercial information and records obtained by ((~~any persons pursuant to the provisions of this section shall be confidential and~~)) the director or commission are exempted from public disclosure under the provisions of RCW 15.66.105 and 42.56.380 and shall not be ((~~by him~~)) disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the director or the commission to give legal advice thereon or by court order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-520-002	Director's findings and final decision approving a marketing order.
WAC 16-520-030	Marketing order purposes.
WAC 16-520-070	Effective time.

WSR 10-22-012
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 21, 2010, 1:00 p.m., effective February 1, 2011]

Effective Date of Rule: February 1, 2011.

Purpose: The department is amending WAC 388-450-0050 How does your participation in the community jobs (CJ) program affect your cash assistance and Basic Food benefits?, in order to change community jobs income budgeting from unearned income to earned income.

The amendment will be consistent with the Administrative Notice 10-27 Treatment of TANF Funded Subsidized Employment Income published April 9, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0050.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, 74.08A.340, 74.04.055, 74.04.057, 74.04.500, 74.04.510.

Adopted under notice filed as WSR 10-10-073 on May 3, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 21, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-14-043, filed 6/29/04, effective 7/1/04)

WAC 388-450-0050 How does your participation in the community jobs (CJ) program affect your cash assistance and Basic Food benefits? (1) There are two different types of income in the community jobs program. They are:

(a) Subsidized, where your wages are paid from TANF or SFA funds; and

(b) Unsubsidized, where your wages are paid entirely by your employer.

(2) We figure your total monthly subsidized or unsubsidized income by:

(a) Estimating the number of hours you, your case manager, and the CJ contractor expect you to work for the month; and

(b) Multiplying the number of hours by the federal or state minimum wage, whichever is higher.

(3) Because you are expected to participate and meet the requirements of CJ, once we determine what your total monthly income is expected to be, we do not change your TANF grant if your actual hours are more or less than anticipated.

(4) We treat the total income we expect you to get each month from your CJ position as:

(a) Earned income for cash assistance, except we do not count any of the CJ income for the first month you receive your paycheck.

(b) Earned income for Basic Food ((~~after you have been transferred to your employer's regular unsubsidized payroll; or~~

~~(c) Unearned income for Basic Food while you have subsidized income~~)) for all months.

(5) If your anticipated subsidized income is more than your grant amount, your cash grant is suspended. This means that you are still considered a TANF/SFA recipient, but you do not get a grant.

(a) Your grant can be suspended up to a maximum of nine months.

(b) You can keep participating in CJ even though your grant is suspended, as long as you would be eligible for a grant if we did not count your subsidized income.

(c) The months your grant is suspended do not count toward your sixty-month lifetime limit.

(6) If your unsubsidized income, after we subtract half of what you have earned is greater than your grant, your TANF/SFA case will close. This happens because your income is over the maximum you are allowed. You will still be able to participate in the CJ program for up to a total of nine months.

(7) If your income from other sources alone, not counting CJ income makes you ineligible for a cash grant, we terminate your grant and end your participation in CJ.

WSR 10-22-022
PERMANENT RULES
OFFICE OF STATE AUDITOR

[Filed October 22, 2010, 3:14 p.m., effective November 22, 2010]

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

Purpose: Rules are being changed to comply with changes to public records laws, changes in the Environmental Policy Act and to recognize changes in the state auditor's office organizational structure for processing appeals by local governments that wish to appeal their audit costs.

Citation of Existing Rules Affected by this Order: Repealing chapter 48-12 WAC, Access to public records and chapter 48-20 WAC, Local audit costs appeal; and amending WAC 48-16-010 Agency activities exempt.

Statutory Authority for Adoption: RCW 42.56.070, 43.21C.120, and 43.09.281.

Adopted under notice filed as WSR 10-17-018 on August 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 1, Repealed 2.

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

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: October 12, 2010.

Jan M. Jutte
Director of
Legal Affairs

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 48-12-010	Purpose.
WAC 48-12-020	Definitions.
WAC 48-12-030	Description of central and field organization of office of state auditor.
WAC 48-12-040	Operations and procedures.
WAC 48-12-050	Public records available.
WAC 48-12-060	Public records officer.
WAC 48-12-070	Office hours.
WAC 48-12-080	Requests for public records.
WAC 48-12-090	Copying.
WAC 48-12-100	Exemptions.
WAC 48-12-110	Review of denials of public records requests.
WAC 48-12-120	Protection of public records.
WAC 48-12-130	Records index.
WAC 48-12-140	Communication with agency.
WAC 48-12-150	Adoption of form.
WAC 48-12-990	Appendix No. 1—Form—Request for public record.

Chapter 48-13 WAC

ACCESS TO PUBLIC RECORDS

NEW SECTION

WAC 48-13-010 Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record"

to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures the state auditor's office will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the state auditor's office and establish processes for both requestors and state auditor's office staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the state auditor's office will be guided by the provisions of the act describing its purposes and interpretation.

NEW SECTION

WAC 48-13-020 Agency description—Contact information—Public records officer. (1) The state auditor's office has the constitutional responsibility for auditing state government and all municipal corporations in Washington state. The administrative office of the state auditor's office and its staff are located at: 302 Sid Snyder Ave. S.E., Room 200, Olympia, WA.

(2) Any person wishing to request access to public records of the state auditor's office, or seeking assistance in making such a request should contact the public records officer of the state auditor's office:

Public Records Officer
State Auditor's Office
P.O. Box 40031
Olympia, WA 98504
360-586-3105
e-mail: publicrecords@sao.wa.gov

Information and public records are also available at the state auditor's office web site at http://www.sao.wa.gov. Requestors are encouraged to view the information and documents available on the web site prior to contacting the records officer.

(3) The public records officer will oversee compliance with the act but another state auditor's office staff member may process the request. The public records officer or designee will provide fullest assistance to requestors, pursuant to this chapter, and prevent fulfilling public records requests from causing excessive interference with essential functions of the state auditor's office.

NEW SECTION

WAC 48-13-030 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying by appointment during normal business hours of the state auditor's office, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding legal holidays. Original records must be inspected at the offices of the state auditor's office. A requestor shall not take state auditor's office records from state auditor's offices without the permission of the public records officer or designee.

(2) **Records index and records available on-line.** An index of public records is available for use by members of the public. The index may be accessed on-line at http://www.sao.wa.gov. A variety of records is also available on the state auditor's office web site. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the state auditor's office should make the request in writing by letter, fax, or e-mail addressed to the public records officer or using the office's web site form located at: http://www.sao.wa.gov. Records requests should include the following information:

• Name of requestor;

• Address of requestor;

• Other contact information, including telephone number and e-mail address;

• Identification of the public records adequate for the public records officer or designee to locate the records; and

• The date and time of day of the request.

(b) If the requestor wishes to retain photocopies or electronic versions of nonelectronic records instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records. A deposit may be required prior to the office's collection of the records requested. Pursuant to WAC 48-13-070, photocopies and scanned copies will be provided at ten cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 48-13-040 Processing of public records requests—General. (1) **Order of response.** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying; or

(b) If copies or scanned documents are requested and terms of payment are met, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided

by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **Failure to respond.** If the state auditor's office does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the state auditor's office believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the state auditor's office shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the state auditor's office notification to him or her that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the state auditor's office may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(8) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the state auditor's office has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the state auditor's office has closed the request.

(11) **Later discovered documents.** If, after the state auditor's office has informed the requestor that it has provided all available records, the state auditor's office becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

(12) Detailed policy can be found on office web site at http://www.sao.wa.gov.

NEW SECTION

WAC 48-13-050 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

NEW SECTION

WAC 48-13-060 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by state auditor's office for inspection and copying:

RCW 42.40.030, state employee whistleblower protection.

RCW 42.41.030, local government whistleblower protection.

RCW 43.09.186, toll-free efficiency hotline.

(2) The state auditor's office is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 48-13-070 Costs of providing copies of public records. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard

black and white photocopies for ten cents per page when the page count exceeds one hundred pages. Copies in color or larger-sized documents cost will be based on the actual cost to reproduce them at the time of the request.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The state auditor's office will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be free for information on a CD-ROM when the information already exists in electronic format and it only has to be copied to a CD. The cost of scanning existing office paper or other nonelectronic records is ten cents per page when the page count exceeds one hundred pages. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) **Costs of mailing.** The state auditor's office may also charge actual costs of mailing, including the cost of the shipping container for requests exceeding one hundred pages.

(4) **Payment.** Payment may be made by cash, check, or money order to the state auditor's office.

NEW SECTION

WAC 48-13-080 Review of denials of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the director of legal affairs. The petition will be affirmed or reversed within five business days following the state auditor's office receipt of the petition, or within such other time as the state auditor's office and the requestor mutually agree.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the state auditor's office denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending Order 76-3, filed 10/1/76)

WAC 48-16-010 Agency activities exempt. The ((~~activities of the~~)) state auditor's office ((~~as they existed on December 12, 1975, have been exempted by the council on environmental policy in WAC 197-10-175 (12)(b). All authorized activities of the state auditor's office have been reviewed and found to fall within the exempted category~~)) has reviewed its authorized activities and found them all to be exempt pursuant to Title 197 WAC. This ((~~regulation~~)) section is adopted ((~~in conformance~~)) for compliance with ((~~WAC 197-10-800(4)~~)) the State Environmental Policy Act, chapter 43.21C RCW.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 48-20-010	Definitions.
WAC 48-20-020	Notification to chief examiner.
WAC 48-20-030	Response of chief examiner.
WAC 48-20-040	Appeal to internal appeals board.
WAC 48-20-050	Appeal to external appeals board.
WAC 48-20-060	External appeals board—Membership.
WAC 48-20-070	External appeals board review.
WAC 48-20-080	Review and final decision by state auditor.
WAC 48-20-090	Failure to follow procedure—Waiver.
WAC 48-20-100	Appeal board administrative costs.

Chapter 48-21 WAC

LOCAL AUDIT COSTS APPEAL

NEW SECTION

WAC 48-21-010 Definitions. "Local government" includes any municipal corporation, taxing district, or other governmental unit subject to audit by the state auditor's office, acting through its legally constituted legislative body or its designee.

"Local government association" means any generally recognized association or organization whose membership consists exclusively or principally of local government units or their officers.

"Officers of a local government association" includes any person serving as an elected officer of a local government association or any person employed by a local government association as its executive director or any person with duties equivalent to those of an executive director.

"Writing" means handwriting, typewriting, printing, and every other means of commonly understood written recording, including letters, facsimiles or electronic mail.

NEW SECTION

WAC 48-21-020 Notification to director of audit. A local government which disagrees with a bill for services issued to it shall notify the director of audit in writing within fourteen days after receipt of the bill. The writing shall include the local government's reasons for challenging the bill and any other information the local government deems pertinent.

NEW SECTION

WAC 48-21-030 Response of director of audit. The director of audit shall review any bill challenged by a local government, together with the reasons for the challenge. Within ten days of receipt of notification from the local government, the director of audit shall respond in writing to the local government, either reaffirming the bill or modifying it, and stating the reasons for his action.

NEW SECTION

WAC 48-21-040 Appeal to internal appeals board. Within ten days after receiving the director of audit's written response, the local government may appeal the matter to the internal appeals board by writing directed to the director of audit. The internal appeals board shall consist of the chief of staff and two deputy state auditors designated by the state auditor, neither of whom shall have direct responsibility for the conduct of audits. The internal appeals board shall review the matter and may reaffirm or modify the disputed bill. Within ten days of the appeal, the internal appeals board shall issue written findings and mail them to the local government.

NEW SECTION

WAC 48-21-050 Appeal to external appeals board. Within ten days of receipt of the written findings of the internal appeals board, a local government not satisfied with the findings may appeal to an external appeals board by addressing a written notice to the director of audit. The written notice shall specify the grounds for appeal and shall designate the person selected by the local government to serve on the external appeals board.

NEW SECTION

WAC 48-21-060 External appeals board—Membership. The external appeals board shall consist of three officers of local government associations, one selected by the local government at the time of its appeal, one selected by the director of audit after receipt of the notice of appeal, and the third to be selected by the other two members.

NEW SECTION

WAC 48-21-070 External appeals board review. The external appeals board shall review the challenged bill, together with any other pertinent material furnished by the local government and the state auditor's office. Within ten days after its selection, the external appeals board shall submit written findings and recommendations to the state auditor and to the local government.

NEW SECTION

WAC 48-21-080 Review and final decision by state auditor. Within ten days after receipt of the findings and recommendation of the external appeals board, the state auditor shall issue a final written decision accepting, rejecting, or modifying the recommendation of the appeals board. The final decision shall be delivered to the local government, which shall promptly pay any charges rendered in the final decision.

NEW SECTION

WAC 48-21-090 Failure to follow procedure—Waiver. Any local government which fails to follow the appeal procedures outlined in this chapter will be deemed to have waived its appeal, and shall promptly pay any bill submitted by the state auditor.

NEW SECTION

WAC 48-21-100 Appeal board administrative costs. The office of the state auditor will provide facilities, clerical staff, and necessary expenses for appeals boards selected pursuant to this chapter.

WSR 10-22-039
PERMANENT RULES
HEALTH CARE AUTHORITY
(Health Insurance Partnership)

[Order 10-04—Filed October 27, 2010, 11:47 a.m., effective November 27, 2010]

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

Purpose: To amend chapter 182-26 WAC to increase the age of an eligible dependent for health insurance partnership (HIP) insurance coverage and to add an exception to the HIP employer premium payment deadline.

Citation of Existing Rules Affected by this Order: Amending WAC 182-26-100, 182-26-305, 182-26-340, and 182-26-350.

Statutory Authority for Adoption: RCW 41.05.160 and chapter 70.47A RCW.

Adopted under notice filed as WSR 10-18-010 on August 19, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2010.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 08-02, filed 10/31/08, effective 12/1/08)

WAC 182-26-100 Definitions. "Administrator" means the administrator of the Washington state health care authority established under chapter 41.05 RCW.

"Appeal" means a formal written request to the HIP or its designee for resolution of problems or concerns that cannot be resolved informally. For the purposes of this chapter, "appeal" applies only to HIP decisions regarding subsidy determinations and employer eligibility for the HIP.

"Applicant" means:

• An ((~~individual~~)) eligible partnership participant who applies for a premium subsidy through the HIP on behalf of the ((~~individual~~)) eligible partnership participant and his or her dependents; or

• ((~~A~~)) An eligible partnership participant who applies or reapplies for premium subsidy through the HIP on behalf of the eligible partnership participant and his or her dependents during the annual subsidy application and renewal period as described in WAC 182-26-320.

"Application" means a form developed by the administrator that an applicant must sign, complete, and submit to the administrator to apply for a premium subsidy through the HIP. To be considered complete, the application must be accompanied by all supporting documents as required and determined by the administrator.

"Benchmark health benefit plan" or "benchmark plan" means a health benefit plan selected by the board and upon which the subsidy scale shall be determined and from which the administrator will calculate ((~~a~~)) an eligible partnership participant's premium subsidy.

"Board" or "HIP board" means the health insurance partnership board established under RCW 70.47A.100.

"Carrier" or "insurance carrier" means the same as defined in RCW 48.43.005.

"The department of social and health services" or "DSHS" means the department of social and health services as defined in RCW 43.20A.020.

"Dependent," for the purpose of determining subsidy eligibility, "dependent" means:

(((~~(1) A~~)) (a) An eligible partnership participant's ((~~lawful~~)) spouse, ((~~not legally separated, who shares a home with the partnership participant~~)) as defined under RCW 70.47A.901; or

(((~~(2)~~))) (b) The ((~~unmarried~~)) child of the partnership participant or participant's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, and not given up for adoption, who is:

(((~~(a)~~))) (i) Younger than age ((~~twenty-five~~)) twenty-six; or

(((~~(b)~~))) (ii) Is of any age, is not able to take care of himself or herself due to disability, and is under legal guardianship of the partnership participant or the participant's dependent spouse.

(((~~(3)~~))) (c) A dependent may be placed on only one HIP account at any given time.

"Designated health benefit plan" means a health benefit plan selected by the board as eligible for offer through the HIP.

"Disenroll" or "disenrollment" means the termination of a partnership participants' enrollment in the HIP program. Decisions regarding eligibility or enrollment status for insurance coverage will be made by the carrier.

"Eligible partnership participant" means a partnership participant who:

• Is a resident of the state of Washington;

• Has a family income that does not exceed two hundred percent of the federal poverty level, as determined annually by the federal Department of Health and Human Services; and

• Is a health plan eligible employee as defined in this section that is enrolled or is applying to enroll in the participating small employer's offered coverage.

"Employee" has the same meaning as defined in RCW 48.43.005.

"Employer agreement" means a form developed by the administrator that a small employer must complete, sign, and submit to the administrator to request enrollment in the HIP.

"Health insurance partnership" or "HIP" means the health insurance partnership established in RCW 70.47A.-030.

"Health plan eligible employee" means an individual who meets the participating small employer's enrollment criteria.

"HIP account" means an account maintained by the administrator for each partnership participant that includes but is not limited to:

• Demographic information for participants and dependents, if any;

• Subsidy status;

• Carrier and plan enrollment status; and

• Other information as required by the administrator.

"Income" or "family gross income" means total cash receipts, as defined in WAC 182-26-345, before taxes, for participants and all dependents.

"Individual health benefit plan selection." Reserved.

The "office of the insurance commissioner" or "OIC" means the insurance commissioner as defined in RCW 48.02.010.

"Open enrollment" means a designated time period during which partnership participants may enroll additional dependents or make other changes to their employer-sponsored health benefit plan coverage.

"Participating small employer" means a small employer who:

• Enters into a written agreement with the HIP to purchase a designated health benefit plan through the HIP;

• Attests at the date of the agreement that the employer does not currently offer coverage, including insurance purchased through the small group and association health plan markets, self-funded plans, and multiple employer welfare arrangements; and

• Attests at the date of the agreement that at least fifty percent of its employees are low-wage workers, as defined by the board.

"Partnership participant" means:

• A participating small employer as defined in this section;

• An employee of a participating small employer;

• A former employee of a participating small employer who chooses to continue coverage through the HIP following separation from employment, to the extent the employee is eligible for continuation of coverage under 29 U.S.C. Sec. 1161 et seq.; and

• A former employee of a participating small employer who chooses to continue coverage through HIP following separation from employment, to the extent determined by the board.

"Philanthropy" means a person, organization or other entity, approved by the administrator that is responsible for payment of all or part of the monthly premium obligation on behalf of a partnership participant.

"Premium" has the same meaning as described in RCW 48.43.005.

"Premium subsidy" or "subsidy" means payment to or reimbursement by the HIP on behalf of an eligible partnership participant toward the purchase of a designated health benefit plan.

"Qualifying change in family status" is defined in WAC 182-26-325.

"Section 125 plan" means a cafeteria plan compliant with section 125 of the federal Internal Revenue Code that enables employees to use pretax dollars to pay their share of their health benefit plan premium.

"Small employer" or "employer" as used in this chapter means an employer who meets the definition of "small employer" in RCW 48.43.005.

"Subsidy application and renewal period" means an annual period that lasts at least sixty days, during which:

• All partnership participants may apply for premium subsidies for themselves and their dependents; and

• All partnership participants receiving a subsidy are required to provide proof of their continuing eligibility for a premium subsidy.

The subsidy application and renewal period will begin ninety days before the employer-sponsored health benefit plan open enrollment period begins.

"Surcharge" means an amount, determined by the administrator, that may be added to a partnership participant's premium as provided for in WAC 182-26-500. The surcharge is not part of the premium and applies only to coverage purchased through the HIP.

"Washington state resident" means:

(a) A person who physically resides in and maintains a residence in the state of Washington.

(b) To be considered a Washington resident, individuals who are temporarily out of Washington state for any reason may be required to demonstrate their intent to return to Washington state.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person stays; or

(iii) Another person's home.

NEW SECTION

WAC 182-26-230 Small employer one-time exception to monthly group premium payment deadline. The HIP program may grant small employers a one-time exception to the monthly group premium payment deadline as specified and agreed upon in the HIP employer agreement. Small employers are allowed to utilize the exception only once. To utilize the one-time exception, the small employer must satisfy all of the following three steps:

(1) The participating small employer must make a request to the HIP, in writing or over the phone, of its intent to utilize the one-time exception to the monthly group premium payment deadline.

(2) The participating small employer receives written acknowledgment from the HIP that its one-time payment deadline is approved; the exception must be received and approved by the last business day of the month preceding coverage.

(3) The participating small employer makes the full monthly group premium payment to the HIP by the 10th day of the month of coverage.

AMENDATORY SECTION (Amending Order 08-02, filed 10/31/08, effective 12/1/08)

WAC 182-26-305 Applying for a HIP premium subsidy. (1) To receive a HIP subsidy, an applicant must submit a complete application and all supporting documents as described in WAC 182-26-310 to the HIP.

(2) On a subsidy application, an applicant must list all eligible dependents up to age nineteen. The applicant must also provide other information and documents as required by the HIP.

(3) An applicant is not required to list dependents aged nineteen or over and under ((~~twenty-five~~)) twenty-six on the application, but if they are listed on the application, the HIP will include the dependents' income for purposes of subsidy eligibility and calculation.

(4) An applicant is not required to apply for a subsidy for all of his or her dependents. However, any dependent that does not apply for a subsidy at the same time that the other family members apply must wait to apply as a dependent until the next subsidy application and renewal period.

AMENDATORY SECTION (Amending Order 08-02, filed 10/31/08, effective 12/1/08)

WAC 182-26-340 How does the HIP determine the premium subsidy amount? (1) The HIP will apply a sliding scale subsidy schedule based on the partnership participant's family gross income and family size to determine the percentage of the employee's premium obligation the state will pay.

(2) The percentage in subsection (1) of this section will be applied to the health benefit plan employee premium share, including the amount due for dependents' coverage, remaining after deducting the employer contribution and a philanthropic contribution if applicable from the total premium amount for that participant.

(3) If a participating small employer chooses a health benefit plan with a higher premium than the benchmark plan, the subsidy will not exceed the amount applicable to the benchmark plan.

(4) In no case will the subsidy percentage exceed ninety percent of the ((~~benchmark~~)) plan ((~~employee~~)) employee's premium share after all contributions.

(5) Once enrolled in the HIP, the subsidy percentage will not change until the next subsidy application and renewal period, even if the total premium share changes because of a qualifying change in family status.

AMENDATORY SECTION (Amending Order 08-02, filed 10/31/08, effective 12/1/08)

WAC 182-26-350 What does the HIP count as income? Income includes all of the following, before any deductions (gross income):

Source	Received by the participant, spouse, child dependent aged nineteen or over and under ((~~twenty-five~~)) twenty-six, or adult dependent	Received by a dependent child under age nineteen
Wages, tips, and salaries	Yes	No
Taxable interest	Yes	Yes
Ordinary dividends	Yes	Yes
Taxable refunds, credits, or offsets of state and local income taxes	Yes	Yes
Alimony received	Yes	N/A
Business income or loss	Yes	Yes
Capital gain or loss	Yes	Yes
Other gains or losses	Yes	Yes
IRA distributions	Yes	Yes
Pensions and annuities	Yes	N/A
Rental real estate, royalties, partnerships, S corporations	Yes	Yes
Farm income	Yes	Yes
Unemployment compensation	Yes	No
Social Security benefits	Yes	Yes
Other income	Yes	Yes

WSR 10-22-040
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed October 27, 2010, 12:56 p.m., effective November 27, 2010]

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

Purpose: The purpose of the chapter is to have uniform statewide standards for domestic violence shelters and supportive services funded by DSHS. These standards address issues such as adequate food, clothing, emergency housing, safety, security, and advocacy.

The proposed major changes to the chapter: New definitions and changes to existing definitions; adds new section that describes the model that must be used in providing the minimum services standards established by the proposed rule; describes the supportive services that must be provided by domestic violence agencies funded by DSHS; adds supportive services and resources for children/youth residing in emergency domestic violence shelter; describes requirements for an agency's crisis hotline; updates the requirements for cribs and bassinets, provision of food/clothing, and storing resident medications in the emergency domestic violence shelter.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-61A-0005, 388-61A-0010, 388-61A-0015, 388-61A-0020, 388-61A-0025, 388-61A-0030, 388-61A-0035, 388-61A-0040, 388-61A-0045, 388-61A-0050, 388-61A-0055, 388-61A-0060, 388-61A-0065, 388-61A-0070, 388-61A-0075, 388-61A-0080, 388-61A-0085, 388-61A-0090, 388-61A-0095, 388-61A-0100, 388-61A-0105, 388-61A-0110, 388-61A-0115, 388-61A-0120, 388-61A-

0125, 388-61A-0130, 388-61A-0135, 388-61A-0140, 388-61A-0145, 388-61A-0146, 388-61A-0147, 388-61A-0148, 388-61A-0149, 388-61A-0150, 388-61A-0155, 388-61A-0160, 388-61A-0165, 388-61A-0170, 388-61A-0175, and 388-61A-0180.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Adopted under notice filed as WSR 10-13-145 on June 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: Written and oral testimony were provided requesting that WAC 388-61A-0280(5) be changed to avoid an unintended consequence of callers to the crisis hotline/helpline from receiving a busy signal if all incoming lines are in use. The change was made because it does not alter the intended meaning of WAC 388-61A-0280 and, indeed, strengthens the intent of this section.

Written comment requested that WAC 388-61A-0280(1) be clarified with respect to the area of coverage for distributing the domestic violence agency's crisis hotline/helpline telephone number. The change was made because it clarifies the department's intent for wide geographic distribution of the crisis hotline/helpline telephone number.

A final cost-benefit analysis is available by contacting Susan Hannibal, Program Manager, DSHS, 4045 Delridge Way S.W., Room 200, Seattle, WA 98106, phone (206) 923-4910, fax (206) 923-4899, e-mail hsus300@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 46, Amended 0, Repealed 40.

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 46, Amended 0, Repealed 40.

Date Adopted: October 27, 2010.

Susan N. Dreyfus
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-23 issue of the Register.

WSR 10-22-045
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed October 28, 2010, 7:48 a.m., effective November 28, 2010]

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

Purpose: Add WAC 308-104-022 to chapter 308-104 WAC, to permit the department to send a letter to drivers age eighteen through twenty-one who have received a moving traffic violation warning them of the risk of crash involvement.

Statutory Authority for Adoption: RCW 46.01.110, 46.52.120.

Adopted under notice filed as WSR 10-19-096 on September 20, 2010.

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

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

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

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

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

Date Adopted: October 28, 2010.

Walt Fahrer
Rules Coordinator

NEW SECTION

WAC 308-104-022 Warning letters for drivers age eighteen through twenty-one. The department may mail a letter to drivers age eighteen through twenty-one who have been convicted of or found to have committed a moving traffic violation as listed in WAC 308-104-160 warning them of the risk of crash involvement.

WSR 10-22-048
PERMANENT RULES
SECRETARY OF STATE

[Filed October 28, 2010, 9:50 a.m., effective November 28, 2010]

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

Purpose: To clarify certain sections of chapter 434-120 WAC regarding the tiered financial reporting and exempt filing requirements; some minor updates to terminology.

Citation of Existing Rules Affected by this Order: Amending WAC 434-120-107, 434-120-110, 434-120-115, 434-120-130, 434-120-135, 434-120-140, and 434-120-145.

Statutory Authority for Adoption: RCW 19.09.540.

Other Authority: RCW 43.07.125.

Adopted under notice filed as WSR 10-19-009 on September 3, 2010.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 7, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2010.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-107 Audited financial report—Tiered reporting requirements (effective January 1, 2010). (1) Tier one: Charitable organizations ((~~submitting an initial registration, shall~~)) with one million dollars or less in annual gross revenue averaged over the last three accounting years must meet the financial reporting requirements((~~,~~)) specified in RCW 19.09.075 ((~~or~~)) and WAC 434-120-105. ((~~If an organization does not file a federal form (990, 990PF, 990EZ, 990T), the organization must complete the solicitation report contained in the form prescribed by the secretary.~~))

(2) Tier two: Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the last three ((~~fiscal~~)) accounting years, ((~~shall have the federal tax reporting form (990, 990EZ, 990PF or 990T) prepared or reviewed by a certified public accountant or other professional, independent third-party who normally prepares or reviews the federal returns in the ordinary course of their business. If the federal tax form is not signed by a preparer who is so qualified, the charitable organization must, using a reporting form provided by the secretary, confirm that the federal tax form was reviewed by an independent third-party who normally prepares or reviews federal returns in the ordinary course of their business~~)) must provide one of the following:

(a) A photocopy of the federal tax reporting form (990, 990EZ, 990 PF) that has been prepared by a certified public accountant or other professional, who normally prepares or reviews federal returns in the ordinary course of their business; or

(b) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or

(c) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.

(3) Tier three: Charitable organizations with more than three million dollars in annual gross revenue averaged over the last three ((~~fiscal~~)) accounting years, ((~~shall~~)) must submit ((~~an audited financial statement prepared by an independent certified public accountant for the year immediately following any year in which the organization achieves a three year average of more than three million dollars. For organizations with more than three million dollars in annual gross revenue averaged over the last three fiscal years, but directly or indirectly receive five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years, the audit requirement is waived. Organizations with five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years shall meet the financial reporting requirements described in subsection (2) of this section. For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers, but does not include gifts of tangible, real, or personal property or in-kind services~~)) one of the following:

(a) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or

(b) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.

(4) If an organization has been in existence for less than three years, the organization must calculate its average gross revenue based on the number of years the organization has been in existence to determine which tier is applicable.

(((~~4~~))) (5) Waiver of audit requirement: The secretary may waive the requirement to file audited financial statements prepared by an independent certified public accountant ((~~when the~~)) for organizations ((~~can demonstrate that they have reached a three year average of~~)) with more than three million dollars in gross revenue ((~~through unusual or nonreoccurring revenue received in a single year without which they would have not met the three year annual gross average threshold.~~

~~(5) This rule becomes effective January 1, 2010~~)) averaged over the last three accounting years and that meet one of the following:

(a) Directly or indirectly receive five hundred thousand dollars or less in cash averaged over the last three accounting years. Organizations with five hundred thousand dollars or less in cash averaged over the last three accounting years must meet tier two reporting requirements. For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers received from all sources including, but not limited to, solicitations, investment income and tuition. "Cash" does not include gifts of tangible, real, or personal property or in-kind services; or

(b) Organizations who can demonstrate that they have reached a three-year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would not have met the three-year annual gross average threshold.

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-110 Organizations exempt from filing requirements—Optional filing. (1) Charitable organizations exempt from the filing requirements of this chapter under RCW 19.09.076(1) and WAC 434-120-100 (2)(b), (c), or (e) may register with the charities program.

(2) Charitable organizations choosing to register under this section ((~~shall~~)) may register by((~~:~~

~~(a)~~)) completing the registration form specified by the secretary((~~; and~~

~~(b) Paying the appropriate registration fee per WAC 434-120-145~~)).

(3) Charitable organizations registered under this section may change or update their registration by((~~:~~

~~(a)~~)) filing the ((~~update~~)) updated information with the charities program((~~; and~~

~~(b) Paying the appropriate fee per WAC 434-120-145~~)).

(4) Expedited processing under WAC 434-112-080 is available for registrations and updates under this section.

(5) The secretary offers this optional registration because some grant making entities and programs require registration with the charities program.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-115 Treatment of appropriated funds. A government subdivision or publicly supported educational facility that is also a charitable organization ((~~shall~~)) must report government appropriated funds only to the extent such funds are directly expended to support fund raising efforts or to defray costs of administering the organization's fund-raising programs.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-130 Financial standards. Upon the request of the attorney general, secretary or the county prosecutor, a charitable organization ((~~shall~~)) must submit a financial statement containing, but not limited to, the following information within thirty days from date of request.

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund-raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same ((~~fiscal~~)) accounting period.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-135 Contributor lists. All charitable organizations registered under this act ((~~shall~~)) must keep records of all contributors to the organization for three years. If a commercial fund raiser manages a campaign for a charitable organization, either the commercial fund raiser or the charitable organization ((~~shall~~)) must be the entity responsible for maintaining the contributor records for that campaign. These records ((~~shall~~)) must include the names of the following contributors:

(1) Each contributing entity that collects individual donations from an employee or member group or a business, turning them over to the charitable organization as a single sum, such as the United Way;

(2) Each corporation that contributed; and

(3) Each individual who contributed more than twenty-five dollars.

The records must be retrievable and compilable for a period of three years and ((~~shall~~)) must be turned over within ten working days upon written request of the attorney general or the county prosecutor, although the organization is not required to keep the names in a standard list format at all times.

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-140 How and when. (1) ((~~Original~~)) Initial registration: An entity required to register as a charitable organization ((~~shall~~)) must complete the form described in WAC 434-120-105 and submit it with the fee in WAC 434-120-145 prior to conducting any solicitation.

(2) Annual renewal:

(a) An entity ((~~shall~~)) must renew its charitable registration by no later than the fifteenth day of the fifth month after the end of its ((~~fiscal~~)) accounting year.

(b) The renewal ((~~shall~~)) must include the same information required for registration as described in WAC 434-120-105 and RCW 19.09.075, except that a determination letter from the Internal Revenue Service need not be attached if it was previously filed. The solicitation report will be based on the most recent filing with the Internal Revenue Service or if the organization does not file with the Internal Revenue Service, the solicitation report will be based on the most recently completed ((~~fiscal~~)) accounting year. No organization may submit the same ((~~fiscal~~)) financial information for two consecutive years.

(c) No change in an entity's ((~~fiscal~~)) accounting year ((~~shall~~)) may cause the due date of a renewal to be more than one year after the previous registration or renewal. For purposes of renewals that include financial information for a partial year, due to a change of ((~~fiscal~~)) accounting year, threshold levels for registration and financial statement requirements ((~~shall~~)) must be determined on a prorated basis.

(3) An organization ((~~shall~~)) must notify the charities program of a change in organization name, mailing address, organization structure, principal officer, Washington representative, tax status, ((~~fiscal~~)) accounting year, or any other information filed under RCW 19.09.075 or WAC 434-120-105.

(4) The organization ((~~shall~~)) must submit changes using the form available from the charities program within thirty days after the change ((~~and include the appropriate fee per WAC 434-120-145~~)).

AMENDATORY SECTION (Amending WSR 10-15-036, filed 7/13/10, effective 8/13/10)

WAC 434-120-145 Fees. (1) Original registration: Entities registering as charitable organizations must pay a fee of sixty dollars for the first year of registration; charitable

organizations registering as exempt per RCW 19.09.076(1), may do so at no fee.

(2) Annual renewal: Organizations must pay a renewal fee of forty dollars; organizations choosing to register as exempt per WAC 434-120-110, are not required to renew.

(3) Information changes: Organizations filing changes of information described in WAC 434-120-105 will file at no charge.

(4) Photocopy fees: For copy of a charitable organization registration form or letter, including the finance and solicitation reports, the fee is five dollars.

(5) The fee for expedited service is twenty dollars for single on-line transactions within each new or existing charity's program file. The fee for expedited service of paper documents (in-person, mail or fax) is fifty dollars for single or multiple transactions within each new or existing charity's program file. In addition, the filing fee for each transaction will apply.

(6) For service of process on a registered charity, commercial fund-raiser, or charitable trust, the fee is fifty dollars.

WSR 10-22-054
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 28, 2010, 1:53 p.m., effective November 28, 2010]

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

Purpose: HB 2996 passed by the 2010 Washington state legislature directs the office of superintendent of public instruction (OSPI) to provide administrators of approved private schools in Washington state with access to OSPI's electronic record data base.

Citation of Existing Rules Affected by this Order: Amending WAC 392-300-050 and 392-300-070.

Statutory Authority for Adoption: RCW 28A.400.305

Adopted under notice filed as WSR 10-17-057 on August 12, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 21, 2010.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 07-19-012, filed 9/7/07, effective 10/8/07)

WAC 392-300-050 Access to record check data base. School districts, the state school for the deaf, the state school for the blind, educational service districts, Bureau of Indian Affairs funded schools, authorized employees of approved private schools, colleges and universities shall establish written policies or procedures to determine which employees are authorized to access the data base. Access to the superintendent of public instruction's record check data base shall be limited to:

(1) Employees of the superintendent of public instruction processing record check information including employees within the fingerprint records section, the office of professional practices, the legal services section, the certification section or their equivalents in case of future agency reorganization.

(2) Authorized employees of school districts.

(3) Authorized employees of educational service districts.

(4) Authorized employees of college or universities with state board of education approved certification programs.

(5) Authorized employees of the state school for the deaf.

(6) Authorized employees of the state school for the blind.

(7) Authorized employees of Bureau of Indian Affairs funded schools.

(8) Authorized employees of approved private schools.

(9) Other authorized individuals as determined by the superintendent of public instruction or designee.

Access to the data base will be controlled by a confidential password issued by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 09-04-031, filed 1/29/09, effective 3/1/09)

WAC 392-300-070 Private school fingerprint process. Fingerprinting of subject individuals employed by private schools.

(1) Definitions of private school terms.

(a) "Subject individual" means: Any person, certified or classified employed by a private school in a position having regularly scheduled, unsupervised access to children;

(b) "Regularly scheduled, unsupervised access to children" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed to process fingerprint cards through the Washington state patrol and Federal Bureau of Investigation records check;

(d) "Information to be required" means all information requested by the office of the superintendent of public instruction;

(e) "Convictions of crimes" means, notwithstanding any other statutes or Washington administrative rule, conviction of a crime listed in WAC 180-86-013, or being under indictment for any of the crimes listed in WAC 180-86-013;

(f) "Private school" means a school that is approved with the Washington state board of education under chapter 180-90 WAC.

(2) The office of the superintendent of public instruction shall request criminal information from the Washington state patrol and the Federal Bureau of Investigation in the manner prescribed by law. A fee shall be charged for such services.

(3) Upon the private school's submission of the completed fingerprint cards and information form, the office of the superintendent of public instruction shall review the criminal records of subject individual.

(4) ((~~The office of the superintendent of public instruction shall not provide copies of criminal records to anyone except as provided by law. The private school will receive a copy of subject individual's record of arrest and prosecution (RAP) sheet from the Washington state patrol. The subject individual will be sent a copy of his or her personal criminal records.~~

~~(5) For the Federal Bureau of Investigation portion, the superintendent of public instruction or designee shall notify the private school if the subject individual has been convicted of a crime listed in WAC 180-86-013, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Washington under a different statutory name or number; if the subject individual falsified information on the application form; or if the subject individual has no conviction of crimes as listed in WAC 180-86-013.~~

~~(6)~~)) OSPI will send conviction information to administrators of approved private schools as allowed under RCW 10.97.050.

(5) The office of the superintendent of public instruction shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced used by Washington state patrol or Federal Bureau of Investigation.

(((~~(7)~~))) (6) Only cards and forms approved by the office of the superintendent of public instruction will be accepted. The office of the superintendent of public instruction will hold fingerprint cards on file and notify the private school and subject individual when there is no fee, an incorrect fee, when necessary information is missing from the fingerprint cards, or the information form was not received.

(((~~(8)~~))) (7) The office of the superintendent of public instruction will return to the private school any fingerprint cards that the Washington state patrol or Federal Bureau of Investigation rejects for poor quality prints. The private school will be responsible for having the subject individual submit additional prints as required.

(((~~(9)~~))) (8) The superintendent's office shall maintain a record of all properly submitted fingerprint cards in the current records data base for a period of at least two years. The record shall include at least the following:

(a) Card sequence number;

(b) Name of private school submitting the cards;

(c) Date cards received at the Washington state patrol;

(d) Date letter regarding incomplete card was sent to the subject individual with a copy to the private school (only if applicable);

(e) Date Washington state patrol received fingerprint cards;

(f) Date private school was notified of Washington state patrol criminal history record or clearance;

(g) Date private school was notified of Federal Bureau of Investigation record or lack of record.

This WAC will remain in effect through June 30, 2011.

WSR 10-22-056
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed October 28, 2010, 3:13 p.m., effective October 28, 2010, 3:13 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The rule only delays the effective date of another rule that is not yet effective.

Purpose: Amendment of chapter 51-11 WAC, the Washington State Energy Code.

This filing extends the effective date from October 29, 2010, to January 1, 2011, for the 2009 edition of the Washington State Energy Code, chapter 51-11 WAC. The effective date had previously been extended from July 1, 2010, to October 29, 2010, by WSR 10-13-113.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11-0101, 51-11-0105, 51-11-0201, 51-11-0302, 51-11-0303, 51-11-0401, 51-11-0402, 51-11-0501, 51-11-0502, 51-11-0503, 51-11-0504, 51-11-0505, 51-11-0525, 51-11-0527, 51-11-0530, 51-11-0540, 51-11-0541, 51-11-0601, 51-11-0602, 51-11-0603, 51-11-0604, 51-11-0625, 51-11-0701, 51-11-0800, 51-11-0900, 51-11-1001, 51-11-1004, 51-11-1005, 51-11-1006, 51-11-1007, 51-11-1008, 51-11-1009, 51-11-1120, 51-11-1131, 51-11-1132, 51-11-1133, 51-11-1141, 51-11-1310, 51-11-1311, 51-11-1312, 51-11-1313, 51-11-1314, 51-11-1322, 51-11-1323, 51-11-1331, 51-11-1332, 51-11-1334, 51-11-1402, 51-11-1410, 51-11-1411, 51-11-1412, 51-11-1413, 51-11-1414, 51-11-1416, 51-11-1421, 51-11-1423, 51-11-1431, 51-11-1432, 51-11-1433, 51-11-1435, 51-11-1436, 51-11-1437, 51-11-1438, 51-11-1439, 51-11-1440, 51-11-1454, 51-11-1510, 51-11-1512, 51-11-1513, 51-11-1515 [this WAC section does not exist], 51-11-1521, 51-11-1530, 51-11-1531, 51-11-1532, 51-11-99901, 51-11-99902, 51-11-99903[, and 51-11-99904]; and new WAC 51-11-1135, 51-11-1200, 51-11-1444, 51-11-1445, 51-11-1446 and 51-11-1460; suspended January 1, 2011.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Adopted under notice filed as WSR 09-17-136 on August 19, 2009, and WSR 10-13-113 on June 21, 2010.

Changes Other than Editing from Proposed to Adopted Version:

- The requirement in Section 503.4.1 for variable speed motors was not adopted.
- The lighting requirements in Section 505.1 were changed to require fifty percent high efficacy luminaires rather than fifty percent high efficiency lamps.
- Table 6-2 was added back to the code for Climate Zone 2 and envelope requirements were adjusted in stringency for that climate zone.

- Chapter 9 was retained, requiring single family buildings to achieve additional savings above and beyond the requirements in Chapters 4 through 6, but the number of credits required for approval was lowered from two to one.
- The requirement in Section 1132.3 that would lower the threshold for replacing all lighting in commercial tenant improvements from sixty percent to twenty percent was not adopted.
- Section 1201 was modified to eliminate the exceptions and require all buildings to have a totalizing meter for each energy source.
- The requirement in Section 1314.6 for mandatory vestibules was not adopted.
- The new exception 2 to Section 1322 allowing for a decrease in perimeter insulation was not adopted.
- The increase in U-factors to mass walls in Tables 13-1 and 13-2 were not adopted, and the revisions to default Table 10-5(B) 1 were not adopted.
- Equations 13-1 and 13-2 were modified to reflect the additional component assemblies added to Tables 13-1 and 13-2.
- The requirement for stepped control of egress lighting in Section 1515 was not adopted.
- The added Table 15-1B was not adopted; and modifications were made to Table 15-1A, which goes back to being Table 15-1. Most modifications were to levels between the existing code and the proposed code.
- The requirement for automatic control of walkways and escalators in Sections 1550-1552 were not adopted.

FILING NOTE: Amendments to chapter 51-11 WAC, the Washington State Energy Code, were originally adopted by the state building code council on November 20, 2009, and filed under WSR 10-03-115 with an effective date of July 1, 2010. On June 21, 2010, the state building code council filed an amended rule-making order to change the effective date of the new rules to October 29, 2010. At the same time, the council scheduled public hearings to hear debate as to whether the effective date should be further delayed. Based on testimony received at these hearings, the council voted to extend the effective date to January 1, 2011.

A final cost-benefit analysis is available by contacting Tim Nolger, P.O. Box 41011, Olympia, WA 98504-1011, phone (360) 902-7296, fax (360) 586-0493, e-mail sbcc@ga.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 7, Amended 13, 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 7, Amended 13, Repealed 0.

Date Adopted: June 11, 2010.

John C. Cochran
Council Chair

WSR 10-22-057
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed October 28, 2010, 3:16 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: Amendment of chapter 51-11 WAC, the Washington State Energy Code.

Correcting references, table borders and correlation errors in the Washington State Energy Code, chapter 51-11 WAC, 2009 Edition.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11-0402, 51-11-0625, 51-11-0900, 51-11-1007, 51-11-1334, 51-11-1416, and 51-11-1438.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Adopted under notice filed as WSR 10-16-091 on July 30, 2010.

Changes Other than Editing from Proposed to Adopted Version: No changes were made to the proposed expedited rule. The changes remain as follows:

WAC 51-11-0402, in the exception to Section 402.2, the percentage by which the proposed design is required to beat the standard design was lowered to eight percent to correlate with the change made to lower the number of points required by Section 901 in WSR 10-03-115.

WAC 51-11-0625, Footnote 1 of Table 6-1 was adjusted to represent the current percentage of glazing referenced in the table.

WAC 51-11-0900, the exception to Section 901 was edited as noted for WAC 51-11-0402.

WAC 51-11-1007, Table 1007-F was reformatted to have column and row headers in the appropriate places. In addition, nonapplicable footnote references were eliminated in Table 9-1.

WAC 51-11-1334, Equation 13-3 was modified to use the new definitions from Equation 13-1 established in WSR 10-03-115.

WAC 51-11-1416, the section reference in Section 1416.2 was corrected.

WAC 51-11-1438, some text in Section 1438.1 that should have been part of the main section was inadvertently included in the exception.

A final cost-benefit analysis is available by contacting Tim Nolger, P.O. Box 41011, Olympia, WA 98504-1011, phone (360) 902-7296, fax (360) 586-0493, e-mail sbcc@ga.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, 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: October 15, 2010.

John C. Cochran
Council Chair

AMENDATORY SECTION (Amending WSR 10-03-115 and 10-13-113, filed 1/20/10 and 6/21/10, effective 10/29/10)

WAC 51-11-0402 Systems analysis.

402.1 Special Requirements for Single-Family Residential:

402.1.1 Energy Budgets: Proposed buildings designed in accordance with this section shall be designed to use no more energy from nonrenewable sources for space heating, space cooling and domestic hot water heating than a standard building whose enclosure elements and energy consuming systems are designed in accordance with section 502.2 of this Code for the appropriate climate zone, and heating system type and cooling system and whose mechanical system type is the same as the proposed building and which complies with Section 503 of this Code. Energy derived from renewable sources may be excluded from the total annual energy consumption attributed to the alternative building.

402.1.2 Calculation of Energy Consumption: The application for a building permit shall include documentation which demonstrates, using a calculation procedure as listed in Chapter 8, or an approved alternate, that the proposed building's annual space heating, space cooling and domestic hot water heating energy use does not exceed the annual space heating, space cooling and domestic hot water heating energy use of a standard building conforming to Chapter 5 of this Code for the appropriate climate zone. The total calculated annual energy consumption shall be shown in units of kWh/ft^2-yr or Btu/ft^2-yr of conditioned area.

402.1.3 Input Values: The following standardized input values shall be used in calculating annual space heating budgets:

PARAMETER	VALUE
Thermostat set point, heating	65° F
Thermostat set point, cooling	78° F
Thermostat night set back	65° F
Thermostat night set back period	0 hours
Internal gain	3000 Btu/h
Domestic Hot Water Heater Setpoint	120° F
Domestic Hot Water Consumption	20 gallons/person/day.
Minimum heat storage	Calculated using standard engineering practice for the actual building or as approved.
Site weather data	Typical meteorological year (TMY) or ersatz TMY data for the closest appropriate TMY site or other sites as approved.
Heating and cooling equipment efficiency	Equipment shall comply with Section 1411.

The standard building shall be modeled with glazing area distributed equally among the four cardinal directions. Parameter values that may be varied by the building designer to model energy saving options include, but are not limited to, the following:

1. Overall thermal transmittance, U_o, of building envelope or individual building components;

2. Heat storage capacity of building;

3. Glazing orientation; area; and solar heat coefficients; (where Chapter 5 does not contain SHGC requirements, the standard design shall be modeled with glazing SHGC as determined by Tables 13-1 and 13-2. SHGC values shall be determined in accordance with Section 1312.2.)

4. Heating system efficiency.

Parameter values that may not be varied:

• Domestic hot water consumption.

402.1.4 Solar Shading and Access: Building designs using passive solar features with eight percent or more south facing equivalent glazing to qualify shall provide to the building official a sun chart or other approved documentation depicting actual site shading for use in calculating compliance under this section. The building shall contain at least forty-five Btu/°F for each square foot of south facing glass.

402.1.5 Infiltration: Infiltration levels used shall be set at 0.35 air changes per hour for thermal calculation purposes only.

402.1.6 Heat Pumps: The heating season performance factor (HSPF) for heat pumps shall be calculated using procedures consistent with section 5.2 of the U.S. Department of Energy Test Procedure for Central Air Conditioners, including heat pumps published in the December 27, 1979 Federal Register Vol. 44, No. 24.10 CFR 430. Climate data as specified above, the proposed buildings overall thermal performance value (Btu/°F) and the standardized input assumptions specified above shall be used to model the heat pumps HSPF.

402.2 Energy Analysis: Compliance with this chapter will require an analysis of the annual energy usage, hereinafter called an annual energy analysis.

EXCEPTIONS: Chapters 5, and 6 of this Code establish criteria for different energy-consuming and enclosure elements of the building which, will eliminate the requirement for an annual systems energy analysis while meeting the intent of this Code.

((~~A building designed in accordance with this chapter will be deemed as complying with this Code if the calculated annual energy consumption is 16 percent less than a similar building (defined as a "standard design") whose enclosure elements and energy-consuming systems are designed in accordance with Chapter 5.~~

~~For an alternate building design to be considered similar to a "standard design," it shall utilize the same energy source(s) for the same functions and have equal floor area and the same ratio of envelope area to floor area, environmental requirements, occupancy, climate data and usage operational schedule.~~))

A building designed in accordance with this chapter will be deemed as complying with this Code if the calculated annual energy consumption is 8 percent less than a similar building (defined as a "standard design") whose enclosure elements and energy-consuming systems are designed in accordance with Chapter 5.

For an alternate building design to be considered similar to a "standard design," it shall utilize the same energy source(s) for the same functions and have equal floor area and the same ratio of envelope area to floor area, environmental requirements, occupancy, climate data and usage operational schedule.

402.3 Design: The standard design, conforming to the criteria of Chapter 5 and the proposed alternative design shall be designed on a common basis as specified herein:

The comparison shall be expressed as kBtu or kWh input per square foot of conditioned floor area per year at the building site.

402.4 Analysis Procedure: The analysis of the annual energy usage of the standard and the proposed alternative building and system design shall meet the following criteria:

a. The building heating/cooling load calculation procedure used for annual energy consumption analysis shall be detailed to permit the evaluation of effect of factors specified in section 402.5.

b. The calculation procedure used to simulate the operation of the building and its service systems through a full-year operating period shall be detailed to permit the evaluation of the effect of system design, climatic factors, operational characteristics, and mechanical equipment on annual energy usage. Manufacturer's data or comparable field test data shall be used when available in the simulation of systems and equipment. The calculation procedure shall be based upon eight thousand seven hundred sixty hours of operation of the building and its service systems.

402.5 Calculation Procedure: The calculation procedure shall cover the following items:

a. Design requirements—Environmental requirements as required in Chapter 3.

b. Climatic data—Coincident hourly data for temperatures, solar radiation, wind and humidity of typical days in the year representing seasonal variation.

c. Building data—Orientation, size, shape, mass, air, moisture and heat transfer characteristics.

d. Operational characteristics—Temperature, humidity, ventilation, illumination, control mode for occupied and unoccupied hours.

e. Mechanical equipment—Design capacity, part load profile.

f. Building loads—Internal heat generation, lighting, equipment, number of people during occupied and unoccupied periods.

EXCEPTION: Single-family residential shall comply with calculation procedures in Chapter 8, or an approved alternate.

402.6 Documentation: Proposed alternative designs, submitted as requests for exception to the standard design criteria, shall be accompanied by an energy analysis comparison report. The report shall provide technical detail on the two building and system designs and on the data used in and resulting from the comparative analysis to verify that both the analysis and the designs meet the criteria of Chapter 4 of this Code.

AMENDATORY SECTION (Amending WSR 10-03-115 and 10-13-113, filed 1/20/10 and 6/21/10, effective 10/29/10)

WAC 51-11-0625 Table 6-1.

TABLE 6-1
PRESCRIPTIVE REQUIREMENTS[0,1] FOR SINGLE-FAMILY RESIDENTIAL
CLIMATE ZONE 1

Option	Glazing Area[10]: % of Floor	Glazing U-Factor		Door[9] U-Factor	Ceiling[2]	Vaulted Ceiling[3]	Wall[12] Above Grade	Wall• int[4] Below Grade	Wall• ext[4] Below Grade	Floor[5]	Slab[6] on Grade
		Vertical	Overhead[11]								
I.	13%	0.34	0.50	0.20	R-49 or R-38 adv	R-38	R-21 int[7]	R-21 TB	R-10	R-30	R-10 2'
II.*	25%	0.32	0.50	0.20	R-49 or R-38 adv	R-38	R-21 int[7]	R-21 TB	R-10	R-30	R-10 2'
III.	Unlimited	0.30	0.50	0.20	R-49 or R-38 adv	R-38	R-21 int[7]	R-21 TB	R-10	R-30	R-10 2'

* Reference Case
0. Nominal R-values are for wood frame assemblies only or assemblies built in accordance with Section 601.1.
1. Minimum requirements for each option listed. For example, if a proposed design has a glazing ratio to the conditioned floor area of ((~~13~~)) 15%, it shall comply with all of the requirements of the ((~~15~~)) 25% glazing option (or higher). Proposed designs which cannot meet the specific requirements of a listed option above may calculate compliance by Chapters 4 or 5 of this Code.
2. Requirement applies to all ceilings except single rafter or joist vaulted ceilings complying with note 3. 'Adv' denotes Advanced Framed Ceiling.
3. Requirement applicable only to single rafter or joist vaulted ceilings.
4. Below grade walls shall be insulated either on the exterior to a minimum level of R-10, continuous or on the interior as a framed wall. Exterior insulation installed on below grade walls shall be a water resistant material, manufactured for its intended use, and installed according to the manufacturer's specifications. See Section 602.2.
5. Floors over crawl spaces or exposed to ambient air conditions.
6. Required slab perimeter insulation shall be a water resistant material, manufactured for its intended use, and installed according to manufacturer's specifications. See Section 602.4. For slabs inside a foundation wall, the insulation shall be installed to provide a thermal break (TB) between the slab edge and the foundation. Monolithic slabs shall include insulation, installed outside the foundation wall, and shall extend downward from the top of the slab for a minimum distance of 24 inches or downward and then horizontally for a minimum combined distance of 24 inches. Monolithic slabs shall also include R-10 insulation under the nonload bearing portions of the slab.
7. Int. denotes standard framing 16 inches on center with headers insulated with a minimum of R-10 insulation.
8. Reserved.
9. Doors, including all fire doors, shall be assigned default U-factors from Table 10-6C.
10. Where a maximum glazing area is listed, the total glazing area (combined vertical plus overhead) as a percent of gross conditioned floor area shall be less than or equal to that value. Overhead glazing with U-factor of U = 0.35 or less is not included in glazing area limitations.
11. Overhead glazing shall have U-factors determined in accordance with NFRC 100 or as specified in Section 502.1.5.
12. Log and solid timber walls with a minimum average thickness of 3.5" are exempt from this insulation requirement.

TABLE 6-2
PRESCRIPTIVE REQUIREMENTS[0,1] FOR SINGLE-FAMILY RESIDENTIAL
CLIMATE ZONE 2

Option	Glazing Area[10]: % of Floor	Glazing U-Factor		Door[9] U-Factor	Ceiling[2]	Vaulted Ceiling[3]	Wall[12] Above Grade	Wall• int[4] Below Grade	Wall• ext[4] Below Grade	Floor[5]	Slab[6] on Grade
		Vertical	Overhead[11]								
I.	12%	0.32	0.50	0.20	R-49 or R-38 adv	R-38	R-21 int[7]	R-21 TB	R-12	R-30	R-10 2'
II.*	15%	0.32	0.50	0.20	R-49 or R-38 adv	R-38	R-19 +R-5[8]	R-21 TB	R-12	R-30	R-10 2'
III.	Unlimited	0.30	0.50	0.20	R-49 or R-38 adv	R-38	R-19 +R-5[8]	R-21 TB	R-12	R-30	R-10 2'

* Reference Case.
0. Nominal R-values are for wood frame assemblies only or assemblies built in accordance with Section 601.1.
1. Minimum requirements for each option listed. For example, if a proposed design has a glazing ratio to the conditioned floor area of 13%, it shall comply with all of the requirements of the 15% glazing option (or higher). Proposed designs which cannot meet the specific requirements of a listed option above may calculate compliance by Chapters 4 or 5 of this Code.
2. Requirement applies to all ceilings except single rafter or joist vaulted ceilings complying with note 3. 'Adv' denotes Advanced Framed Ceiling.
3. Requirement applicable only to single rafter or joist vaulted ceilings.
4. Below grade walls shall be insulated either on the exterior to a minimum level of R-12, continuous or on the interior as a framed wall. Exterior insulation installed on below grade walls shall be a water resistant material, manufactured for its intended use, and installed according to the manufacturer's specifications. See Section 602.2.
5. Floors over crawl spaces or exposed to ambient air conditions.
6. Required slab perimeter insulation shall be a water resistant material, manufactured for its intended use, and installed according to manufacturer's specifications. See Section 602.4. For slabs inside a foundation wall, the insulation shall be installed to provide a thermal break (TB) between the slab edge and the foundation. Monolithic slabs shall include insulation, installed outside the foundation wall, and shall extend downward from the top of the slab for a minimum distance of 24 inches or downward and then horizontally for a minimum combined distance of 24 inches. Monolithic slabs shall also include R-10 insulation under the nonload bearing portions of the slab.
7. Int. denotes standard framing 16 inches on center with headers insulated with a minimum of R-10 insulation.
8. Reserved.
9. Doors, including all fire doors, shall be assigned default U-factors from Table 10-6C.
10. Where a maximum glazing area is listed, the total glazing area (combined vertical plus overhead) as a percent of gross conditioned floor area shall be less than or equal to that value. Overhead glazing with U-factor of U = 0.35 or less is not included in glazing area limitations.
11. Overhead glazing shall have U-factors determined in accordance with NFRC 100 or as specified in Section 502.1.5.
12. Log and solid timber walls with a minimum average thickness of 3.5" are exempt from this insulation requirement.

AMENDATORY SECTION (Amending WSR 10-03-115 and 10-13-113, filed 1/20/10 and 6/21/10, effective 10/29/10)

WAC 51-11-0900 Chapter 0900—Additional residential energy efficiency requirements.

901 Additional Residential Energy Efficiency Requirements. Dwelling units permitted under this Code shall comply with all provisions of Chapter 5 of this Code and develop 1 credit from Table 9-1.

EXCEPTION: Buildings complying using Chapter 4 Building Design by Systems Analysis shall meet this provision of this section by demonstrating that the proposed building energy use is ((~~16~~)) 8 percent less than the target building energy use.

TABLE 9-1
ENERGY CREDITS (DEBITS)

OPTION	DESCRIPTION	CREDIT(S)
1a	HIGH EFFICIENCY HVAC EQUIPMENT 1: Gas, propane or oil-fired furnace or boiler with minimum AFUE of 92%, **or** Air-source heat pump with minimum HSPF of 8.5.	1.0
1b	HIGH EFFICIENCY HVAC EQUIPMENT 2: Closed-loop ground source heat pump; with a minimum COP of 3.3.	2.0
1c	HIGH EFFICIENCY HVAC EQUIPMENT 3: DUCTLESS SPLIT SYSTEM HEAT PUMPS, ZONAL CONTROL: In home where the primary space heating system is zonal electric heating, a ductless heat pump system shall be installed and provide heating to at least one zone of the housing unit.	1.0
2	HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM:[1] All heating and cooling system components installed inside the conditioned space. All combustion equipment shall be direct vent or sealed combustion. Locating system components in conditioned crawl spaces is not permitted under this option. Electric resistance heat is not permitted under this option. Direct combustion heating equipment with AFUE less than 80% is not permitted under this option.	1.0
3a	EFFICIENT BUILDING ENVELOPE 1: Prescriptive compliance is based on Table 6-1, Option III with the following modifications: Window U = 0.28 floor R-38, slab on grade R-10 full, below grade slab R-10 full. **or** Component performance compliance: Reduce the Target UA from Table 5-1 by 5%, as determined using EQUATION 1.((+))	0.5
3b	EFFICIENT BUILDING ENVELOPE 2: Prescriptive compliance is based on Table 6-1, Option III with the following modifications: Window U = 0.25 and wall R-21 plus R-4 and R-38 floor, slab on grade R-10 full, below grade slab R-10 full, and R-21 plus R-5 below grade basement walls. **or** Component performance compliance: Reduce the Target UA from Table 5.1 by 15%, as determined using EQUATION 1.((+))	1.0
3c	SUPER-EFFICIENT BUILDING ENVELOPE 3: Prescriptive compliance is based on Table 6-1, Option III with the following modifications: Window U = 0.22 and wall R-21 plus R-12 and R-38 floor, slab on grade R-10 full, below grade slab R-10 full and R-21 plus R-12 below grade basement walls and R-49 advanced ceiling and vault. **or** Component performance compliance: Reduce the Target UA from Table 5.1 by 30%, as determined using EQUATION 1.((+))	2.0
4a	AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION: Envelope leakage reduced to SLA of 0.00020 building envelope tightness shall be considered acceptable when tested air leakage is less than specific leakage area of 0.00020 when tested with a blower door at a pressure difference of 50 PA. Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation, and combustion appliances.	0.5

OPTION	DESCRIPTION	CREDIT(S)
	and All whole house ventilation requirements as determined by Section M1508 of the Washington State Residential Code shall be met with a heat recovery ventilation system in accordance with Section M1508.7 of that Code.	
4b	ADDITIONAL AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION: Envelope leakage reduced to SLA of 0.00015 building envelope tightness shall be considered acceptable when tested air leakage is less than specific leakage area of 0.00015 when tested with a blower door at a pressure difference of 50 PA. Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation, and combustion appliances. **and** All whole house ventilation requirements as determined by Section M1508 of the Washington State Residential Code shall be met with a heat recovery ventilation system in accordance with Section M1508.7 of that Code.	1.0
5a	EFFICIENT WATER HEATING:((+)) Water heating system shall include one of the following: Gas, propane or oil water heater with a minimum EF of 0.62. **or** Electric Water Heater with a minimum EF of 0.93. **and for both cases** All showerhead and kitchen sink faucets installed in the house shall meet be rated at 1.75 GPM or less. All other lavatory faucets shall be rated at 1.0 GPM or less.[2]	0.5
5b	HIGH EFFICIENCY WATER HEATING:((+)) Water heating system shall include one of the following: Gas, propane or oil water heater with a minimum EF of 0.82. **or** Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems. **or** Electric heat pump water heater with a minimum EF of 2.0.	1.5
6	SMALL DWELLING UNIT 1:((+)) Dwelling units less than 1500 square feet in floor area with less than 300 square feet of window + door area. Additions to existing building that are less than 750 square feet of heated floor area.	1.0
7	LARGE DWELLING UNIT 1:((+)) Dwelling units exceeding 5000 square feet of floor area shall be assessed a deduction for purposes of complying with Section 901 of this Code.	-1.0
8	RENEWABLE ELECTRIC ENERGY: For each 1200 kWh of electrical generation provided annually by on-site wind or solar equipment a 0.5 credit shall be allowed, up to 3 credits. Generation shall be calculated as follows: For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTs. Documentation noting solar access shall be included on the plans.	[0.5]

OPTION	DESCRIPTION	CREDIT(S)
	For wind generation projects designs shall document annual power generation based on the following factors: The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.	

Footnotes:

1. **Interior Duct Placement:** Ducts included as Option 2 of Table 9-1 shall be placed wholly within the heated envelope of the housing unit. The placement shall be inspected and certified to receive the credits associated with this option.

EXCEPTION: Ducts complying with this section may have up to 5% of the total linear feet of ducts located in the exterior cavities or buffer spaces of the dwelling. If this exception is used the ducts will be tested to the following standards:

Post-construction test: Leakage to outdoors shall be less than or equal to 1 CFM per 100 ft^2 of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test.

2. **Plumbing Fixtures Flow Ratings.** Low flow plumbing fixtures (water closets and urinals) and fittings (faucets and showerheads) shall comply with the following requirements:

(a) Residential bathroom lavatory sink faucets: Maximum flow rate - 3.8 L/min (1.0 gal/min) when tested in accordance with ASME A112.18.1/CSA B125.1.

(b) Residential kitchen faucets: Maximum flow rate - 6.6 L/min (1.75 gal/min) when tested in accordance with ASME A112.18.1/CSA B125.1.

(c) Residential showerheads: Maximum flow rate - 6.6 L/min (1.75 gal/min) when tested in accordance with ASME A112.18.1/CSA B125.1.

Reviser's note: The brackets and enclosed material in the text of 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 10-03-115 and 10-13-113, filed 1/20/10 and 6/21/10, effective 10/29/10)

WAC 51-11-1007 Section 1007 Ceilings.

1007.1 General: Table 10-7 lists heat-loss coefficients for the opaque portion of exterior ceilings below vented attics, vaulted ceilings, and roof decks in units of Btu/h•ft^2•°F of ceiling.

They are derived from procedures listed in Standard RS-1, listed in Chapter 7. Ceiling U-factors are modified for the buffering effect of the attic, assuming an indoor temperature of 65° F and an outdoor temperature of 45°F.

Metal Framed Ceilings: The nominal R-values in Table 10-5A(2) - EFFECTIVE R-VALUES FOR METAL FRAMING AND CAVITY ONLY may be used for purposes of calculating metal framed ceiling section U-factors in lieu of the ASHRAE zone calculation method as provided in Chapter 27 of Standard RS-1.

Metal building roofs have a different construction and are addressed in Table 10-7(F).

1007.2 Component Description: The four types of ceilings are characterized as follows:

Ceilings Below a Vented Attic: Attic insulation is assumed to be blown-in, loose-fill fiberglass with a K-value of 2.6 hr•ft^2•°F/Btu per inch. Full bag count for specified R-value is assumed in all cases. Ceiling dimensions for flat ceiling calculations are forty-five by thirty feet, with a gabled roof having a 4/12 pitch. The attic is assumed to vent naturally at the rate of three air changes per hour through soffit and ridge vents. A void fraction of 0.002 is assumed for all attics with insulation baffles. Standard-framed, unbaffled attics assume a void fraction of 0.008.

Attic framing is either standard or advanced. Standard framing assumes tapering of insulation depth around the perimeter with resultant decrease in thermal resistance. An increased R-value is assumed in the center of the ceiling due to the effect of piling leftover insulation. Advanced framing assumes full and even depth of insulation extending to the outside edge of exterior walls. Advanced framing does not change from the default value.

U-factors for flat ceilings below vented attics with standard framing may be modified with the following table:

	U-Factor for Standard Framing	
Roof Pitch	R-30	R-38
4/12	.036	.031
5/12	.035	.030
6/12	.034	.029
7/12	.034	.029
8/12	.034	.028
9/12	.034	.028
10/12	.033	.028
11/12	.033	.027
12/12	.033	.027

Vented scissors truss attics assume a ceiling pitch of 2/12 with a roof pitch of either 4/12 or 5/12. Unbaffled standard framed scissors truss attics are assumed to have a void fraction of 0.016.

Vaulted Ceilings: Insulation is assumed to be fiberglass batts installed in roof joist cavities. In the vented case, at least 1.5-inches between the top of the batts and the underside of the roof sheathing is left open for ventilation in each cavity. A ventilation rate of 3.0 air changes per hour is assumed. In the unvented or dense pack case, the ceiling cavity is assumed to be fully packed with insulation, leaving no space for ventilation.

EXCEPTION: Where spray polyurethane foam meets the requirements of Section 502.1.6.3 or 1313.2, the cavity shall be filled to the depth to achieve R-value requirements.

Roof Decks: Rigid insulation is applied to the top of roof decking with no space left for ventilation. Roofing materials are attached directly on top of the insulation. Framing members are often left exposed on the interior side.

Metal Truss Framing: Overall system tested values for the roof/ceiling U_o for metal framed truss assemblies from

approved laboratories shall be used, when such data is acceptable to the building official.

Alternatively, the U_o for roof/ceiling assemblies using metal truss framing may be obtained from Tables 10-7A, 10-7B, 10-7C, 10-7D and 10-7E.

Steel Truss Framed Ceiling, Table 10-7A.

Steel Truss Framed Ceiling with R-3 Sheathing, Table 10-7B.

Steel Truss Framed Ceiling with R-5 Sheathing, Table 10-7C.

Steel Truss Framed Ceiling with R-10 Sheathing, Table 10-7D.

Steel Truss Framed Ceiling with R-15 Sheathing, Table 10-7E.

Metal Building Roof, Table 10-7F: The base assembly is a roof where the insulation is compressed when installed beneath metal roof panels attached to the steel structure (purlins). Additional assemblies include continuous insulation, uncompressed and uninterrupted by framing.

Single Layer. The rated R-value of insulation is for insulation installed perpendicular to and draped over purlins and then compressed when the metal roof panels are attached. A minimum R-3 (R-0.5) thermal spacer block between the purlins and the metal roof panels is required, unless compliance is shown by the overall assembly U-factor.

Double Layer. The first rated R-value of insulation is for insulation installed perpendicular to and draped over purlins. The second rated R-value of insulation is for unfaced insulation installed above the first layer and parallel to the purlins and then compressed when the metal roof panels are attached. A minimum R-3 (R-0.5) thermal spacer block between the purlins and the metal roof panels is required, unless compliance is shown by the overall assembly U-factor.

Continuous Insulation. For continuous insulation (e.g., insulation boards or blankets), it is assumed that the insulation is installed below the purlins and is uninterrupted by framing members. Insulation exposed to the conditioned space or semiheated space shall have a facing, and all insulation seams shall be continuously sealed to provide a continuous air barrier.

Liner System (Ls). A continuous membrane is installed below the purlins and uninterrupted by framing members. Uncompressed, unfaced insulation rests on top of the membrane between the purlins. For multilayer installations, the last rated R-value of insulation is for unfaced insulation draped over purlins and then compressed when the metal roof panels are attached. A minimum R-3 (R-0.5) thermal spacer block between the purlins and the metal roof panels is required, unless compliance is shown by the overall assembly U-factor.

Filled Cavity. The first rated R-value of insulation is for faced insulation installed parallel to the purlins. The second rated R-value of insulation is for unfaced insulation installed above the first layer, parallel to and between the purlins and compressed when the metal roof panels are attached. The facer of the first layer of insulation is of sufficient width to be continuously sealed to the top flange of the purlins and to accommodate the full thickness of the second layer of insulation. A supporting structure retains the bottom of the first layer at the prescribed depth required for the full thickness of the second layer of insulation being installed above it. A minimum R-5 (R-0.9) thermal spacer block between the purlins and the metal roof panels is required, unless compliance is shown by the overall assembly U-factor.

U-factors for Metal Building Roofs. U-factors for metal building roofs shall be taken from Table 10-7F, provided the average purlin spacing is at least 52 in. and the R-value of the thermal spacer block is greater than or equal to the thermal spacer block R-value indicated in Table 10-7F for the assembly. It is not acceptable to use the U-factors in Table 10-7F if additional insulated sheathing is not continuous.

Roofs with Insulation Entirely Above Deck (uninterrupted by framing), Table 10-7G: The base assembly is continuous insulation over a structural deck. Added insulation is continuous and uninterrupted by framing. For the insulation, the first column lists the R-value for continuous insulation with a uniform thickness; the second column lists the comparable area-weighted average R-value for continuous insulation provided that the insulation thickness is never less than R-5 (except at roof drains) and that the slope is no greater than 1/4 inch per foot.

TABLE 10-7
DEFAULT U-FACTORS FOR CEILINGS

Ceilings Below Vented Attics

	Standard Frame	Advanced Frame
Flat Ceiling	**Baffled**	
R-19	0.049	0.047
R-30	0.036	0.032
R-38	0.031	0.026
R-49	0.027	0.020
R-60	0.025	0.017
Scissors Truss		
R-30 (4/12 roof pitch)	0.043	0.031
R-38 (4/12 roof pitch)	0.040	0.025

	Standard Frame	Advanced Frame
R-49 (4/12 roof pitch)	0.038	0.020
R-30 (5/12 roof pitch)	0.039	0.032
R-38 (5/12 roof pitch)	0.035	0.026
R-49 (5/12 roof pitch)	0.032	0.020
Vaulted Ceilings		
	16" O.C.	**24" O.C.**
Vented		
R-19 2x10 joist	0.049	0.048
R-30 2x12 joist	0.034	0.033
R-38 2x14 joist	0.027	0.027
Unvented		
R-30 2x10 joist	0.034	0.033
R-38 2x12 joist	0.029	0.027
R-21 + R-21 2x12 joist	0.026	0.025
Roof Deck		
	4x Beams, 48" O.C.	
R-12.5 2" Rigid insulation	0.064	
R-21.9 3.5" Rigid insulation	0.040	
R-37.5 6" Rigid insulation	0.025	
R-50 8" Rigid insulation	0.019	

Table 10-7A
Steel Truss[1] Framed Ceiling U_O

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.1075	0.0991	0.0928	0.0878	0.0839	0.0807	0.0780	0.0757	0.0737	0.0720	0.0706	0.0693	0.0681
30	0.0907	0.0823	0.0760	0.0710	0.0671	0.0638	0.0612	0.0589	0.0569	0.0552	0.0538	0.0525	0.0513
38	0.0844	0.0759	0.0696	0.0647	0.0607	0.0575	0.0548	0.0525	0.0506	0.0489	0.0474	0.0461	0.0449
49	0.0789	0.0704	0.0641	0.0592	0.0552	0.0520	0.0493	0.0470	0.0451	0.0434	0.0419	0.0406	0.0395

Table 10-7B
Steel Truss[1] Framed Ceiling U_O with R-3 Sheathing[2]

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.0809	0.0763	0.0728	0.0701	0.0679	0.0661	0.0647	0.0634	0.0623	0.0614	0.0606	0.0599	0.0592
30	0.0641	0.0595	0.0560	0.0533	0.0511	0.0493	0.0478	0.0466	0.0455	0.0446	0.0438	0.0431	0.0424
38	0.0577	0.0531	0.0496	0.0469	0.0447	0.0430	0.0415	0.0402	0.0392	0.0382	0.0374	0.0367	0.0361
49	0.0523	0.0476	0.0441	0.0414	0.0393	0.0375	0.0360	0.0348	0.0337	0.0328	0.0319	0.0312	0.0306

Table 10-7C
Steel Truss[1] Framed Ceiling U_O with R-5 Sheathing[2]

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.0732	0.0697	0.0670	0.0649	0.0633	0.0619	0.0608	0.0598	0.0590	0.0583	0.0577	0.0571	0.0567
30	0.0564	0.0529	0.0502	0.0481	0.0465	0.0451	0.0440	0.0430	0.0422	0.0415	0.0409	0.0403	0.0399
38	0.0501	0.0465	0.0438	0.0418	0.0401	0.0388	0.0376	0.0367	0.0359	0.0351	0.0345	0.0340	0.0335
49	0.0446	0.0410	0.0384	0.0363	0.0346	0.0333	0.0322	0.0312	0.0304	0.0297	0.0291	0.0285	0.0280

Table 10-7D
Steel Truss[1] Framed Ceiling U_O with R-10 Sheathing[2]

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.0626	0.0606	0.0590	0.0578	0.0569	0.0561	0.0555	0.0549	0.0545	0.0541	0.0537	0.0534	0.0531
30	0.0458	0.0437	0.0422	0.0410	0.0401	0.0393	0.0387	0.0381	0.0377	0.0373	0.0369	0.0366	0.0363

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
38	0.0394	0.0374	0.0359	0.0347	0.0337	0.0330	0.0323	0.0318	0.0313	0.0309	0.0305	0.0302	0.0299
49	0.0339	0.0319	0.0304	0.0292	0.0283	0.0275	0.0268	0.0263	0.0258	0.0254	0.0251	0.0247	0.0245

Table 10-7E
Steel Truss[1] Framed Ceiling U_O with R-15 Sheathing[2]

Cavity R-value	Truss Span (ft)												
	12	14	16	18	20	22	24	26	28	30	32	34	36
19	0.0561	0.0550	0.0541	0.0535	0.0530	0.0526	0.0522	0.0519	0.0517	0.0515	0.0513	0.0511	0.0509
30	0.0393	0.0382	0.0373	0.0367	0.0362	0.0358	0.0354	0.0351	0.0349	0.0347	0.0345	0.0343	0.0341
38	0.0329	0.0318	0.0310	0.0303	0.0298	0.0294	0.0291	0.0288	0.0285	0.0283	0.0281	0.0279	0.0278
49	0.0274	0.0263	0.0255	0.0249	0.0244	0.0239	0.0236	0.0233	0.0230	0.0228	0.0226	0.0225	0.0223

1 - Assembly values based on 24 inch on center truss spacing; 11 Truss member connections penetrating insulation (4 at the eaves, 7 in the interior space); 1/2 inch drywall ceiling; all truss members are 2x4 "C" channels with a solid web.
2 - Ceiling sheathing installed between bottom chord and drywall.

TABLE 10-7F
Default U-Factors for Metal Building Roofs

Insulation System	Rated R-Value of Insulation	Overall U-Factor for Entire Base Roof Assembly	Overall U-Factor for Assembly of Base Roof Plus Continuous Insulation (uninterrupted by framing) Rated R-Value of Continuous Insulation					
			R-6.5	R-13	R-19.5	R-26	R-32.5	R-39
Standing Seam Roofs with Thermal Spacer Blocks[a,b]								
Single Layer	None	1.280	0.137	0.073	0.049	0.037	0.030	0.025
	R-10	0.115	0.066	0.046	0.035	0.029	0.024	0.021
	R-11	0.107	0.063	0.045	0.035	0.028	0.024	0.021
	R-13	0.101	0.061	0.044	0.034	0.028	0.024	0.020
	R-16	0.096	0.059	0.043	0.033	0.027	0.023	0.020
	R-19	0.082	0.053	0.040	0.031	0.026	0.022	0.020
	((~~R-10 + R-10~~	~~0.088~~	~~0.056~~	~~0.041~~	~~0.032~~	~~0.027~~	~~0.023~~	~~0.020~~
	~~R-10 + R-11~~	~~0.086~~	~~0.055~~	~~0.041~~	~~0.032~~	~~0.027~~	~~0.023~~	~~0.020~~
	~~R-11 + R-11~~	~~0.085~~	~~0.055~~	~~0.040~~	~~0.032~~	~~0.026~~	~~0.023~~	~~0.020~~
	~~R-10 + R-13~~	~~0.084~~	~~0.054~~	~~0.040~~	~~0.032~~	~~0.026~~	~~0.023~~	~~0.020~~))
Double Layer	R-10 + R-10	0.088	0.056	0.041	0.032	0.027	0.023	0.020
	R-10 + R-11	0.086	0.055	0.041	0.032	0.027	0.023	0.020
	R-11 + R-11	0.085	0.055	0.040	0.032	0.026	0.023	0.020
	R-10 + R-13	0.084	0.054	0.040	0.032	0.026	0.023	0.020
	R-11 + R-13	0.082	0.053	0.040	0.032	0.026	0.022	0.020
	R-13 + R-13	0.075	0.050	0.038	0.030	0.025	0.022	0.019
	((~~R10~~)) R-10 + R-19	0.074	0.050	0.038	0.030	0.025	0.022	0.019
	R-11 + R-19	0.072	0.049	0.037	0.030	0.025	0.022	0.019
	R-13 + R-19	0.068	0.047	0.036	0.029	0.025	0.021	0.019
	R-16 + R-19	0.065	0.046	0.035	0.029	0.024	0.021	0.018
	R-19 + R-19	0.060	0.043	0.034	0.028	0.023	0.020	0.018
	((~~R-19 + R-11~~	~~0.035~~))						
Liner System	R-19 + R-11	0.035						
	R-25 + R-11	0.031						
	R-30 + R-11	0.029						

Insulation System	Rated R-Value of Insulation	Overall U-Factor for Entire Base Roof Assembly	Overall U-Factor for Assembly of Base Roof Plus Continuous Insulation (uninterrupted by framing) Rated R-Value of Continuous Insulation					
			R-6.5	R-13	R-19.5	R-26	R-32.5	R-39
	R-25 + R-11 + R-11	0.026						
Filled Cavity with Thermal Spacer Blocks[c]								
	R-10 + R-19	0.057	0.042	0.033	0.027	0.023	0.020	0.018
Standing Seam Roofs without Thermal Spacer Blocks								
Liner System	R-19 + R-11	0.040						
Thru-Fastened Roofs without Thermal Spacer Blocks								
((~~Liner System~~)) Single Layer	R-10	0.184						
	R-11	0.182						
	R-13	0.174						
	R-16	0.157						
	R-19	0.151						
	((~~R-19 + R-11~~	~~0.044~~))						
Liner System	R-19 + R-11	0.044						
(Multiple R-values are listed in order from inside to outside)								

a. A standing seam roof clip that provides a minimum 1.5 in. distance between the top of the purlins and the underside of the metal roof panels is required.
b. A minimum R-3 thermal spacer block is required.
c. A minimum R-5 thermal spacer block is required.

TABLE 10-7G
Assembly U-Factors for Roofs with Insulation Entirely Above Deck (uninterrupted by framing)

Rated R-Value of Insulation Alone: Minimum Throughout, Unsloped	Rated R-Value of Insulation Alone: Average (R-5 minimum), Sloped (1/4 inch per foot maximum)	Overall U-Factor for Entire Assembly
R-0	Not Allowed	U-1.282
R-1	Not Allowed	U-0.562
R-2	Not Allowed	U-0.360
R-3	Not Allowed	U-0.265
R-4	Not Allowed	U-0.209
R-5	Not Allowed	U-0.173
R-6	R-7	U-0.147
R-7	R-8	U-0.129
R-8	R-9	U-0.114
R-9	R-10	U-0.102
R-10	R-12	U-0.093
R-11	R-13	U-0.085
R-12	R-15	U-0.078
R-13	R-16	U-0.073
R-14	R-18	U-0.068
R-15	R-20	U-0.063
R-16	R-22	U-0.060
R-17	R-23	U-0.056
R-18	R-25	U-0.053
R-19	R-27	U-0.051
R-20	R-29	U-0.048
R-21	R-31	U-0.046
R-22	R-33	U-0.044
R-23	R-35	U-0.042
R-24	R-37	U-0.040
R-25	R-39	U-0.039
R-26	R-41	U-0.037
R-27	R-43	U-0.036
R-28	R-46	U-0.035
R-29	R-48	U-0.034
R-30	R-50	U-0.032
R-35	R-61	U-0.028
R-40	R-73	U-0.025
R-45	R-86	U-0.022
R-50	R-99	U-0.020
R-55	R-112	U-0.018
R-60	R-126	U-0.016

AMENDATORY SECTION (Amending WSR 10-03-115 and 10-13-113, filed 1/20/10 and 6/21/10, effective 10/29/10)

WAC 51-11-1334 Solar heat gain coefficient rate calculations. Solar heat gain coefficient shall comply with Section 1323.3. The target $SHGCA_t$ and the proposed $SHGCA_p$ shall be calculated using Equation 13-3 and 13-4 and the corresponding areas and SHGCs from Table 13-1 or 13-2.

Equation 13-1:
Target UA_t

UA_t	=	$U_{radt}A_{radt} + U_{mrt}A_{mrt} + U_{rst}A_{rst} + U_{ort}A_{ort} + U_{ogcort}A_{ogcort} + U_{ogort}A_{ogort} + U_{mwt}A_{mwt} + U_{mbwt}A_{mbwt} + U_{sfwt}A_{sfwt} + U_{wt}A_{wt} + U_{vgt}A_{vgt} + U_{vgmt}A_{vgmt} + U_{vgdt}A_{vgdt} + U_{dt}A_{dt} + U_{fmt}A_{fmt} + U_{fst}A_{fst} + U_{ft}A_{ft} + F_{st}P_{st} + F_{rst}P_{rst}$
UA_t	=	The target combined specific heat transfer of the gross roof/ceiling assembly, exterior wall and floor area.
Where:		
U_{radt}	=	The thermal transmittance value for roofs with the insulation entirely above deck found in Table 13-1 or 13-2.
U_{mrt}	=	The thermal transmittance value for metal building roofs found in Table 13-1 or 13-2.
U_{rst}	=	The thermal transmittance value for single rafter roofs found in Table 13-1 or 13-2.
U_{ort}	=	The thermal transmittance value for attic and other roofs found in Table 13-1 or 13-2.
U_{ogcort}	=	The thermal transmittance for overhead glazing with curb found in Table 13-1 or 13-2 which corresponds to the proposed total glazing area as a percent of gross exterior wall area.
U_{ogort}	=	The thermal transmittance for overhead glazing without curb found in Table 13-1 or 13-2 which corresponds to the proposed total glazing area as a percent of gross exterior wall area.
U_{mwt}	=	The thermal transmittance value for opaque mass walls found in Table 13-1 or 13-2.
U_{mbwt}	=	The thermal transmittance value for opaque metal building walls found in Table 13-1 or 13-2.
U_{sfwt}	=	The thermal transmittance value for opaque steel framed walls found in Table 13-1 or 13-2.
U_{wt}	=	The thermal transmittance value for opaque wood framed and other walls found in Table 13-1 or 13-2.
U_{vgt}	=	The thermal transmittance value for vertical glazing with nonmetal framing found in Table 13-1 or 13-2 which corresponds to the proposed total glazing area as a percent of gross exterior wall area.
U_{vgmt}	=	The thermal transmittance value for vertical glazing with metal framing found in Table 13-1 or 13-2 which corresponds to the proposed total glazing area as a percent of gross exterior wall area.
U_{vgdt}	=	The thermal transmittance value for entrance doors found in Table 13-1 or 13-2 which corresponds to the proposed total glazing area as a percent of gross exterior wall area.
U_{dt}	=	The thermal transmittance value for opaque doors found in Table 13-1 or 13-2.
U_{fmt}	=	The thermal transmittance value for mass floors over unconditioned space found in Table 13-1 or 13-2.
U_{fst}	=	The thermal transmittance value for steel joist floors over unconditioned space found in Table 13-1 or 13-2.
U_{ft}	=	The thermal transmittance value for wood framed or other floors over unconditioned space found in Table 13-1 or 13-2.
F_{st}	=	The F-factor for slab-on-grade floors found in Table 13-1 or 13-2.
F_{rst}	=	The F-factor for radiant slab floors found in Table 13-1 or 13-2.
A_{dt}	=	The proposed opaque door area, A_d.
A_{fmt}	=	The proposed mass floor over unconditioned space area, A_{fm}.
A_{fst}	=	The proposed steel joist floor over unconditioned space area, A_{fs}.
A_{ft}	=	The proposed wood framed and other floor over unconditioned space area, A_f.
P_{st}	=	The proposed linear feet of slab-on-grade floor perimeter, P_s.
P_{rst}	=	The proposed linear feet of radiant slab floor perimeter, P_{rs}.
and;		
if the total amount of glazing area as a percent of gross exterior wall area does not exceed the maximum allowed in Table 13-1 or 13-2:		
A_{radt}	=	The proposed roof area with insulation entirely above deck, A_{rad}.
A_{mrt}	=	The proposed roof area for metal building, A_{mr}.
A_{rst}	=	The proposed single rafter roof area, A_{ors}.
A_{ort}	=	The proposed attic and other roof area, A_{or}.
A_{ogcort}	=	The proposed overhead glazing area with curbs, A_{ogcor}.
A_{ogort}	=	The proposed overhead glazing area without curbs, A_{ogor}.
A_{mwt}	=	The proposed opaque mass wall area, A_{mw}.

A_{mbwt}	=	The proposed opaque metal building wall area, A_{mbw}.
A_{sfwt}	=	The proposed opaque steel framed wall area, A_{sfw}.
A_{wt}	=	The proposed opaque wood framed and other wall area, A_{w}.
A_{vgt}	=	The proposed vertical glazing area with nonmetal framing, A_{vg}.
A_{vgmt}	=	The proposed vertical glazing area with metal framing, A_{vgm}.
A_{vgdt}	=	The proposed entrance door area, A_{vgd}.

or;

if the total amount of glazing area as a percent of gross exterior wall area exceeds the maximum allowed in Table 13-1 or 13-2, the area of each fenestration element shall be reduced in the base envelope design by the same percentage and the net area of each wall type adjusted proportionately by the same percentage so that the total overhead and vertical fenestration area is exactly equal to 40% of the gross wall area.

EQUATION 13-2

Proposed UA_p

$$UA_p = U_{mr}A_{mr} + U_{ad}A_{ad} + U_{rs}A_{rs} + U_{ra}A_{ra} + U_{ogc}A_{ogc} + U_{og}A_{og} + U_{mw}A_{mw} + U_{mbw}A_{mbw} + U_{sfw}A_{sfw} + U_{wfow}A_{wfow} + U_{d}A_{d} + U_{vg}A_{vg} + U_{vgm}A_{vgm} + U_{vgd}A_{vgd} + U_{fm}A_{fm} + U_{fs}A_{fs} + U_{fwo}A_{fwo} + F_{s}P_{s} + F_{sr}P_{sr}$$

Where:

UA_p	=	The combined proposed specific heat transfer of the gross exterior wall, floor and roof/ceiling assembly area.
U_{mr}	=	The thermal transmittance of the metal building roof area.
A_{mr}	=	Opaque metal building roof area.
U_{rad}	=	The thermal transmittance of the roof area where the insulation is entirely above roof deck.
A_{rad}	=	Opaque roof area where the insulation is entirely above roof deck.
U_{rs}	=	The thermal transmittance of the single rafter roof area.
A_{rs}	=	Opaque single rafter roof area.
U_{ra}	=	The thermal transmittance of the roof over attic and other roof area.
A_{ra}	=	Opaque roof over attic and other roof area.
U_{ogc}	=	The thermal transmittance for the overhead glazing with curbs.
A_{ogc}	=	Overhead glazing area with curbs.
U_{og}	=	The thermal transmittance for the overhead glazing without curbs.
A_{og}	=	Overhead glazing area without curbs.
U_{mw}	=	The thermal transmittance of the opaque mass wall area.
A_{mw}	=	Opaque mass wall area (not including opaque doors).
U_{mbw}	=	The thermal transmittance of the opaque metal building wall area.
A_{mbw}	=	Opaque metal building wall area (not including opaque doors).
U_{sfw}	=	The thermal transmittance of the opaque steel framed wall area.
A_{sfw}	=	Opaque steel framed wall area (not including opaque doors).
U_{wfow}	=	The thermal transmittance of the opaque wood framed and other wall area.
A_{wfow}	=	Opaque wood framed and other wall area (not including opaque doors).
U_{vg}	=	The thermal transmittance of the vertical glazing area with nonmetal framing.
A_{vg}	=	Vertical glazing area with nonmetal glazing.
U_{vgmf}	=	The thermal transmittance of the vertical glazing area with metal framing.
A_{vgmf}	=	Vertical glazing area with metal framing.
U_{vgd}	=	The thermal transmittance of the vertical glazing area for entrance doors.
A_{vgd}	=	Vertical glazing area for entrance doors.
U_{d}	=	The thermal transmittance value of the opaque door area.
A_{d}	=	Opaque door area.

U_{fm} = The thermal transmittance of the mass floor over unconditioned space area.
A_{fm} = Mass floor area over unconditioned space.
U_{fs} = The thermal transmittance of the steel joist floor over unconditioned space area.
A_{fs} = Steel joist floor area over unconditioned space.
U_{fwo} = The thermal transmittance of the wood framed and other floor over unconditioned space area.
A_{fwo} = Wood framed and other floor area over unconditioned space.
F_s = Slab-on-grade floor component F-factor.
P_s = Linear feet of slab-on-grade floor perimeter.
F_{sr} = Radiant floor component F-factor.
P_{sr} = Lineal feet of radiant floor perimeter.

NOTE: Where more than one type of wall, window, roof/ceiling, door and skylight is used, the U and A terms for those items shall be expanded into sub-elements as:

$$U_{mw1}A_{mw1} + U_{mw2}A_{mw2} + U_{sfw1}A_{sfw1} + ...\text{etc.}$$

EQUATION 13-3
Target $SHGCA_t$

$SHGCA_t = SHGC_t (((\sout{A_{ograt}})) \underline{A_{ogcort}} + A_{ogort} + A_{vgt} \underline{+ A_{vgmt} + A_{vgot}})$

Where:

$SHGCA_t$ = The target combined specific heat gain of the target glazing area.
$SHGC_t$ = The solar heat gain coefficient for glazing found in Table 13-1 or 13-2 which corresponds to the proposed total glazing area as a percent of gross exterior wall area, and
$((\sout{A_{ograt}}))$ $\underline{A_{ogcort}}$, A_{ogort}, $\underline{A_{vgmt}}$, $\underline{A_{vgot}}$ and A_{vgt} are defined under Equation 13-1.

EQUATION 13-4
Proposed $SHGCA_p$

$SHGCA_p = SHGC_{og}A_{og} + SHGC_{vg}A_{vg}$

Where:

$SHGCA_t$ = The combined proposed specific heat gain of the proposed glazing area.
$SHGC_{og}$ = The solar heat gain coefficient of the overhead glazing.
A_{og} = The overhead glazing area.
$SHGC_{vg}$ = The solar heat gain coefficient of the vertical glazing.
A_{vg} = The vertical glazing area.

TABLE 13-1
BUILDING ENVELOPE REQUIREMENTS FOR CLIMATE ZONE 1

	Nonresidential		Residential, Other than Single-Family	
Opaque Elements	**Assembly Max. U-factor**	**Insulation Min. R-Value**	**Assembly Max. U-factor**	**Insulation Min. R-Value**
Roofs				
Insulation entirely above deck	U-0.034	R-30 c.i.	U-0.031	R-38 c.i.
Metal building	U-0.031	R-25 + R-11 Ls	U-0.031	R-25 + R-11 Ls
Single-rafter	U-0.027	R-38	U-0.027	R-38
Attic and other	U-0.027	R-38 adv or R-49	U-0.027	R-38 adv or R-49
Walls, Above Grade				
Mass[1]	U-0.150	R-5.7 c.i.	U-0.090	R-11.4 c.i.
Metal building	U-0.064	R-13 + R-7.5 c.i.	U-0.057	R-19 + R-8.5 c.i.
Steel framed	U-0.064	R-13 + R-7.5 c.i.	U-0.057	R-19 + R-8.5 c.i.
Wood framed and other	U-0.057	R-21	U-0.057	R-13 + R-6 c.i.
Walls, Below Grade				
Below grade wall		Same as above grade		Same as above grade

	Nonresidential		Residential, Other than Single-Family	
Opaque Elements	**Assembly Max. U-factor**	**Insulation Min. R-Value**	**Assembly Max. U-factor**	**Insulation Min. R-Value**
Floors				
Mass	U-0.029	R-30 c.i.	U-0.029	R-30 c.i.
Steel joist	U-0.029	R-38 + R-4 c.i.	U-0.029	R-38 + R-4 c.i.
Wood framed and other	U-0.029	R-30	U-0.029	R-30
Slab-on-Grade Floors				
Unheated	F-0.540	R-10 for 24 in. (with thermal break)	F-0.540	R-10 for 24 in. (with thermal break)
Heated	F-0.360	R-10 c.i. (with thermal break)	F-0.360	R-10 c.i. (with thermal break)
Opaque Doors				
Swinging	U-0.600		U-0.400	
Nonswinging	U-0.600		U-0.400	

Fenestration 0-40% of Wall	**Assembly Max. U-Factor**	**Assembly Max. SHGC**	**Assembly Max. U-Factor**	**Assembly Max. SHGC**
Vertical Fenestration				
Nonmetal framing: All	U-0.32	SHGC-0.40 all OR	U-0.32	
Metal framing: Fixed/operable	U-0.40	SHGC-0.45 all PLUS Permanent PF>0.50 on	U-0.40	
Entrance doors	U-0.60	west, south and east	U-0.60	
Skylights				
Without curb (i.e., sloped glazing)	U-0.50	SHGC-0.35 all	U-0.50	SHGC-0.35 all
With curb (i.e., individual unit skylights)	U-0.60		U-0.60	

c.i. = continuous insulation, Ls = liner system (see definitions).

Footnote

1. Nonresidential walls may be ASTM C90 concrete block walls, ungrouted or partially grouted at 32 inches or less on center vertically and 48 inches or less on center horizontally, with ungrouted cores filled with material having a maximum thermal conductivity of 0.44 Btu·in/h·ft^{2}·°F.

TABLE 13-2
BUILDING ENVELOPE REQUIREMENTS
FOR CLIMATE ZONE 2

	Nonresidential		Residential, Other than Single-Family	
Opaque Elements	**Assembly Max. U-factor**	**Insulation Min. R-Value**	**Assembly Max. U-factor**	**Insulation Min. R-Value**
Roofs				
Insulation entirely above deck	U-0.034	R-30 c.i.	U-0.031	R-38 c.i.
Metal building	U-0.031	R-25 + R-11 Ls	U-0.031	R-25 + R-11 Ls
Single-rafter	U-0.027	R-38	U-0.027	R-38
Attic and other	U-0.027	R-38 adv or R-49	U-0.027	R-38 adv or R-49
Walls, Above Grade				
Mass	U-0.123	R-7.6 c.i.	U-0.080	R-13.3 c.i.
Metal building	U-0.064	R-13 + R-7.5 c.i.	U-0.044	R-19 + R-16 c.i.
Steel framed	U-0.064	R-13 + R-7.5 c.i.	U-0.044	R-19 + R-14 c.i.
Wood framed and other	U-0.051	R-13 + R-7.5 c.i. OR R-21 + R-2.5 c.i.	U-0.044	R-21+ R-5 c.i.
Walls, Below Grade				
Below grade wall		Same as above grade		Same as above grade
Floors				
Mass	U-0.029	R-30 c.i.	U-0.029	R-30 c.i.
Steel joist	U-0.029	R-38 + R-4 c.i.	U-0.029	R-38 + R-4 c.i.
Wood framed and other	U-0.029	R-30	U-0.029	R-30
Slab-on-Grade Floors				
Unheated	F-0.540	R-10 for 24 in. (with thermal break)	F-0.540	R-10 for 24 in. (with thermal break)
Heated	F-0.360	R-10 c.i. (with thermal break)	F-0.360	R-10 c.i. (with thermal break)

	Nonresidential		Residential, Other than Single-Family	
Opaque Elements	**Assembly Max. U-factor**	**Insulation Min. R-Value**	**Assembly Max. U-factor**	**Insulation Min. R-Value**
Opaque Doors				
Swinging	U-0.600		U-0.400	
Nonswinging	U-0.600		U-0.400	

Fenestration 0-40% of Wall	**Assembly Max. U-Factor**	**Assembly Max. SHGC**	**Assembly Max. U-Factor**	**Assembly Max. SHGC**
Vertical Fenestration				
Nonmetal framing: All	U-0.32	SHGC-0.40 all OR	U-0.32	
Metal framing: Fixed/operable	U-0.40	SHGC-0.45 all PLUS Permanent PF>0.50 on	U-0.40	
Entrance doors	U-0.60	west, south and east	U-0.60	
Skylights				
Without curb (i.e., sloped glazing)	U-0.50	SHGC-0.35 all	U-0.50	SHGC-0.35 all
With curb (i.e., individual unit skylights)	U-0.60		U-0.60	

c.i. = continuous insulation, Ls = liner system (see definitions).

AMENDATORY SECTION (Amending WSR 10-03-115 and 10-13-113, filed 1/20/10 and 6/21/10, effective 10/29/10)

WAC 51-11-1416 Commissioning and completion requirements.

1416.1 General. Drawing notes or specifications shall require commissioning and completion requirements in accordance with this section.

1416.2 Commissioning Scope. Commissioning in compliance with this section and Section ((~~1513.7~~)) 1513.8 shall be required for new systems or modified portions of systems, with a heating capacity of 600K Btu/h or a cooling capacity of 40 tons or more.

1416.2.1 Buildings which require commissioning shall go through a commissioning process that includes as a minimum:

1. Commissioning plan;
2. Systems testing and balancing;
3. HVAC equipment and HVAC controls functional testing;
4. Supporting documentation in the form of operation and maintenance and record documents;
5. Commissioning report.

1416.3 Commissioning Requirements.

1416.3.1 Commissioning Plan. Commissioning plan shall include:

1. A general description of the commissioning process activities including the systems to be commissioned;
2. The scope of the commissioning process including systems testing and balancing, functional testing, and supporting documentation;
3. Roles and responsibilities of the commissioning team;
4. A schedule of activities including systems testing and balancing, functional testing, and supporting documentation;
5. Functional test procedures and forms.

1416.3.2 Systems Testing and Balancing.

1416.3.2.1 General. All HVAC air and hydronic systems shall be balanced in accordance with generally accepted engineering standards.

1416.3.2.2 Air Systems Balancing. Throttling losses shall be minimized by balancing the systems or adjusting the speed of fans with motors greater than 1 hp.

1416.3.2.3 Hydronic Systems Balancing. Throttling losses shall be minimized by balancing the systems, or trimming the pump impeller or adjusting the pump speed.

EXCEPTIONS:
1. Pumps with pump motors of 10 hp or less.
2. Throttling is an acceptable method of balancing only if the power draw does not exceed that of equivalent system with the impeller trimmed by more than 5 percent.

All hydronic heating or cooling coils with design flow exceeding 20 gpm (76 L/m) shall be equipped with dedicated pressure testing ports to enable testing of pressure drop through the coil. All hydronic heating or cooling systems served by pump(s) exceeding 5 hp (3.7 kW) shall be equipped with accessible pressure testing ports to enable testing supply and return pressure near the end of each major hydronic run.

1416.3.3 Systems, Equipment, and Controls Functional Testing. All HVAC systems, equipment, and controls as well as and lighting controls as specified in Section ((~~1513.7~~)) 1513.8 shall be tested to ensure that control devices, components, equipment and systems are calibrated, adjusted and operate in accordance with sequences of operation prescribed in the construction documents. Written procedures which clearly describe the individual systematic test procedures, the expected systems' response or acceptance criteria for each procedure, the actual response or findings, and any pertinent discussion. Optional examples of test methods and forms are provided in Reference Standard 34.

1416.3.4 Supporting Documentation. Supporting documentation shall include, as a minimum:

1416.3.4.1 Systems Documentation. Systems documentation shall be in accordance with industry accepted standards and shall include as a minimum:

1. Submittal data stating equipment size and selected options for each piece of equipment.

2. Operation and maintenance manuals for each piece of equipment requiring maintenance, except equipment not furnished as part of the project. Required routine maintenance actions shall be clearly identified.

3. Names and addresses of at least one HVAC service agency.

4. HVAC controls system maintenance and calibration information, including wiring diagrams, schematics, as-built drawings and control sequence descriptions. Desired or field determined set points shall be permanently recorded on control drawings at control devices, or, for digital control systems, in programming comments.

5. Complete written narrative of how each system and piece of equipment is intended to operate including interface with existing equipment or systems (where applicable). Sequence of operation is not acceptable as a narrative for this requirement.

1416.3.4.2 Record Documents. Construction documents shall be updated to convey a record of the alterations to the original design. Such updates shall include updated mechanical, electrical and control drawings red-lined, or redrawn if specified, that show all changes to size, type and location of components, equipment and assemblies.

1416.3.4.3 Systems Operation Training. Training of the maintenance staff for each equipment type and or system shall include as a minimum:

1. Review of systems documentation.

2. Hands-on demonstration of all normal maintenance procedures, normal operating modes, and all emergency shutdown and start-up procedures.

3. Training completion report.

1416.3.5 Commissioning Report. The commissioning report shall be completed and provided to the owner. The commissioning report shall include:

1. Completed Functional Test forms including measurable criteria for test acceptance.

2. Issues log of corrected and uncorrected deficiencies with the anticipated date of correction.

3. Deferred tests, which cannot be performed at the time of report preparation, with anticipated date of completion.

4. Record of progress and completion of operator training.

5. Completed Commissioning Compliance form.

1416.4 Commissioning Compliance Form. A commissioning compliance checklist shall be submitted to the building official upon substantial completion of the building. The checklist shall be completed and signed by the building owner or owner's representative. The building official may require that the Commissioning Compliance form components be submitted to verify compliance with Sections 1416 and 1513.8 requirements. Completion of the Commissioning Compliance Checklist (Figure 14B) is deemed to satisfy this requirement.

FIGURE 14B
COMMISSIONING COMPLIANCE CHECKLIST

Project Information	**Project Name:**	
	Project Address:	
	Commissioning Authority:	
Commissioning Plan (Section 1416.3.1)	☐	**Commissioning Plan was used during construction and included items below** • A written schedule including Systems Testing and Balancing, Functional Testing, and Supporting Documentation. • Roles and Responsibilities of the commissioning team. • Functional Test procedures and forms.
Systems Balancing (Section 1416.3.2)	☐	**Systems Balancing has been completed** • Air and Hydronic systems are proportionately balanced in a manner to first minimize throttling losses. • Test ports are provided on each pump for measuring pressure across the pump.
Functional Testing (Section 1416.3.3)	☐	**HVAC Systems Functional Testing has been completed** (Section 1416.3.3) HVAC systems have been tested to ensure that equipment, components, and subsystems are installed, calibrated, adjusted and operate in accordance with approved plans and specifications.
	☐	**HVAC Controls Functional Testing has been completed** (Section 1416.3.3) HVAC controls have been tested to ensure that control devices are calibrated, adjusted and operate properly. Sequences of operation have been functionally tested to ensure they operate in accordance with approved plans and specifications.
	☐	**Lighting Controls Functional Testing has been completed** (Section ((~~1513.7~~)) 1513.8) Lighting controls have been tested to ensure that control devices, components, equipment, and systems are calibrated, adjusted and operate in accordance with approved plans and specifications.

Project Information	**Project Name:**	
	Project Address:	
	Commissioning Authority:	
Supporting Documents (Section 1416.3.4)	☐	**Systems documentation, record documents and training have been completed or are scheduled.** • System documentation has been provided to the owner or scheduled date: ____ • Record documents have been submitted to owner or scheduled date: _____ • Training has been completed or scheduled date: _____
Commissioning Report (Section 1416.3.5)	☐	**Commissioning Report submitted to Owner and includes items below.** • Completed Functional Tests documentation. • Deficiencies found during testing required by this section which have not been corrected at the time of report preparation and the anticipated date of correction. • Deferred tests, which cannot be performed at the time of report preparation due to climatic conditions or other circumstances beyond control of Commissioning Authority.
Certification	☐	I hereby certify that all requirements for commissioning have been completed in accordance with the Washington State Energy Code, including all items above. _____ Building Owner or Owner's Representative Date

AMENDATORY SECTION (Amending WSR 10-03-115 and 10-13-113, filed 1/20/10 and 6/21/10, effective 10/29/10)

WAC 51-11-1438 System criteria. For fans and pumps 7.5 horsepower and greater including custom and packaged air handlers serving variable air volume fan systems, constant volume fans, heating and cooling hydronic pumping systems, pool and service water pumping systems, domestic water pressure boosting systems, cooling tower fan, and other pumps or fans where variable flows are required, there shall be:

a. Variable speed drives, or

b. Other controls and devices that will result in fan and pump motor demand of no more than 30% of design wattage at 50% of design air volume for fans when static pressure set point equals 1/3 the total design static pressure, and 50% of design water flow for pumps, based on manufacturer's certified test data. Variable inlet vanes, throttling valves (dampers), scroll dampers or bypass circuits shall not be allowed.

EXCEPTION: Variable speed devices are not required for motors that serve:
1. Fans or pumps in packaged equipment where variable speed drives are not available as a factory option from the equipment manufacturer.
2. Fans or pumps that are required to operate only for emergency fire-life-safety events (e.g., stairwell pressurization fans, elevator pressurization fans, fire pumps, etc.).

1438.1 Heat rejection equipment: The requirements of this section apply to heat rejection equipment used in comfort cooling systems such as air-cooled condensers, open cooling towers, closed-circuit cooling towers, and evaporative condensers.

EXCEPTION: Heat rejection devices included as an integral part of equipment listed in Tables 14-1A through 14-1D.
((~~Heat rejection equipment shall have a minimum efficiency performance not less than values specified in Table 14-1G. These requirements apply to all propeller, axial fan and centrifugal fan cooling towers. Table 14-1G specifies requirements for air-cooled condensers that are within rating conditions specified within the table.~~))

Heat rejection equipment shall have a minimum efficiency performance not less than values specified in Table 14-1G. These requirements apply to all propeller, axial fan and centrifugal fan cooling towers. Table 14-1G specifies requirements for air-cooled condensers that are within rating conditions specified within the table.

1438.1.1 Variable flow controls: Cooling tower fans 7.5 hp and greater shall have control devices that vary flow by controlling leaving fluid temperature or condenser temperature/pressure of the heat rejection device.

1438.1.2 Limitation on centrifugal fan cooling towers: Open cooling towers with a combined rated capacity of 1,100 gpm and greater at 95°F condenser water return, 85°F condenser water supply and 75°F outdoor wet-bulb temperature shall meet the energy efficiency requirement for axial fan open circuit cooling towers.

EXCEPTION: Open circuit cooling towers that are ducted (inlet or discharge) or have external sound attenuation that requires external static pressure capability.

1438.2 Hot gas bypass limitation: Cooling equipment with direct expansion coils rated at greater than 95,000 Btu/h total cooling capacity shall have a minimum of 2 stages of cooling capacity or capacity modulation other than hot gas bypass that is capable of reducing input and output by at least 50%.

1438.3 Large volume fan systems: Single or multiple fan systems serving a zone or adjacent zones without separating walls with total air flow over 10,000 cfm (3,540 L/s) are required to reduce airflow based on space thermostat heating and cooling demand. A variable speed drive shall reduce airflow to a maximum 75% of peak airflow or minimum ventilation air requirement as required by Section 403 of the IMC, whichever is greater.

EXCEPTIONS: 1. Systems where the function of the supply air is for purposes other than temperature control, such as

maintaining specific humidity levels or supplying an exhaust system.

2. Dedicated outdoor air supply unit(s) with heat recovery where airflow is equal to the minimum ventilation requirements and other fans cycle off unless heating or cooling is required.

3. An area served by multiple units where designated ventilation units have 50% or less of total area airflow and nonventilation unit fans cycle off when heating or cooling is not required.

WSR 10-22-058
PERMANENT RULES
UNIVERSITY OF WASHINGTON

[Filed October 28, 2010, 3:24 p.m., effective November 28, 2010]

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

Purpose: During the 2010 legislative session, EHB 2519 (chapter 261, Laws of 2010) was passed mandating the University of Washington waive tuition for children and surviving spouses of law enforcement officers (as defined in chapter 41.26 RCW), firefighters (as defined in chapters 41.24 or 41.26 RCW), or Washington state patrol officers who lost their lives or became totally disabled in the line of duty while employed by any public law enforcement agency or full-time volunteer fire department in Washington state.

This changed the tuition waiver from a permissive waiver, authorized but not required by the state, to be affirmatively implemented by the University of Washington board of regents, to one that is mandatory and authorized by the state of Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 478-160-163.

Statutory Authority for Adoption: Chapter 261, Laws of 2010; chapter 28B.15 RCW; and RCW 28B.20.130.

Other Authority: University of Washington board of regents Standing Orders, Chapter 1, Section 2.

Adopted under notice filed as WSR 10-17-092 on August 17, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: October 28, 2010.

Rebecca Goodwin Deardorf
Director of
Rules Coordination

AMENDATORY SECTION (Amending WSR 08-03-115, filed 1/22/08, effective 2/22/08)

WAC 478-160-163 Waivers of tuition and fees. (1) The board of regents is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. A number of these statutes authorize, but do not require, the board of regents to grant waivers for different categories of students and provides for waivers of different fees. For the waivers that are authorized but not required by state law, the board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. A list of waivers that the board has implemented can be found in the *University of Washington General Catalog*, which is published biennially. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html.

(2) Even when it has decided to implement a permissive waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws. Where the university has chosen to impose specific limitations on a permissive waiver listed in RCW 28B.15.910, those limitations are delineated in subsection (5) of this section. If the university has not imposed specific limitations on a permissive waiver listed in RCW 28B.15.910, the waiver is not mentioned in subsection (5) of this section. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection ((~~(7)~~)) (8) of this section. All permissive waivers are subject to subsection ((~~(7)~~)) (8) of this section.

(3) The board of regents also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waiver programs adopted under RCW 28B.15.915 are described in the *General Catalog*. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html. Waivers granted under RCW 28B.15.915 are subject to subsection ((~~(7)~~)) (8) of this section.

(4) Waivers will not be awarded to students participating in self-sustaining courses or programs because they do not pay "tuition," "operating fees," "services and activities fees," or "technology fees" as defined in RCW 28B.15.020, 28B.15.031, 28B.15.041, or 28B.15.051, respectively.

(5) Specific limitations on waivers are as follows:

(a) Waivers authorized by RCW 28B.15.621 (2)(a) for eligible veterans and National Guard members, shall be awarded only to:

(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and

(ii) Full-time graduate or professional degree students, provided however, that the waiver may be applied only toward a single degree program at the University of Washington, and, provided further, that graduate and professional degree students who received a waiver authorized by RCW

28B.15.621 (2)(a) as undergraduates at the University of Washington shall not be eligible for this waiver.

To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and a DD form 214 (Report of Separation) indicating their service as an active or reserve member of the United States military or naval forces, or a National Guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters, and if discharged from services, has received an honorable discharge.

(b) Waivers of nonresident tuition authorized by RCW 28B.15.014 for university faculty and classified or professional staff shall be restricted to four consecutive quarters from their date of employment with the University of Washington. The recipient of the waiver must be employed by the first day of the quarter for which the waiver is awarded. Waivers awarded to immigrant refugees, or the spouses or dependent children of such refugees, shall be restricted to persons who reside in Washington state and to four consecutive quarters from their arrival in Washington state.

(c) ((~~Waivers authorized by RCW 28B.15.380 for children of police officers or firefighters who are deceased or permanently disabled, shall be awarded only to undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.~~

~~(d)~~)) Waivers authorized by RCW 28B.15.558 shall be awarded only to:

(i) University of Washington employees who are employed half-time or more, hold qualifying appointments as of the first day of the quarter for which the waivers are requested, are paid monthly, and, for classified staff new to the university, have completed their probationary periods prior to the first day of the quarter; or

(ii) State of Washington permanent employees who are employed half-time or more, are not University of Washington permanent classified employees, are permanent classified or exempt technical college paraprofessional employees, or are permanent faculty members, counselors, librarians or exempt employees at other state of Washington public higher education institutions; or

(iii) Teachers and other certificated instructional staff employed at public common and vocational schools, holding or seeking a valid endorsement and assignment in a state-identified shortage area.

(6) Waivers mandated by RCW 28B.15.621(4), as amended by section 1, chapter 450, Laws of 2007, for children and spouses or surviving spouses of eligible veterans and National Guard members who became totally disabled, or lost their lives, while engaged in active federal military or naval service, or who are prisoners of war or missing in action, shall be awarded in accordance with, and subject to the limitations set forth in state law.

(7) Waivers mandated by RCW 28B.15.380, as amended by section 4, chapter 261, Laws of 2010, for children and surviving spouses of any law enforcement officer (as defined in chapter 41.26 RCW), firefighter (as defined in chapter 41.24 or 41.26 RCW), or Washington state patrol officer, who lost his or her life or became totally disabled in the line of duty while employed by any public law enforcement agency or full-time volunteer fire department in this state, shall be awarded in accordance with, and subject to the limitations set forth in, state law.

(8) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915.

WSR 10-22-061
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 29, 2010, 10:01 a.m., effective December 1, 2010]

Effective Date of Rule: December 1, 2010.

Purpose: The department is proposing to eliminate support services and post employment services for clients who no longer receive temporary assistance for needy families (TANF) or state family assistance (SFA). The proposal is intended to reduce program costs in response to a budget shortfall. The proposal will impact clients who no longer receive a TANF or SFA cash grant, but were previously eligible for support services and post employment services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-0100, 388-310-0800, and 388-310-1800.

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

Adopted under notice filed as WSR 10-19-126 on September 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 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 28, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-08-051, filed 4/1/99, effective 5/2/99)

WAC 388-310-0100 WorkFirst—Purpose. (1) **What is the WorkFirst program?**

The WorkFirst program offers services and activities to help people in low-income families find jobs, keep their jobs, find better jobs and become self-sufficient. The program links families to a variety of state, federal and community resources to meet this goal. When you enter the WorkFirst program, you will be asked to work, look for work and/or prepare for work.

(2) **Who does the WorkFirst program serve?**

The WorkFirst program serves ((~~three~~)) two groups:

(a) Parents and children age sixteen or older who receive cash assistance under the temporary assistance for needy families (TANF), general assistance for pregnant women (GA-S) or state family assistance (SFA) programs; and

(b) ((~~Parents who no longer receive cash assistance and need some continuing support to remain self-sufficient; and~~

~~(c)~~)) Low income parents who support their family without applying for or relying on cash assistance.

AMENDATORY SECTION (Amending WSR 09-06-053, filed 2/26/09, effective 4/1/09)

WAC 388-310-0800 WorkFirst—Support services. (1) **Who can get support services?**

People who can get support services include:

(a) WorkFirst participants who receive a TANF cash grant;

(b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated ((~~by a sanction review panel~~)) while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);

(c) Unmarried or pregnant minors who are income eligible to receive TANF and are:

(i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or

(ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement and/or meeting the school requirements.

(d) ((~~Former WorkFirst recipients who are working at least twenty hours or more per week for up to six months after leaving TANF if they need support services to meet a temporary emergency. This can include up to four weeks of support services if they lose a job and are looking for another one (see also WAC 388-310-1800);~~

~~(e)~~)) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

(2) **Why do I receive support services?**

Although not an entitlement, you may receive support services for the following reasons:

(a) To help you participate in work and WorkFirst activities that lead to independence.

(b) To help you to participate in job search, accept a job, keep working, advance in your job, and/or increase your wages.

(c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 170-290 WAC describes the rules for this child care assistance program.)

(3) **What type of support services may I receive and what limits apply?**

There is a limit of three thousand dollars per person per program year (July 1st to June 30th) for WorkFirst support services you may receive. Most types of support services have dollar limits.

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the limits that apply.

Definitions:

• Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.

•• Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence. When approved, safety-related support services can exceed the dollar or category limits listed below.

••• Some support services are available if you need them for other required activities in your IRP.

Type of support service	Limit	• Work	•• Safety	••• Other
Reasonable accommodation for employment	$1,000 for each request	x		
Clothing/uniforms	$75 per adult per program year	x		
Diapers	$50 per child per month	x		
Haircut	$40 per each request	x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene	$50 per adult per program year	x		
Professional, trade, association, union and bonds	$300 for each fee	x		

Type of support service	Limit	• Work	•• Safety	••• Other
Relocation related to employment (can include rent, housing, and deposits)	$1,000 per program year	x		
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment	$500 per program year	x		
Car repair needed to restore car to operable condition	$250 per program year	x	x	
License/fees	$130 per program year	x	x	
Mileage, transportation, and/or public transportation	Same rate as established by OFM for state employees	x	x	
Transportation allotment	Up to: $25 for immediate need, or $40 twice a month if you live within 40 miles of your local WorkFirst office, or $60 twice a month if you live more than 40 miles from your local WorkFirst office.	x	x	
Counseling	No limit	x	x	x
Educational expenses	$300 for each request if it is an approved activity in your IRP and you do not qualify for sufficient student financial aid to meet the cost	x		x
Medical exams (not covered by medicaid)	$150 per exam	x	x	x
Public transportation	$150 per month	x	x	x
Testing-diagnostic	$200 each	x	x	x

(4) **What are the other requirements to receive support services?**

Other restrictions on receiving support services are determined by the department or its agents. They will ((~~decide what support services you receive, as follows~~)) consider whether:

(a) It is within available funds; and

(b) It does not assist, promote, or deter religious activity; and

(c) There is no other way to meet the cost.

(5) **What happens to my support services if I do not participate as required?**

The department will give you ten days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

AMENDATORY SECTION (Amending WSR 08-15-136, filed 7/22/08, effective 8/22/08)

WAC 388-310-1800 WorkFirst—Post employment services. (1) **What is the purpose of post employment services?**

Post employment services help ((~~low income~~)) TANF or SFA parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

(2) **How do I obtain post employment services?**

(a) You can obtain post employment services by:

(i) Asking for a referral from the local community service office;

(ii) Contacting community or technical colleges; or

(iii) Contacting the employment security department. ((~~Employment security department staff may also telephone you if you got a job while you were on TANF or SFA to see if you are interested in receiving these services.~~

~~(b) You may qualify for different services (from various state or federal programs) depending on whether you:~~

~~(i) Are a mandatory participant (that is, you currently receive TANF or SFA benefits);~~

~~(ii) Used to receive TANF or SFA benefits; or~~

~~(iii) Have never been on TANF or SFA.~~))

(3) **Who provides post employment services and what kind of services do they provide?**

(a) The employment security department can help you increase your wages, increase your job skills or find a better job by providing you with:

(i) Employment and career counseling;

(ii) Labor market information;

(iii) Job leads for a better job (sometimes called job development);

(iv) On the job training;

(v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and

(vi) Help with finding a new job after job loss (sometimes called reemployment).

(b) Any Washington state technical and community college can approve a skill-training program for you that will

help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

(i) High school/GED,

(ii) Vocational education training,

(iii) Job skills training,

(iv) Adult basic education,

(v) English as a second language training, or

(vi) Preemployment training.

(4) **What other services are available while you receive post employment services?**

While you receive post employment services, you may qualify for:

(a) Working connections childcare if you meet the criteria for this program (described in chapter 170-290 WAC).

(b) Other support services, such as help in paying for transportation or work expenses if you meet the criteria for this program (WAC 388-310-0800).

(c) Other types of assistance for low-income families such as food stamps, medical assistance or help with getting child support that is due to you and your children.

(5) **Who is eligible for post employment ((~~service, support services and childcare~~)) services?**

If you are a current TANF or SFA recipient, you may qualify for post employment services((~~, support services and child care~~)) if you are working twenty hours or more a week, ((~~and:~~

~~(a) You are current TANF or SFA recipient. You qualify for:~~

~~(i) All types of post employment services,~~)) unless you are in sanction status((~~;~~

~~(ii) Tuition assistance from the community and technical college system;~~

~~(iii) WorkFirst support services; and~~

~~(iv) Working connections childcare.~~

~~(b) You are a former TANF or SFA recipient. You qualify for:~~

~~(i) Employment retention services (help with keeping a job) for up to twelve months after exiting TANF or SFA.~~

~~(ii) Wage and skill progression services (help with finding a better job and/or obtaining better wages) for up to twelve months after exiting TANF or SFA.~~

~~(iii) Tuition assistance or preemployment training from the community and technical college system;~~

~~(iv) Working connections childcare assistance; and/or~~

~~(v) WorkFirst support services for up to six months after exiting TANF or SFA.~~

~~(c) You are a low wage earner (that is, your family income does not exceed one hundred seventy-five percent of the federal poverty level) who has never received TANF or SFA benefits, and are in a community or technical college-approved skill training program. You may qualify for:~~

~~(i) Tuition assistance or preemployment training from the community and technical college system; or~~

~~(ii) Working connections child care while you are in training or school for up to a total of thirty six months~~)).

(6) **What if I lose my job while I am receiving post employment services?**

If you now receive ((~~or used to receive~~)) TANF or SFA, help is available to you ((~~for up to four weeks~~)) so that you can find another job and continue in your approved post employment services.

(a) The employment security department will provide you with reemployment services.

(b) At the same time, your case manager can approve ((~~up to four weeks of~~)) support services and childcare for you.

WSR 10-22-062

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 29, 2010, 10:03 a.m., effective December 1, 2010]

Effective Date of Rule: December 1, 2010.

Purpose: These amendments align two-parent participation requirements with federal rules; eliminate the career services program; and clarify information regarding how an individual responsibility plan is used to generate participation requirements. The changes are being made to reduce program costs in response to budget reductions. These amendments may reduce the number of participation hours required for some two-parent households, and will no longer provide career services payments for former temporary assistance for needy families (TANF) or diversion cash assistance clients.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-310-2100; and amending WAC 388-310-0200, 388-310-0400, and 388-310-1300.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Adopted under notice filed as WSR 10-19-130 on September 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 4, 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 4, Repealed 0.

Date Adopted: October 28, 2010.

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-15-084, filed 7/14/09, effective 8/14/09)

WAC 388-310-0200 WorkFirst—Activities. (1) **Who is required to participate in WorkFirst activities?**

(a) You are required to participate in the WorkFirst activities in your individual responsibility plan, and become what is called a "mandatory participant," if you:

(i) Are receiving TANF or SFA cash assistance because you are pregnant or the parent or adult in the home; and

(ii) Are not exempt. For exemptions see WAC 388-310-0300 and 388-310-0350.

(b) Participation is voluntary for all other WorkFirst participants (those who no longer receive or have never received TANF or SFA cash assistance).

(2) **What activities do I participate in when I enter the WorkFirst program?**

When you enter the WorkFirst program, you will participate in one or more of the following activities (which are described in more detail in other sections of this chapter):

(a) Paid employment (see WAC 388-310-0400 (2)(a) and 388-310-1500);

(b) Self employment (see WAC 388-310-1700);

(c) Job search (see WAC 388-310-0600);

(d) Community jobs (see WAC 388-310-1300)

(e) Work experience (see WAC 388-310-1100);

(f) On-the-job training (see WAC 388-310-1200);

(g) Vocational educational training (see WAC 388-310-1000);

(h) Basic education activities (see WAC 388-310-0900);

(i) Job skills training (see WAC 388-310-1050);

(j) Community service (see WAC 388-310-1400);

(k) Activities provided by tribal governments for tribal members and other American Indians (see WAC 388-310-1400(1) and 388-310-1900);

(l) Other activities identified by your case manager on your individual responsibility plan that will help you with situations such as drug and/or alcohol abuse, homelessness, or mental health issues; and/or

(m) Activities identified by your case manager on your individual responsibility plan to help you cope with family violence as defined in WAC 388-61-001; and/or

(n) Up to ten hours of financial literacy activities to help you become self-sufficient and financially stable.

(3) **If I am a mandatory participant, how much time must I spend doing WorkFirst activities?**

If you are a mandatory participant, you will be required to participate in the activities in your individual responsibility plan, and may be required to participate full time, working, looking for work or preparing for work. You might be required to participate in more than one part-time activity at the same time that add up to full time participation. You will have an individual responsibility plan (described in WAC 388-310-0500) that includes the specific activities and requirements of your participation.

(4) **What activities do I participate in after I get a job?**

You ((~~will~~)) may be required to participate in other activities, such as job search or training once you are working twenty hours or more a week in a paid unsubsidized job, to bring your participation up to full time.

You may also engage in activities if you are working full time and want to get a better job.

((~~Post-employment services (described in WAC 388-310-1800) include:~~

~~(a) Activities that help you keep a job (called an "employment retention" service); and/or~~

~~(b) Activities that help you get a better job or better wages (called a "wage and skill progression" service).~~))

AMENDATORY SECTION (Amending WSR 09-14-019, filed 6/22/09, effective 7/23/09)

WAC 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant. (1) **What happens when I enter the WorkFirst program as a mandatory participant?**

If you are a mandatory participant, you must follow instructions as written in your individual responsibility plan (see WAC 388-310-0500), which is written after you have participated in a comprehensive evaluation of elements related to your employability. If you have been identified as someone who needs necessary supplemental accommodation (NSA) services (defined in chapter 388-472 WAC) your case manager will first develop an accommodation plan to help you access WorkFirst services. The case manager will use the accommodation plan to help develop your IRP with you. If you have been identified as a victim of family violence (defined in WAC 388-61-001), you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

If you are a mandatory participant, your case manager will refer you to WorkFirst activities unless any of the following applies to you:

(a) You work thirty-two or more hours a week (or, if you are a member of a two-parent family, you work thirty-five hours or more a week). **"Work"** means to engage in any legal, income generating activity which is taxable under the United States tax code or which would be taxable with or without a treaty between an Indian Nation and the United States;

(b) You participate the equivalent of twenty or more hours a week (or if you are a member of a two-parent family, you participate the equivalent of thirty or more hours a week) in job search, vocational education, issue resolution, or paid or unpaid work that meets the federal definition of core activities, which may include work of sixteen or more hours a week in the federal or state work study program, and you attend a Washington state community or technical college at least half time;

(c) You work twenty or more hours a week (or if you are a member of a two-parent family, you work thirty or more hours a week) in unsubsidized employment and attend a Washington state community or technical college at least half time;

(d) You are under the age of eighteen, have not completed high school, GED or its equivalent and are in school full time;

(e) You are eighteen or nineteen years of age and are attending high school or an equivalent full time;

(f) You are pregnant or have a child under the age of twelve months, and are participating in other pregnancy to employment activities. See WAC 388-310-1450;

(g) Your situation prevents you from looking for a job and you are conducting activities identified on your IRP to help you with your situation. (For example, you may be unable to look for a job while you have health problems or you are homeless); or

(h) Your situation prevents you from looking for work because you are a victim of family violence and you are conducting activities on your IRP to help you with your situation.

(2) **How will I know what my participation requirements are?**

(a) Your individual responsibility plan will describe what you need to do to be able to enter job search or other WorkFirst activities and then find a job (see WAC 388-310-0500 and 388-310-0700).

(b) If you enter the pregnancy to employment pathway (described in WAC 388-310-1450(3)), you must take part in an assessment.

(3) **What happens if I do not follow my WorkFirst requirements?**

If you do not participate in creating an individual responsibility plan, job search, or in the activities listed in your individual responsibility plan, and you do not have a good reason, the department will follow the sanction rules in WAC 388-310-1600.

AMENDATORY SECTION (Amending WSR 02-20-073, filed 9/30/02, effective 10/1/02)

WAC 388-310-1300 Community jobs. (1) **What is the community jobs program?**

Community jobs is a paid work experience that assists you to gain work skills and experience. You are placed in a community job (up to twenty hours per week) where your wages are paid by the community jobs program. If you participate in the program, you are eligible for support services that assist you in moving into a job where your employer pays all your wages.

(2) **What is career jump?**

Career jump offers job-ready community jobs participants an opportunity to gain paid work experience that leads to a permanent job. This program is a subset of community jobs and will be referred to as such. Career jump places you in a part time (up to twenty hours per week), community job where your earnings are paid by the community jobs program, for up to five months, at which time you will transition to the employer's payroll. You will be provided with support services to assist you in retaining your job through the ninth month of the program. At or before the fifth month, the employment opportunity will be above minimum wage, thirty-two or more hours per week and include wage progression and benefits comparable to other employees.

(3) **Who administers the community jobs program?**

The state department of community, trade, and economic development (DCTED) administers the community jobs program. DCTED contract with local agencies throughout the state, known as community jobs contractors who develop and manage the community jobs positions, pay the wages, provide support services and act as the "employer of record" while you are enrolled in a community job.

(4) **What types of work sites are used to provide community jobs?**

The following work sites may be used to provide community jobs:

(a) Federal, state or local governmental agencies and tribal governments;

(b) Private and tribal nonprofit businesses, organizations and educational institutions;

(c) Private for profit businesses for career jump placements.

(5) **What are the requirements for the work sites?**

Work sites for community jobs and career jump:

(a) Must assist in strengthening work ethics, improve workplace skills and help you gain skills to move into a job where the employer pays all your wages. If they do not meet this requirement, they will not be considered for additional community jobs/career jump placements.

(b) We will follow the employment rules described in WAC 388-310-1500. In any situation where training is inconsistent with the terms of a collective bargaining agreement, your community jobs contractor will obtain written approval from the labor organization concerned. Career jump employers will remain neutral with regard to neutralization in the worksite.

(c) You will not be required to do work related to religious, electoral or partisan political activities.

(6) **What are the benefits of community jobs?**

You benefit from community jobs by:

(a) Learning work skills;

(b) Getting work experience;

(c) Working twenty hours per week, while being paid federal or state minimum wage, whichever is higher; and

(d) Earning paid personal leave as determined by DCTED.

(7) **How do I get into community jobs?**

You will be placed into community jobs after you and your DSHS case manager decide:

(a) You would benefit from community jobs after you have participated in job search without finding a job; and/or

(b) You need a supportive work environment to help you become more employable.

(8) **What happens after I am placed in the community jobs program?**

When you are placed in the community jobs program by DSHS:

(a) You will be assigned to a community job by the community jobs contractor for no more than nine months. You will work twenty hours a week and participate in any other unpaid activities for twelve to twenty additional hours per week as required in your individual responsibility plan;

(b) Your placement in community jobs will be reviewed by your DSHS case manager every three months during your nine-month placement for the following:

(i) To ensure you are TANF/SFA eligible; and

(ii) To verify any earned or unearned income received by you or another member of your assistance unit (that is, you and other people in your household who are included on your cash grant).

(c) Your community jobs contractor will review your case each month to ensure you are following your IRP and IDP, participating full time, and becoming more employable because of your community job;

(d) If you request a different community jobs placement, we do not consider your request a refusal to participate without good cause under WAC 388-310-1600. You may be asked to explain why you want a different placement;

(e) Grievance policies are in place for your protection. You will be required to sign an acknowledgment that you received a copy of this policy at the time of placement with the employer.

(9) **How does community jobs affect my TANF benefits?**

The amount of your TANF/SFA monthly grant will be determined by following the rules in WAC 388-450-0050 and 388-450-0215 (1), (3), (4), (5) and (6). WAC 388-450-0215(2), does not apply to your community jobs wages.

(10) What can I expect from my career jump placement?

(a) You cannot represent more than ten percent of the total labor force for an employer that has ten or more employees.

(b) No more than one community jobs participant shall be allowed per private for profit worksite supervisor.

(c) You will participate in developing a career progression plan that will include health care benefits comparable to other employees.

(d) You may be eligible for unemployment benefits if you have participated in community jobs' career jump and have worked at least six hundred eighty hours in a base year. You will gain unemployment insurance credits for all hours worked under your career jump placement.

(e) Your employer and your community jobs contractor will be required to follow DCTED's contractual agreements for career jump.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-310-2100	Career services program.

WSR 10-22-067
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed October 29, 2010, 2:33 p.m., effective November 29, 2010]

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

Purpose: WAC 458-20-166 (Rule 166) explains the taxation of persons who provide lodging and related services to transients for a charge.

The department amended Rule 166 to recognize recent legislation:

- Chapter 15, Laws of 2010 1st sp. sess. (SSB 6889) - this legislation authorizes the transfer of the King County Convention and Trade Center to a public facilities district; and
- Chapter 563, Laws of 2009 (SB 6173) - this legislation replaces the resale certificate with the reseller permit as the means by which to document a wholesale sale.

The department also updated the rule to:

- Recognize the current statutory language regarding when the furnishing of lodging for a continuous period of one month or more is presumed to be a rental or lease of real property;
- Remove obsolete language regarding purchases made using United States government credit cards. The rule now refers readers to the department's internet site for current information regarding the types of credit cards used by the federal government;
- Update language to reflect current statutory terminology regarding self-service laundry facilities; and
- Add language to recognize that current law authorizes a tourism promotion area charge (chapter 35.101 RCW).

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-166 (Rule 166) Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Adopted under notice filed as WSR 10-17-114 on August 18, 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: October 29, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 94-05-001, filed 2/2/94, effective 3/5/94)

WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc. (1) **Introduction.** This section explains the taxation of persons operating establishments such as hotels, motels, and bed and breakfast facilities, which provide lodging and related services to transients for a charge. In addition to retail sales tax and business and occupation (B&O) tax, this section explains the special hotel/motel tax, the convention and trade center tax, the tourism promotion area charge, and the taxation of emergency housing furnished to the homeless.

(a) In addition to persons operating hotels or motels, this section applies to persons operating the following establishments:

(i) Trailer camps and recreational vehicle parks which charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc.

(ii) Educational institutions which sell overnight lodging to persons other than students. See WAC 458-20-167, Educational institutions, school districts, student organizations, and private schools.

(iii) Private lodging houses, dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms or schools solely for the accommodation of employees of such firms or students which are not held out to the public as a place where sleeping accommodations may be obtained. As will be discussed more fully below, in some circumstances these businesses may not be making retail sales of lodging.

(iv) Guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc. In some cases these businesses may not be making retail sales, as discussed below.

(b) This section does not apply to persons operating the following establishments:

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Persons operating these establishments should refer to WAC 458-20-168, Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities.

(ii) Establishments such as apartments or condominiums where the rental is for longer than one month. See WAC 458-20-118, Sale or rental of real estate, license to use real estate for the distinction between a rental of real estate and the license to use real estate.

(2) **Transient defined.** The term "transient" as used in this section means any guest, resident, or other occupant to whom lodging and other services are furnished under a license to use real property for less than one month, or less than thirty continuous days if the rental period does not begin on the first day of the month. ((~~An occupant remaining in continuous occupancy for thirty days or more is considered a nontransient upon the thirtieth day. An occupant who contracts in advance and does remain in continuous occupancy for the initial thirty days will be considered a nontransient from the start of the occupancy.~~)) The furnishing of lodging for a continuous period of one month or more to a guest, resident, or other occupant is a rental or lease of real property. It is presumed that when lodging is furnished for a continuous period of one month or more, or thirty continuous days or more if the rental period does not begin on the first day of the month, the guest, resident, or other occupant purchasing the lodging is a nontransient upon the thirtieth day without regard to a specific lodging unit occupied throughout the continuous thirty-day period. An occupant who contracts in advance and does remain in continuous occupancy for the initial thirty days will be considered a nontransient from the first day of occupancy provided in the contract.

(3) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient, the transaction is a rental of real estate and exempt from B&O tax. (See RCW 82.04.390.) Sales of lodging and related services to transients are subject to B&O tax, including transactions which may have been identified or characterized as membership fees or dues. ((~~(See WAC 458-20-114.)~~)) The B&O tax applies as follows:

(a) **Retailing.** Amounts derived from the following charges to transients are retail sales and subject to the retailing B&O tax: Rental of rooms for lodging((~~,~~)); rental of radio and television sets((~~, coin-operated laundries,~~)); rental of rooms, space, and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, etc.((~~,~~)); automobile parking or storage((~~,~~)); and the sale or rental of tangible personal property at retail. See "retail sales tax" below for a more detailed explanation of the charges included in the retailing classification.

(b) **Service and other business activities.** Commissions, amounts derived from accommodations not available to the public, and certain unsegregated charges are taxable under this classification.

(i) Hotels, motels, and similar businesses may receive commissions from various sources which are generally taxable under the service and other business activities classification. The following are examples of such commissions:

(A) Commissions received from acting as a laundry agent for guests when someone other than the hotel provides the laundry service ((~~(~~)). See WAC 458-20-165((~~)~~)), Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.

(B) Commissions received from telephone companies for long distance telephone calls where the hotel or motel is merely acting as an agent (WAC 458-20-159, Consignees, bailees, factors, agents and auctioneers) and commissions received from coin-operated telephones (WAC 458-20-245, Telephone business, telephone service). Refer to the retail sales tax subsection below for a further discussion of telephone charges.

(C) Commissions or license fees for permitting a satellite antenna to be installed on the premises or as a commission for permitting a broadcaster or cable operator to make sales to the guest of the hotel or motel.

(D) Commissions from the rental of videos for use by guests of the hotel or motel when the hotel or motel operator is clearly making such sales as an agent for a seller.

(E) Commissions received from the operation of amusement devices. ((~~(~~))See WAC 458-20-187, Coin operated vending machines, amusement devices and service machines.((~~)~~))

(ii) Taxable under this classification are amounts derived from the rental of sleeping accommodations by private lodging houses, and by dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms and which are not held out to the public as a place where sleeping accommodations may be obtained.

(iii) Summer camps, guest ranches and similar establishments making an unsegregated charge for meals, lodging, instruction and the use of recreational facilities must report the gross income from such charges under the service and other business activities classification.

(iv) Deposits retained by the business as a penalty charged to a customer for failure to timely cancel a reserva-

tion is taxable under the service and other business activities classification.

(4) **Retail sales tax.** Persons providing lodging and other services generally must collect retail sales tax on their charges for lodging and other services as discussed below. They must pay retail sales or use tax on all of the items they purchase for use in providing their services.

(a) **Lodging.** All charges for lodging and related services to transients are retail sales. Included are charges for vehicle parking and storage and for space and other facilities, including charges for utility services, in a trailer camp.

(i) An occupant who does not contract in advance to stay at least thirty days does not become entitled to a refund of retail sales tax where the rental period extended beyond thirty days. For example, a tenant rents the same motel room on a weekly basis. The tenant is considered a transient for the first twenty-nine days of occupancy and must pay retail sales tax on the rental charges. The rental charges become exempt of retail sales tax beginning on the thirtieth day. The tenant is not entitled to a refund of retail sales taxes paid on the rental charges for the first twenty-nine days.

(ii) A business providing transient lodging must complete the "transient rental income" information section of the combined excise tax return. The four digit location code must be listed along with the income received from transient lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All charges for food, beverages, and entertainment are retail sales.

(i) Charges for related services such as room service, banquet room services, and service charges and gratuities which are agreed to in advance by customers or added to their bills by the service provider are also retail sales.

(ii) In the case of meals sold under a "two meals for the price of one" promotion, the taxable selling price is the actual amount received as payment for the meals.

(iii) Meals sold to employees are also subject to retail sales tax. See WAC 458-20-119, Sales of meals for retail sales tax applicability on meals furnished to employees.

(iv) Sale of food and other items sold through vending machines are retail sales. See WAC 458-20-187, Coin operated vending machines, amusement devices and service machines for reporting income from vending machine sales and WAC 458-20-244, Food and food ingredients for the distinction between taxable and nontaxable sales of food products.

(v) Except for guest ranches and summer camps, when a lump sum is charged for lodging to nontransients and for meals furnished, the retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover charges for dancing and entertainment are retail sales.

(vii) Charges for providing extended television reception to guests are retail sales.

(c) **Laundry services.** Charges for laundry services provided by a hotel/motel in the hotel's name are retail sales. ((~~RCW 82.04.050, which defines retail sales, was amended by chapter 25, Laws of 1993 sp.s. to include charges for the use of coin-operated laundry facilities located in hotels, motels, rooming houses, and trailer camps for the exclusive use of the tenants. This change became effective July 1, 1993. Prior to that date income from~~)) Charges to tenants for ((~~coin-operated~~)) self-service laundry facilities ((~~was~~)) are not retail sales. These charges are subject to service B&O tax.

(d) **Telephone charges.** Telephone charges to guests, except those subject to service B&O tax as discussed above and in WAC 458-20-245, Telephone business, telephone service, are retail sales. "Message service" charges are also retail sales.

If the hotel/motel is acting as an agent for a telephone service provider who provides long distance telephone service to the guest, the actual telephone charges are not taxable income to the hotel/motel. These amounts are advances and reimbursements ((~~(~~)). See WAC 458-20-111, Advances and reimbursements and 458-20-159((~~(~~)), Consignees, bailees, factors, agents and auctioneers. Any additional handling or other charge which the hotel/motel may add to the actual long distance telephone charge is a retail sale.

(e) **Telephone lines.** If the hotel/motel leases telephone lines and then provides telephone services for a charge to its guests, these charges are taxable as retail sales. In this case the hotel/motel is in the telephone business. ((~~(~~))See WAC 458-20-245, Telephone business, telephone service.((~~(~~))) The hotel/motel may give a resale certificate for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to the provider of the leased lines and is not subject to the payment of retail sales tax to the provider of the leased lines. Previously accepted resale certificates must be kept on file by the seller for five years from the date of last use or no longer than December 31, 2014.

(f) **Rentals.** Rentals of tangible personal property such as movies and sports equipment are retail sales.

(g) **Purchases of tangible personal property for use in providing lodging and related services.** All purchases of tangible personal property for use in providing lodging and related services are retail sales. The charge for lodging and related services is for services rendered and not for the resale of any tangible property.

(i) Included are such items as beds and other furnishings, restaurant equipment, soap, towels, linens, and laundry supply services. Purchases, such as small toiletry items, are included even though they may be provided for guests to take home if not used.

(ii) The retail sales tax does not apply to sales of food products to persons operating guest ranches and summer camps for use in preparing meals served to guests. Sales of prepared meals or other prepared items ((~~which require a food handler's permit~~)) to persons operating guest ranches and summer camps are subject to retail sales tax. See WAC 458-20-244, Food and food ingredients for sales of food products.

(h) **Sales to the United States government**. Sales made directly to the United States government are not subject to retail sales tax. Sales to employees of the federal government

are fully taxable notwithstanding that the employee ultimately will be reimbursed for the cost of lodging. ((~~The department of revenue has identified the following methods of billing or payment which are presumed to be sales directly to the federal government:~~))

(i) **Payment by government voucher or check.** If the lodging is paid by United States government voucher or United States government check payable directly to the hotel/motel, the sale is presumed to be a tax-exempt sale directly to the federal government.

(((~~(ii) Charges made through the use of a VISA I.M.P.A.C. card (International merchant purchase authorization card). The VISA I.M.P.A.C. cards include the embossed legend "U.S. Government Tax Exempt." The account number on each card begins with the prefix "4716."~~

~~(iii) For periods prior to November 30, 1993, charges made through Diner's Club Corporate Charge Card (the card contains the statement "for official use only"). There were two Diner's Club Corporate Charge Cards available to federal employees. Only one was sales tax exempt. The card providing the exemption was embossed with the name of the employee followed by the statement "for official use only." This card was used by federal agencies to pay for group lodging. The Diner's Club card program for federal employees ended November 29, 1993.~~

~~(iv) Beginning November 30, 1993, charges made through the use of certain American Express charge cards issued for the use of federal government travelers. Only those cards directly charging a government travel account (central bill account) qualify for the exemption. These cards begin with an account number prefix of "3783-9."~~

~~(v) A cash purchase made on behalf of the federal government by a federal employee who gives the seller a federal standard form SF 1165. A cash purchase by a federal employee made on behalf of the federal government qualifies for a sales tax exemption provided that the federal employee presents a federal standard form SF 1165 to document the fact that the purchase is made on behalf of the federal agency out of petty cash funds. The vendor (hotel/motel) is required to sign form SF 1165 to signify receipt of cash for the purchase. The vendor must retain a photocopy of SF 1165, describing the item purchased, to document the sales tax exemption.~~)) (ii) **Charges to government credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Specific information about determining when a purchase by government credit card is a tax-exempt purchase by the United States government is available via the department's internet web site at http://dor.wa.gov. (See the department's lodging industry guide.) For specific information about determining when payment is the direct responsibility of the United States government or the employee, you may contact the department's taxpayer services division at http://dor.wa.gov/content/ContactUs/ or:

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

(5) **Special hotel/motel tax.** ((~~Beginning in October 1987,~~)) Some locations in the state ((~~have been authorized to~~)) charge a special hotel/motel tax. (See chapters 67.28 and 36.100 RCW.) If a business is in one of these locations, an additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. The tax applies without regard to the number of lodging units except that the tax of chapter 36.100 RCW applies only if there are forty or more lodging units. The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. However, the tax does apply to charges for use of camping and recreational vehicle sites.

(6) **Convention and trade center tax.** Businesses selling lodging to transients, having sixty or more units located in King County, must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the tax return. ((~~See RCW 67.40.090.~~))

(a) A business having more than sixty units which are rented to transients and nontransients will be subject to the convention and trade center tax only if the business has at least sixty rooms which are available or being used for transient lodging. For example, a business with one hundred forty total rooms of which ninety-five are rented to nontransients is not subject to the convention and trade center tax.

(b) The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. ((~~Neither is the~~)) Charges for the use of meeting rooms, banquet rooms, or other special use rooms are also not subject to the convention and trade center tax. However, the tax does apply to charges for camping or recreational vehicle sites. Each camp site is considered a single unit.

(c) The four digit location code, amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. ((~~However, the tax does apply to charges for camping or recreational vehicle sites. Each camp site is considered a single unit.~~

~~(7)~~)) (d) If the property of the King County state convention and trade center is transferred to a King County public facilities district created as provided in RCW 36.100.010, the authority under chapter 67.40 RCW of the state and city to impose the convention and trade center tax will be transferred under RCW 36.100.040 to the public facilities district.

(7) **Tourism promotion area charge.** A legislative authority as defined by RCW 35.101.010, Definitions may impose a charge on the furnishing of lodging by a lodging business located in the tourism promotion area, except that this tourism promotion area charge does not apply to temporary medical housing exempt under RCW 82.08.997, Exemptions—Temporary medical housing. The tourism promotion area charge is administered by the department of revenue and must be collected by lodging businesses from those persons

who are subject to retail sales tax on purchases of lodging. The tourism promotion area charge is not subject to the sales tax rate limitations of RCW 82.14.410. To determine whether your lodging business must collect and remit the charge, refer to the special notices for tourism promotion areas at http://dor.wa.gov/content/GetAFormOrPublication/PublicationBySubject/tax_sn_main.aspx or the lodging industry guide at http://dor.wa.gov/content/doingbusiness/BusinessTypes/Industry/lodging/.

(8) **Furnishing emergency lodging to homeless.** The charge made for the furnishing of emergency lodging to homeless persons purchased via a shelter voucher program administered by cities, towns, and counties or private organizations that provide emergency food and shelter services is exempt from the retail sales tax, the convention and trade center tax, and the special hotel/motel tax. ((~~This exemption became effective July 1, 1988.~~))This form of payment does not influence the required minimum of transient rooms available for use as transient lodging under the "convention and trade center tax" or under the "special hotel/motel tax."

WSR 10-22-073
PERMANENT RULES
STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed October 29, 2010, 4:12 p.m., effective November 29, 2010]

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

Purpose: To provide for the participation of eligible higher education coordinating board employees in the state board sponsored 401(a) retirement plan, as authorized by RCW 28B.10.400.

Citation of Existing Rules Affected by this Order: Amending chapter 131-16 WAC.

Statutory Authority for Adoption: RCW 28B.10.400.

Adopted under notice filed as WSR 10-19-099 on September 20, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: October 28, 2010.

DelRae Oderman
Executive Assistance
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-010 ((~~Designation~~)) Establishment of ((~~community and technical college system~~)) the state board retirement plan. There is hereby established for the eligible employees of ((~~the community and technical colleges of the state of Washington and the state board~~)) participating employers, a retirement plan which shall provide such employees with a state board sponsored retirement plan through the Teachers' Insurance Annuity Association (TIAA) and the College Retirement Equities Fund (CREF), hereafter called TIAA-CREF, subject to the provisions of WAC 131-16-011 through 131-16-066 and the plan document. On and after January 1, 2006, this retirement plan is intended to comply with the requirements of a qualified plan under Section 401(a) of the Internal Revenue Code of 1986, as amended and the provisions of the plan document approved by the state board on December 1, 2005, as it may be amended from time to time.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-011 Definitions. For the purpose of WAC 131-16-010 through 131-16-066, the following definitions shall apply:

(1) "Participant" means any employee who is eligible to participate in the plan and who, as a condition of employment, on and after January 1, 1997, shall participate in the plan upon initial eligibility.

(2) "Supplemental retirement benefit" means payments, as calculated in accordance with WAC 131-16-061, ((~~made by the state board~~)) to an eligible retired participant or designated beneficiary whose retirement benefits provided by the plan do not attain the level of the retirement benefit goal established by WAC 131-16-015.

(3) "Year of full-time service" means retirement credit based on full-time employment or the equivalent thereof based on part-time employment in an eligible position for a period of not less than five months in any fiscal year during which contributions to TIAA-CREF were made by both the participant and a participating employer or a Washington public higher education institution ((~~or the state board~~)) or any year or fractional year of prior service in a Washington public retirement system while employed at a participating employer or a Washington public higher education institution: Provided, That the participant will receive a pension benefit from such other retirement system and that not more than one year of full-time service will be credited for service in any one fiscal year.

(4) "Fiscal year" means the period beginning on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.

(5) "Average annual salary" means the amount derived when the salary received during the two consecutive highest salaried fiscal years of full-time service for which contributions to TIAA-CREF were made by both the participant and a participating employer or a Washington public higher education institution is divided by two.

(6) "Plan retirement benefit" means the amount of annual retirement income derived from a participant's accumulated balances including dividends at the time of retirement: Provided, That solely for the purpose of calculating a potential supplemental retirement benefit, such amount shall be adjusted to meet the assumptions set forth in WAC 131-16-061(2).

(7) "Salary" means all remuneration received by the participant from the ((~~employing college district or the state board~~)) participating employer, including summer quarter compensation, extra duty pay, leave stipends, and grants made by or through the ((~~college district or state board~~)) participating employer; but not including any severance pay, early retirement incentive payment, remuneration for unused sick or personal leave, or remuneration for unused annual or vacation leave in excess of the amount payable for thirty days or two hundred forty hours of service.

(8) "Designated beneficiary" means the surviving spouse of the retiree or, with the consent of such spouse, if any, such other person or persons as shall have an insurable interest in the retiree's life and shall have been nominated by written designation duly executed and filed with the retiree's ((~~institution of higher education or the state board~~)) participating employer.

(9) "State board" means the state board for community and technical colleges as created in RCW 28B.50.050.

(10) "Appointing authority" means a ((~~college district~~)) participating employer's governing board ((~~of trustees or the state board~~)) or the designees of such boards.

(11) "Plan" means the retirement plan sponsored by the state board and funded by TIAA-CREF.

(12) "Participating employer" means an educational organization or agency operated by the state of Washington which is the employer of one or more eligible employees or former eligible employees and which is an employing entity designated by the state board to participate in the plan. The participating employers are listed in Appendix A of the plan document.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-021 Employees eligible to participate in the retirement plan. (1) Eligibility to participate in the plan is limited to persons who hold appointments to ((~~college district or state board~~)) participating employer staff positions as full-time or part-time faculty members ((~~or~~)), administrators or professional staff exempt from the provisions of chapter ((~~28B.16~~)) 41.06 RCW and, effective July 1, 1999, are assigned a cumulative total of at least fifty percent of a full-time workload as defined by the collective bargaining agreement and/or the appointing authority at one or more ((~~college districts or the state board~~)) participating employers for at least two consecutive college quarters or its equivalent. (Part-time faculty workload is calculated in accordance with RCW 28B.50.489 and 28B.50.4891.)

(2) Participation in the plan is also permitted for current and former employees of ((~~college districts or the state board~~)) participating employers who are on leave of absence or who have terminated employment by reason of permanent disability and who are receiving a salary continuation insurance benefit through a plan made available by the state of Washington: Provided, That such noncontributory participation shall not be creditable toward the number of years of full-time service utilized in calculating eligibility for supplemental retirement benefits pursuant to WAC 131-16-061.

(3) Optional participation in tax-deferred annuities other than this qualified plan as offered by ((~~individual colleges~~)) participating employers is permitted consistent with the Internal Revenue Code: Provided, That the provisions of WAC 131-16-015, 131-16-050, and 131-16-061 shall not apply in such cases. Optional tax-deferred annuities are provided through a salary reduction agreement between the employee and employer. There is no employer contribution for optional tax-deferred annuities.

(4) An employee who moves from an ineligible to an eligible position for the same appointing authority may become a participant by so electing in writing within six months following such move.

(5) A participant who moves from an eligible position to ((~~an ineligible~~)) a classified position for the same appointing authority may continue to be a participant by so electing within six months following such move.

(6) As specified in RCW 28B.10.400, participation in the plan by employees of the higher education coordinating board is limited to eligible employees who have contributed premiums to a similar qualified plan and who are not receiving or accruing a retirement allowance under Title 41 RCW or chapter 43.43 RCW.

(7) Participants shall continue participation regardless of the proportion of full-time duties assigned, except as otherwise provided in this section, as long as continuously employed ((~~within the community and technical college system~~)) by a participating employer. The ((~~community and technical college or state board~~)) participating employer shall notify, in writing, all newly hired employees of their potential right to participate. A participating employee, who changes employers without a break in service, shall have the responsibility to notify in writing the new ((~~college or state board~~)) participating employer of his or her eligibility. In no case will there be a requirement for retroactive contributions if an employee fails to inform his or her ((~~college or state board~~)) participating employer about eligibility previously established with another ((~~community and technical college system~~)) participating employer. For the purposes of ((~~this section~~)) determining eligibility, spring and fall quarters shall be considered as consecutive periods of employment.

((~~(7)~~)) (8) As a condition of employment, all employees who become eligible on and after January 1, 1997, shall participate in this plan upon initial eligibility. Notwithstanding this provision, all eligible new employees who at the time of employment are members of the Washington state teachers retirement system or the Washington public employees retirement system may participate as provided in WAC 131-16-031.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-031 Participation in the plan. (1) Except as provided in ((~~subsections (2) and (3) of this section~~)) this chapter, participation in the plan is required of all otherwise eligible new employees: Provided, That any such new employee, who at the time of employment is a member of the Washington state teachers retirement system or the Washington public employees retirement system, and whose ((~~college or state board~~)) employment meets the requirements of an "eligible position" as defined by such plan, may irrevocably elect to retain such membership or, if not vested in that system, retain membership until vesting occurs and then irrevocably elect to participate in the plan.

(2) Employees who establish plan eligibility in accordance with WAC 131-16-021 and who, through concurrent employment with another employer, are active Washington public employee retirement system (PERS) members are required to so advise the ((~~college or state board~~)) participating employer and shall be given the following options:

(a) To participate in the state ((~~board's~~)) board retirement plan in accordance with chapter 131-16 WAC, forgoing active PERS membership (contributions and service credit) with their other employer; or

(b) To continue active participation in PERS based upon their employment with the other public employer; forgoing participation in the state ((~~board's~~)) board retirement plan.

Failure to make an election within thirty days of notification results in the employee being placed in the plan. The ((~~college or state board~~)) participating employer is required to advise the department of retirement systems (DRS) of a PERS member's participation in the plan, whether through election or default. It shall be the employee's responsibility to notify the other employer if he or she elects to participate in the plan. The employee will notify his or her ((~~college or state board~~)) participating employer should the employee cease to be an active PERS member. This irrevocable election remains in effect as long as the employee is actively participating in a PERS plan and is required because RCW 41.40.-023(4) prohibits PERS members from simultaneously participating in two state retirement plans.

(3) Any current active participant of the plan who becomes an active member of PERS based on employment with another PERS employer is required to notify his or her ((~~college or state board~~)) participating employer. The employee will be provided the options listed in subsection (2) of this section and the ((~~college or state board~~)) participating employer will follow through accordingly.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-040 Disability retirement provisions for plan participants. The ((~~board of trustees of any college district or the state board~~)) appointing authority may approve the retirement of any participant for reasons of health or permanent disability either upon the request of the ((~~appointing authority or the~~)) participant or the participant's supervisor: Provided, That reasonable consideration is first given to the written recommendations of the employee's personal physician or, if requested by either the employee or the appointing authority, a review of such recommendations by another physician appointed by mutual agreement for that purpose.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-045 Transfers to and from other plans. (1) A participant employed ((~~in a Washington state community or technical college or the state board for community and technical colleges~~)) by a participating employer may directly transfer into his or her plan account any balances from other employers' retirement plans in accordance with Internal Revenue Code and the plan document: Provided, That such other employers' plans permit transfers out of their plans.

(2) A participant who leaves the employment of all ((~~Washington state community and technical colleges and the state board for community and technical colleges,~~)) participating employers may choose to transfer his or her existing plan account balances, subject to the rules established by TIAA-CREF for transfers, to any other employer's retirement plan in accordance with Internal Revenue Code and the plan document: Provided, That such other employer's plans will accept the transferred balances.

AMENDATORY SECTION (Amending WSR 98-14-033, filed 6/23/98, effective 7/24/98)

WAC 131-16-050 Contribution rates established. (1) On and after January 1, 1998, the ((~~employing college or state board~~)) participating employer shall make employee contributions on behalf of participants in lieu of paying an equal amount of each participant's salary, and such contributions shall be treated as employer contributions pursuant to Internal Revenue Code Section 414 (h)(2) in determining the tax treatment under the code. Such contributions shall be made by the employer in lieu of employee contributions.

(2) Contributions made under subsection (1) of this section shall be paid from the same source of funds as used in paying salary for affected participants. Participants do not have the option to receive the amounts contributed under subsection (1) of this section directly.

(3) The amounts of the contributions made under subsection (1) of this section shall be limited as follows:

(a) Five percent of salary each pay period until the participant attains age thirty-five;

(b) Seven and one-half percent of salary for each pay period from age thirty-five through and including age forty-nine; and

(c) Ten percent of salary for each pay period after attaining age fifty.

(4) The ((~~employing college or state board~~)) participating employer shall contribute an additional sum equal to the contributions required by subsection (3) of this section.

(5) During periods when participants are on leave of absence and are receiving partial compensation, the employer shall continue to make contributions on the same basis as herein provided if the participant agrees to contribute in a like manner.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-055 Options for self-directed investment of retirement plan contributions and accumulations. ((~~While actively employed,~~)) Participants may allocate current premiums or transfer ((~~plan~~)) accumulated balances to any of the investment options ((~~approved by the state board~~)) provided under the plan, subject to procedures established by TIAA-CREF.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-056 Hardship withdrawals. (1) In the event of a financial hardship consistent with requirements of subsection (2) of this section and Section 403 (b)(11) of the Internal Revenue Code, as amended, a participant may withdraw all or part of the following plan funds:

(a) Pre-1998 employee contributions;

(b) Any pre-1989 earnings on employee contributions;

(c) Any Section 414(h) employer pick-up contributions; and

(d) Any contributions transferred to this plan from another employer's plan. Such funds may be withdrawn from the participant's ((~~Washington community and technical college system~~)) state board retirement plan ((~~retirement~~)) account while actively employed. Hardship withdrawals may not be larger than the amount necessary to meet the immediate and heavy financial need defined in subsection (2) of this section plus taxes on withdrawn funds and early withdrawal penalties. Employer contributions (other than Section 414(h) pick-up contributions) and earnings on the employer contributions may not be withdrawn as a hardship withdrawal.

(2) To enable hardship withdrawal of funds, the Internal Revenue Code (Section 1.401(k)-1 (d)(2)) requires that the ((~~college president or designee~~)) participating employer shall verify that the participant has certified in writing that:

(a) The participant has an immediate and heavy financial need; and

(b) The participant has no other resources reasonably available to meet the need.

Withdrawals shall be deemed to be for "an immediate and heavy financial need" only if they are for:

(i) Payments to prevent eviction from or foreclosure on the principal residence of the participant;

(ii) Payments to prevent the participant's impending bankruptcy; and/or

(iii) Unreimbursable medical expenses incurred by the participant, spouse, dependent children, and/or dependent parents.

The participant shall be deemed to have "no other resources reasonably available to meet the need" if the participant certifies that he/she cannot meet the need through:

(A) Reimbursement or compensation by insurance or another source;

(B) Reasonable liquidation of assets;

(C) Borrowing from supplemental retirement accounts, life insurance values, or commercial sources; and/or

(D) Stopping any voluntary employee contributions to tax deferral or savings plans made available by the employer. Contributions to the employer-sponsored retirement plan must continue while the employee remains eligible for the plan.

(3) Hardship withdrawals from the ((~~community and technical college~~)) state board retirement plan are taxable income in the year received. Taxes, early withdrawal penalties, and any other consequences of hardship withdrawals shall be the sole responsibility of the participant. Withdrawals from this qualified plan may not be replaced at a later date.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-060 Cashability. Notwithstanding WAC 131-16-062(1), upon termination of employment at all ((~~community and technical college districts and the state board~~)) participating employers for at least ((~~one hundred eighty~~)) ninety consecutive calendar days with no expectation of continued employment, a participant may elect to receive a lump sum payment of his or her plan account pursuant to the settlement options ((~~being~~)) made available by TIAA-CREF at that time.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-061 Supplemental retirement benefits. (1) A participant is eligible to receive supplemental retirement benefit payments if at the time of retirement the participant is at least age sixty-two ((~~or over~~)) and has ((~~at least~~)) ten years of full-time service in the plan at a Washington public institution of higher education: Provided, That the amount of the supplemental retirement benefit, as calculated in accordance with the provisions of this section, is a positive amount.

(2) Subject to the provisions of subdivisions (c), (d), and (e) of this subsection, the annual amount of supplemental retirement benefit payable to a participant upon retirement is the excess, if any, when the value determined in subdivision (b) is subtracted from the value determined in subdivision (a), as follows:

(a) The lesser of fifty percent of the participant's average annual salary or two percent of the average annual salary multiplied by the number of years of full-time service; provided that if the participant did not elect to contribute ten percent of salary beginning July 1, 1974, or if later, after attainment of age fifty, service for such periods shall be calculated at the rate of one and one-half percent instead of two percent.

(b) The combined retirement benefit from the TIAA-CREF annuity and any other Washington state ((~~public~~)) sponsored retirement ((~~system as a result of service while employed by a Washington public higher education institution~~)) plan that the participant would receive in the first month of retirement multiplied by twelve: Provided, That the ((~~TIAA-CREF~~)) state board retirement plan benefit shall be calculated on the following assumptions:

(i) After July 1, 1974, fifty percent of the combined contributions were made to the TIAA traditional annuity and fifty percent to the CREF stock account during each year of full-time service: Provided, That benefit calculations related

to contributions made prior to July 1, 1974, shall be computed on the basis of actual allocations between TIAA and CREF; and

(ii) The full TIAA-CREF annuity accumulations, including all dividends payable by TIAA Traditional Annuity and further including the amounts, if any, paid in a single sum under the retirement transition benefit option, were fully settled on a joint and two-thirds survivorship option with a ten-year guarantee, using actual ages of retiree and spouse, but not exceeding a five-year difference; except that for unmarried participants the TIAA Traditional Annuity accumulations, including dividends, were settled on an installment refund option and the CREF Stock Account accumulations were settled on a life annuity with ten-year guarantee option, all to be based on TIAA-CREF estimates at the time of retirement; and

(iii) Annuity benefits purchased by premiums paid other than as a participant in a Washington public institution of higher education retirement plan shall be excluded.

(iv) For the purposes of this calculation, the assumptions applied to the plan accumulation settlement shall also apply to settlement of the benefit from any other retirement plan.

(c) The amount of supplemental retirement benefit for a participant who has not attained age sixty-five at retirement is the amount calculated in subsection (2) of this section reduced by one-half of one percent for each calendar month remaining until age sixty-five: Provided, That the supplemental retirement benefit for an otherwise qualified participant retired for reason of health or permanent disability shall not be so reduced.

(d) Any portion of participant's plan accumulation paid to a participant's spouse upon dissolution of a marriage shall be included in any subsequent calculation of supplemental retirement benefits just as if these funds had remained in the participant's plan account.

(e) The selection of a retirement option other than the joint and two-thirds survivorship with ten-year guarantee shall not alter the method of calculating the supplemental retirement benefit; however, if the participant's combined plan retirement benefit and calculated supplemental retirement benefit exceeds fifty percent of the participant's average annual salary, the supplemental retirement benefit shall be reduced so that the total combined benefits do not exceed fifty percent of average annual salary.

(3) The payment of supplemental retirement benefits shall be consistent with the following provisions:

(a) Supplemental retirement benefits shall be paid in equal monthly installments, except that if such monthly installments should be less than ten dollars, such benefit payments may be paid at longer intervals as determined by the state board.

(b) Supplemental retirement benefit payments will continue for the lifetime of the retired participant; however, prior to retirement, a participant may choose to provide for the continuation of supplemental retirement benefit payments, on an actuarially equivalent reduced basis, to his or her spouse or designated beneficiary after the retiree's death. Notification of such choice shall be filed in writing with the state board and shall be irrevocable after retirement. If such option is chosen, the supplemental retirement benefit payments shall be in the same proportion as any plan survivor annuity option potentially payable to and elected by the participant. If a designation of a survivor's option is not made and the participant dies after attaining age sixty-two but prior to retirement, any supplemental benefit payable shall be based on the two-thirds benefit to survivor option.

(c) Prior to making any supplemental benefit payments, the state board shall obtain a document signed by the participant and spouse, if any, or designated beneficiary acknowledging the supplemental retirement benefit option chosen by the participant.

(4) A retired participant who is reemployed shall continue to be eligible to receive retirement income benefits, except that the supplemental retirement benefit shall not continue during periods of employment for more than forty percent of full-time or seventy hours per month or five months duration in any fiscal year. Retirement contributions shall not be made from the salary for such employment, unless the individual once again becomes eligible to participate under the provisions of WAC 131-16-021.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-065 Optional retirement transition benefit. Participants may choose the optional retirement transition benefit that at the time of their retirement permits receipt of not more than ten percent of the accumulated value in each annuity in a lump-sum payment, provided that annuity benefits commence after the participant's fifty-fifth birthday. Benefits from the remainder of the combined annuity value shall be paid in the form of other retirement options then available to the annuitant ((~~as now or hereafter~~)) permitted by TIAA-CREF. Selection of the option to receive the retirement transition benefit shall be made immediately prior to retirement in such manner as ((~~now or hereafter~~)) permitted by TIAA-CREF.

WSR 10-22-076
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-04—Filed November 1, 2010, 8:16 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The purpose of this new rule is to explain to domestic insurers the standards that they must follow in the preparation of their business continuity plans as required by RCW 48.07.205. The commissioner considered relevant standards adopted by the National Association of Insurance Commissioners, other states, and other regulatory authorities that regulate financial institutions in the development of this new rule.

Statutory Authority for Adoption: RCW 48.02.060 and 48.07.205.

Adopted under notice filed as WSR 10-17-109 on August 18, 2010.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, 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 1, Amended 0, Repealed 0.

Date Adopted: November 1, 2010.

Mike Kreidler
Insurance Commissioner

BUSINESS CONTINUITY PLANS

NEW SECTION

WAC 284-16-700 Definitions. For purposes of this regulation, the following definitions apply:

(1) "Financially significant activities and applications" means computer software, including system programs and application programs, which are used to perform automated processing of a financially significant account balance or set of transactions. This includes financially significant e-business systems.

(2) "Regulatory reporting" includes filing of quarterly and annual statements, holding company filings, submission of financial payments for fees and taxes, rate and form filings and licensing appointments and renewals.

NEW SECTION

WAC 284-16-710 Requirements for business continuity plan. (1) Each domestic insurer must create and maintain a written business continuity plan identifying procedures relating to a local, state or national emergency or significant business disruption. Such procedures must be reasonably designed to:

(a) Enable the insurer to meet its existing obligations to insurance beneficiaries, policyholders, claimants, subscribers;

(b) Address the insurer's existing relationships with affiliates, third-party service providers, the National Association of Insurance Commissioners and the office of insurance commissioner; and

(c) Be made available upon request to the office of insurance commissioner.

(2) Each domestic insurer must update its business continuity plan in the event of any material change to the insurer's operations, structure, business or location.

(3) Each domestic insurer must conduct an annual review and test of its business continuity plan to determine whether modification is necessary in light of changes to the insurer's operations, structure, business or location.

(4) The elements that comprise a business continuity plan are flexible and may be tailored to the size and needs of an insurer. Each plan must at a minimum, address:

(a) Data back-up and recovery (hard copy and electronic);

(b) Information system disaster recovery (main site and alternate site);

(c) All financially significant activities and applications;

(d) Restoration priority based upon a business impact analysis;

(e) Alternate communications between policyholders or subscribers and the insurer;

(f) Alternate communications between the insurer, its employees and producers;

(g) Alternate physical location of employees;

(h) Regulatory reporting;

(i) Communications with regulators; and

(j) How the insurer will assure policyholders' prompt access to funds and securities due in the event that the insurer determines that it is unable to continue its business.

(5) If any of the categories in subsection (4) of this section are not applicable, the insurer's business continuity plan does not need to address the category but the insurer's business continuity plan must include the rationale for not including such category. If an insurer relies on an affiliate or third-party service provider for any of the categories in subsection (4) of this section or any financially significant system, application or activities, the insurer's business continuity plan must address this relationship.

(6) Each domestic insurer must clearly describe senior management roles and responsibilities associated with the declaration of an emergency and implementation of the business continuity plan.

(7) Each domestic insurer must designate a member of senior management to approve the plan and he or she shall be responsible for conducting the required annual review and test.

WSR 10-22-083
PERMANENT RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed November 1, 2010, 10:34 a.m., effective December 2, 2010]

Effective Date of Rule: December 2, 2010.

Purpose: To amend the mobile spray-coating rules by extending the existing requirement to use an HVLP spray gun to also include the requirement that the gun paint cup capacity be less than or equal to 3.0 fluid ounces.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 9.16.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 10-19-123 on September 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 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: October 28, 2010.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 9.16 SPRAY-COATING OPERATIONS

(a) Applicability. This section applies to indoor and outdoor spray-coating operations when a coating that protects or beautifies a surface is applied with spray-coating equipment, except as exempted in Section 9.16(b) of this regulation. Mobile spray-coating operations for motor vehicles or motor vehicle components are subject to Section 9.16(e) of this regulation.

(b) Exemptions. The following activities are exempt from the provisions of Sections 9.16 (c), (d), and (e) of this regulation. Persons claiming any of the following exemptions shall have the burden of demonstrating compliance with the claimed exemption.

(1) Application of architectural or maintenance coatings to stationary structures (e.g., bridges, water towers, buildings, stationary machinery, or similar structures);

(2) Aerospace coating operations subject to 40 CFR Part 63, Subpart GG. This includes all activities and materials listed in 40 CFR 63.741(f);

(3) Use of high-volume, low-pressure (HVLP) spray guns when:

(A) spray-coating operations do not involve motor vehicles or motor vehicle components;

(B) the gun cup capacity is 8 fluid ounces or less;

(C) the spray gun is used to spray-coat less than 9 square feet per day per facility;

(D) coatings are purchased in containers of 1 quart or less; and

(E) spray-coating is allowed by fire department, fire marshal, or other government agency requirements.

(4) Use of air-brush spray equipment with 0.5 to 2.0 CFM airflow and a maximum cup capacity of 2 fluid ounces, provided that persons claiming exemption from Section 9.16(e) of this regulation register with the Agency in accordance with Article 5 of this regulation and provide a copy of the current Agency registration document to each new customer before starting work at a site;

(5) Use of hand-held aerosol spray cans with a capacity of 1 quart or less; or

(6) Indoor application of automotive undercoating materials using organic solvents having a flash point in excess of 100°F.

(c) General Requirements for Indoor Spray-Coating Operations. It shall be unlawful for any person subject to the provisions of this section to cause or allow spray-coating inside a structure, or spray-coating of any motor vehicles or motor vehicle components, unless all of the following requirements are met:

(1) Spray-coating is conducted inside an enclosed spray area;

(2) The enclosed spray area employs either properly seated paint arresters, or water-wash curtains with a continuous water curtain to control the overspray; and

(3) All emissions from the spray-coating operation are vented to the atmosphere through an unobstructed vertical exhaust vent.

(d) General Requirements for Outdoor Spray-Coating Operations. It shall be unlawful for any person subject to the provisions of this section to cause or allow spray-coating outside an enclosed structure unless reasonable precautions are employed to minimize the overspray. Reasonable precautions include, but are not limited to the use of:

(1) Enclosures and curtailment during high winds; and

(2) High-volume low-pressure (HVLP), low-volume low-pressure (LVLP), electrostatic, or air-assisted airless spray equipment. Airless spray equipment may be used where low viscosity and high solid coatings preclude the use of higher-transfer efficiency spray equipment.

(e) General Requirements for Mobile Spray-Coating Operations. It shall be unlawful for any person to cause or allow the spray-coating of any motor vehicle or motor vehicle component outside of a structure required by Section 9.16(c) of this regulation, unless all the following requirements are met:

(1) Conduct all spray-coating in a portable frame-and-fabric shelter consisting of a fabric roof and three fabric sides or similar portable shelter consisting of a roof and three sides.

(A) Disassemble and remove the portable shelter from the site at the end of each day.

(B) Do not conduct mobile spray-coating operations for more than 5 consecutive calendar days at any site and not more than 14 days during any calendar month at the same site.

(2) Do not apply more than 8 ounces of coating to any single vehicle.

(3) Do not apply coating to more than 9 square feet of any single vehicle.

(4) Do not prepare a surface area for spray-coating greater than 9 square feet per any single vehicle. The measured surface area prepared for spray-coating shall include, but is not limited to all areas that are filled, ground, sanded, or inside masking.

(5) Use only HVLP spray guns or spray equipment with equivalent transfer efficiency (greater than or equal to 65%)

and with a paint cup capacity less than or equal to 3.0 fluid ounces.

(6) Minimize evaporative emissions by collecting all organic solvents used for cleanup of equipment in a closed-loop or contained system; keeping all containers of paints and organic solvents closed except when materials are being added, mixed, or removed; and storing solvent rags in closed containers.

(7) Post a sign that is visible to the public and shows the name of the company and current telephone contact information for complaints. Record information regarding complaints received and investigate complaints regarding odor, overspray, or nuisance as soon as possible, but no later than 1 hour after receipt of a complaint. As part of the investigation, determine the wind direction during the time of the complaint. If the cause of a valid complaint cannot be corrected within 2 hours of the time the complaint was received, shut down the operation until corrective action is completed.

(8) Complete the following records for each vehicle when finished with that vehicle:

(A) Customer identification, address where work was performed, date, time, and the name of the person completing the record;

(B) Identification of each vehicle and vehicle component repaired; and

(C) Quantity (in ounces) of each VOC-containing material used on each vehicle.

All records must be kept current, retained for at least 2 years, and made available to Agency representatives upon request.

(9) Provide a copy of the current Agency registration document to each customer prior to starting work at a site.

(f) Compliance with Other Regulations. Compliance with this regulation does not exempt any person from compliance with Regulation I, Section 9.11 and all other applicable regulations including those of other agencies.

WSR 10-22-087
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 1, 2010, 11:45 a.m., effective December 2, 2010]

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

Purpose: In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file either an annual report or annual survey depending on the tax adjustments being taken. The annual report or survey must be filed with the department of revenue detailing employment, wages, and employer-provided health and retirement benefits. These rules explain who is required to and how to file an annual report or annual survey, and what information must be included.

The department amended WAC 458-20-267 and 458-20-268 to recognize:

- ESSHB 1597 (chapter 106, Laws of 2010). This legislation establishes that only applications that have been approved are not confidential and subject to public disclosure.
- SB 6206 (chapter 137, Laws of 2010). This legislation provided two extensions for filing an annual report or survey. The two extensions are (1) a thirty-day extension based on circumstances beyond the control of the taxpayer and (2) a one-time ninety-day extension.
- SHB 3066 (chapter 114, Laws of 2010). This legislation provides consistency regarding the information required when filing an annual report and annual survey and now requiring all taxpayers who take a tax adjustment to file either a report or survey. The legislation also amended the due date of the reports and surveys to April 30 following any calendar year in which the person becomes eligible to claim the tax adjustment for reports or surveys due 2011 or later.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-267 (Rule 267) Annual reports for certain adjustments and 458-20-268 (Rule 268) Annual surveys for certain tax adjustments.

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

Adopted under notice filed as WSR 10-17-086 on August 16, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: November 1, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-037, filed 4/27/10, effective 5/28/10)

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

This section contains a number of examples. These examples identify a number of facts and then state a conclu-

sion. These examples should be used only as a general guide. The results of other situations must be determined after a review of all of the facts and circumstances.

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

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

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

(ii) The B&O tax credit provided by RCW 82.04.4461 for qualified development aerospace product expenditures;

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

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

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

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

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

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

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

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

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

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

(iv) The use tax exemption provided by RCW 82.12.022(5) for the use of natural or manufactured gas;

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

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

(e) **Tax adjustments for the semiconductor manufacturing and processing industry.**

(i) The B&O tax rate for manufacturers or processors for hire of semiconductor materials provided by RCW 82.04.-2404.

(ii) The sales and use tax exemptions for sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials provided by RCW 82.08.9651, 82.12.9651, and 82.12.970.

(f) **Tax adjustments for various industries.**

(i) The B&O tax rate for printing a newspaper, publishing a newspaper, or both provided by RCW 82.04.260(14).

(ii) The sales tax exemption for sales of eligible server equipment to be installed without intervening use in an eligible computer data center as provided by chapters 1 and 23, Laws of 2010 sp. sess.

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

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

(b) **Electronic filing.** Reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives the report in an electronic format. ((~~The department may waive the electronic filing requirement for good cause shown. Any person not statutorily required to electronically file the report has the option of filing the annual report electronically. Persons that claim the following tax adjustments must file the report electronically with the department: Tax adjustments for the aerospace manufacturing industry under RCW 82.04.260(11), 82.04.4461, 82.04.250(3), 82.04.290, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 (subsection (2)(a)of this section).~~))

(c) **How to obtain the form.** ((~~The form may be filed electronically on-line or obtained by downloading it~~)) Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the report may obtain the report from the department's web site (www.dor.wa.gov). It may also be obtained from the department's district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

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

(d) ((**~~First report.~~** ~~The first report filed under this subsection must also include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax adjustment, unless a report covering this twelve-month period as filed as required by a statute repealed by chapter 81, Laws of 2008. In order to meet this requirement, a person must complete a report for the calendar year immediately preceding the first use of a tax adjustment.~~)) **Special requirement for persons who did not file an annual report during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual report with the department during the previous calendar year, the report must include information on employment, wages, and employer-provided health and retirement benefits for the

two calendar years immediately preceding the due date of the report.

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

(i) **For reports due 2011 or later.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this section, the report must be filed or postmarked by April 30th following any calendar year in which the person becomes eligible to claim the tax credit, tax exemption, or tax rate.

(ii) **For reports due prior to 2010 or earlier.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this section, with the exception of the tax rate provided by RCW 82.04.2404, the report must be filed or postmarked by March 31st following any calendar year in which the tax credit, tax exemption, or tax rate is claimed. For persons claiming the tax rate provided by RCW 82.04.2404 the report must be filed or postmarked by April 30th following any calendar year in which the tax rate is claimed.

(iii) **Due date extensions.** The department may extend the due date for timely filing annual reports as provided in subsection (18) of this section.

(f) **Examples.**

(i) An aerospace firm begins taking the B&O tax rate provided by RCW 82.04.260((~~(11)~~)) (10) for manufacturers and processors for hire of commercial airplanes and component parts on October 1, ((~~2005~~)) 2010. By ((~~March 31, 2006~~)) April 30, 2011, the aerospace firm must provide ((~~two~~)) an annual report((~~s, one~~)) covering calendar years ((~~2004~~)) 2009 and ((~~another covering calendar year 2005~~)) 2010. If the aerospace firm continues to take the B&O tax rate provided by RCW 82.04.260((~~(11)~~)) (10) during calendar year ((~~2006~~)) 2011, a single annual report is due on ((~~March 31, 2007~~)) April 30, 2012, covering calendar year ((~~2006~~)) 2011.

(ii) An aluminum smelter begins taking the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July ((~~1, 2004~~)) 31, 2010. By ((~~March 31, 2005~~)) April 30, 2011, the aluminum smelter must provide ((~~two~~)) an annual report((~~s, one~~)) covering calendar years ((~~2003~~)) 2009 and ((~~another covering calendar year 2004~~)) 2010. If the aluminum smelter continues to take the B&O tax rate provided by RCW 82.04.2909 during calendar year ((~~2005~~)) 2011, a single annual report is due on ((~~March 31, 2006~~)) April 30, 2012, covering calendar year ((~~2005~~)) 2011.

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

(a) ((~~There must be a separate annual report filed for each manufacturing site at which activities are conducted that qualifies for a tax adjustments in the aluminum smelter industry per RCW 82.04.2909, electrolytic processing industry per RCW 82.16.0421, and the solar electric manufacturing industry per RCW 82.04.294.~~)) **General rule.** Except as provided in (b) of this subsection, the report must include information detailing employment positions in the state of Washington.

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

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

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

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

(iii) **~~Which manufacturing site is included in the annual report for the electrolytic processing industry tax adjustments?~~** ~~The location(s) where a person is engaged in a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process within this state is the manufacturing site(s) included in the annual report. A "chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to~~

~~split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "chlor-alkali electrolytic processing business" and "sodium chlorate electrolytic processing business" do not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville Power Administration as of June 10, 2004.~~

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

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

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

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

(i) ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260((~~(11)~~)) (10) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(ii) Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260((~~(11)~~)) (10) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. ((~~When~~)) If filing per manufacturing site, Acme Engines must file an annual report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iii) Tacoma Rivets, located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260((~~(11)~~)) (10) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iv) Dynamic Aerospace Composites is a company that only manufactures FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260((~~(11)~~)) (10) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites.

(v) Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260((~~(11)~~)) (10) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual report for any employment positions in Washington that are directly related to the qualifying activity.

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

(a) The annual report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection (4)(b) of this section, at the manufacturing site as of December 31st of the calendar year for which an applicable tax adjustment is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax adjustment are included in the report if the job is located in the state of Washington or, for persons filing as provided in subsection (4)(b) of this section, at the manufacturing site((~~, or in the case of tax adjustment for the aerospace industry, in the state of Washington~~)).

(b) **Examples.**

(i) XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. ((~~Its management and human resources divisions are located in an administrative office across the street from its Tacoma, WA aluminum smelter.~~)) XYZ Aluminum's annual report for its Tacoma, WA location will include ((~~the~~)) all of its employment positions in ((~~its administrative offices because those jobs are located at the Tacoma, WA manufacturing site~~)) this state, including its nonmanufacturing employment positions.

(ii) AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260((~~(11)~~)) (10) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection (4)(b) of this section, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

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

(a) Major group;

(b) Minor group;

(c) Broad occupation; and

(d) Detailed occupation.

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

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

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

(a) **Full-time and part-time employment positions.** In order for a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

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

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

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

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

SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday thru Friday. The second shift works six hours from 6:00 p.m. to midnight Monday thru Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

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

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

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

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

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

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

Up to $10.00 an hour;

$10.01 an hour to $15.00 an hour;

$15.01 an hour to $20.00 an hour;

$20.01 an hour to $30.00 an hour; and

$30.01 an hour or more.

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

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

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

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

(iii) All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive $10.00 commission for each navigation system sold. Three sales representatives sell 2,500

navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a $10,000 bonus for exceeding company's sales goals. In order to report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid $15.01 an hour to $20.00 an hour.

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

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

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

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

(c) Average duration of all staffing company employees.

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

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

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

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

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

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

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

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

(b) **Examples.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) **Examples.**

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

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

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a $10.00 copayment for primary care provider services and a $200 deductible for hospital services because this is the lowest cost option within Plan

A. Mosaic Aerospace will report that employees have a $10.00 copayment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit copayment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

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

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

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

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

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of $500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of $2,000 and employees have 25% co-insurance obligation.

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

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

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

(b) **Examples.**

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

retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

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

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

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

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

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

(d) **Examples.**

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

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

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

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

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

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

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

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

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

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

(16) **Additional reporting for aluminum smelters and electrolytic processing businesses.** ((~~Annual reports must include data for actual levels of employment for each quarter of the calendar year covered by the report. In addition, the report must identify the number of jobs affected by any employment reductions that have been publicly announced within sixty days of the date the report is submitted to the department.~~)) For an aluminum smelter or electrolytic processing business, the annual report must indicate the quantity of ((~~aluminum smelted at the plant~~)) product produced in this state during the time period covered by the report. ((~~For an electrolytic processing business, the annual report must indicate the quantity of product produced at the plant during the time period covered by the report.~~))

(17) **Are annual reports confidential?** Except for the additional information that the department may request which it deems necessary to measure the results of, or to determine eligibility for the tax preference, annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

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

(a) If a person ((~~fails to submit a complete annual report by March 31st, the department will declare the amount of taxes against which the tax adjustment was taken during the previous calendar year to be immediately due and payable. Interest, but not penalties, will be assessed retroactively to the date the tax adjustment was taken and accrues until taxes for which the tax adjustment was taken are repaid. Interest will be assessed at the rate provided for delinquent excise taxes as provided under chapter 82.32 RCW.~~)) claims a tax adjustment that requires an annual report under this section but fails to submit a complete report by the due date or any extension under RCW 82.32.590 the amount of the tax adjustment claimed for the previous calendar year becomes immediately due and payable. Interest, but not penalties, will be assessed on these amounts due. The interest will be assessed at the rate provided for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid.

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

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

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

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

(c) **Extension for circumstances beyond the control of the taxpayer.** If the department finds that the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the report. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

In making a determination whether the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions adopted by the department in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment of untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(d) **One-time only extension.** A taxpayer who fails to file an annual report required under this section by the due date of the report is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) An extension is for ninety days from the original due date of the annual report.

(iii) No taxpayer may be granted more than one ninety-day extension.

AMENDATORY SECTION (Amending WSR 10-10-038, filed 4/27/10, effective 5/28/10)

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

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

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

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

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

(b) ((~~An applicant for~~)) A recipient of a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in ((~~rural~~)) high unemployment counties, except as provided in (f) of this subsection. Refer to WAC 458-20-24001 (Sales and use tax deferral—Manufac-

turing and research/development activities in ((~~rural counties~~)) high unemployment counties—Applications filed after ((~~March 31, 2004~~)) June 30, 2010) for more specific information about this tax adjustment.

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

(d) ((~~An applicant for~~)) A recipient of a deferral of taxes under chapter 82.74 RCW for sales and use taxes on eligible investment project in certain agricultural or cold storage facilities, except as provided in (g) of this subsection.

(e) Deferral of taxes under chapter 82.75 RCW for sales and use taxes on an eligible investment project in biotechnology products, except as provided in (g) of this subsection.

(f) A recipient of a deferral of taxes under chapter 82.82 RCW for sales and use taxes on a corporate headquarters, except as provided in (f) of this subsection (2).

(((~~(e)~~))) (g) A lessee of an eligible investment project under chapters 82.60, 82.63, ((~~and 82.75~~)) 82.74 or 82.82 RCW (((~~as defined in RCW 82.60.020 (4)(b)(ii), 82.63.010 (7)(b), or 82.75.010 (5)(b)(ii)~~))) who receives the economic benefit of the deferral ((~~and agrees in writing with the department to complete the annual survey~~)). A lessor, by written contract, must agree to pass the economic benefit of the deferral to its lessee. The economic benefit of the deferral to the lessee must be no less than the amount of tax deferred by the lessor as evidenced by written documentation of any type, whether by payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapters 82.60, 82.63, ((~~and 82.75~~)) 82.74 or 82.82 RCW and who meets these requirements is not required to complete and file an annual survey.

(((~~(f)~~))) (h) A person claiming the B&O tax exemption provided by RCW 82.04.4268 for dairy product((~~s~~)) manufacturers, RCW 82.04.4269 for seafood product((~~s~~)) manufacturers, and RCW 82.04.4266 for fruits and vegetable((~~s~~)) manufacturers.

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

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

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

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

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

(j) A person claiming the B&O tax rate provided by RCW 82.04.260(((~~(12)~~))) (11) for timber products, unless the person is a "small harvester" as defined in RCW 84.33.035.

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

(k) A person claiming the B&O tax credit provided by RCW 82.04.4483 for new employees created by businesses engaging in computer software manufacturing or programming in rural counties.

(l) A person claiming the B&O tax credit provided by RCW 82.04.4484 for persons providing information technology help desk services to third parties.

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

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

(b) **Electronic filing.** Surveys must be filed electronically unless the department waives this requirement upon a showing of good cause. A survey is filed electronically when the department receives the survey in an electronic format. ((~~The department may waive the electronic filing requirement for good cause shown. Any person not statutorily required to electronically file the survey has the option of filing the annual survey electronically.~~

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

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

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

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

~~(iv) B&O tax rate for timber products under RCW 82.04.260(12) (subsection (2)(j) of this section).~~))

(c) **How to obtain the form.** ((~~The form may be filed electronically online or obtained by downloading it~~)) Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the survey may obtain the survey from the department's web site (www.dor.wa.gov). It may also be obtained from the department's district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

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

(d) **Due date.**

(i) **For surveys due in 2011 or later.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this section, the survey must be filed or postmarked by ((~~March 31st~~)) April 30th following any calendar year in which the person becomes eligible to claim the tax credit, tax exemption, or tax rate ((~~is claimed~~)).

For ((~~applicants~~)) recipients of any sales tax deferrals listed under subsection (2) of this section or for lessees required to file the annual survey as provided in subsection (2)(g) of this section, the survey must be filed or postmarked by ((~~March 31st~~)) April 30th of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(ii) **For surveys due in 2010 or earlier.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this section, the survey must be filed or postmarked by March 31st following any calendar year in which the tax credit, tax exemption, or tax rate is claimed.

For recipients of any sales tax deferrals listed under subsection (2) of this section or for lessees required to file the annual survey as provided in subsection (2)(g) of this section, the survey must be filed or postmarked by March 31st of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(iii) **Due date extensions.** The department may extend the due date for timely filing annual surveys as provided in subsection (11) of this section.

(e) **Special requirement for person who did not file an annual survey during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the annual survey must include the information described in subsection (4) of this section for the two calendar years immediately preceding the due date of the survey.

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

(i) Advanced Computing, Inc. qualifies for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year ((~~2006~~)) 2010. Advanced Computing, Inc. filed an annual survey in March 2010 for credit claimed under RCW 82.04.4452 in 2009. Advanced Computing, Inc. must electronically file an annual survey with the department by ((~~March 31, 2007~~)) April 30, 2011.

(ii) In ((~~1999~~)) 2009, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The investment project was certified by the department as being operationally complete in ((~~2001~~)) 2010. Biotechnology, Inc. filed an annual survey in March 2010 for credit claimed under RCW 82.04.4452 in 2009. For the sales and use tax deferral under chapter 82.63 RCW. Biotechnology, Inc. must file its annual survey with the department for the ((~~2005~~)) 2010 calendar year by ((~~March 31, 2006~~)) April 30, 2011. A survey is due from Biotechnology, Inc. by ((~~March 31st~~)) April 30th each following year, with its last survey due ((~~March 31, 2008~~)) April 30, 2018.

(iii) Advanced Materials, Inc. has been conducting manufacturing activities in a building leased from Property Management Services since ((~~2002~~)) 2009. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the building was certified by the department as operationally complete in ((~~2002~~)) 2009. In order to pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials, Inc. $5,000 less in rent each year. ((~~Prior to the 2004 calendar year, Advanced Materials, Inc. is not required under chapter 82.60 RCW to file an annual survey.~~)) Advanced Materials, Inc. is a first-time filer of annual surveys. Advanced Materials, Inc.((~~, however,~~)) must file its annual survey with the department ((~~for~~)) covering the ((~~2004~~)) 2008 and 2009 calendar years by March 31, ((~~2005~~)) 2010, assuming all the requirements of ((~~RCW 82.60.020 (4)(b)(ii)~~)) subsection (2)(f) of this section are met. A survey is due from Advanced Materials, Inc. by ((~~March 31st~~)) April 30th each following year, with its last survey due by ((~~March 31, 2009~~)) April 30, 2017.

(iv) Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the ((~~gross proceeds of sales derived from the~~)) canning of fruit ((~~for the first time~~)) in ((~~2006~~)) 2010. Fruit Canning, Inc. is a first-time filer of annual surveys. Fruit Canning, Inc. must file ((~~two~~)) an annual survey((~~s~~)) with the department by ((~~March 31, 2007~~)) April 30, 2011, ((~~one~~)) covering calendar years ((~~2005~~)) 2009 and ((~~one covering calendar year 2006~~)) 2010. If Fruit Canning, Inc. claims the B&O tax exemption during subsequent years, it must file an annual survey for each of those years by ((~~March 31~~)) April 30th of each following year.

(4) **What information does the annual survey require?** The annual survey requests information about the following:

(a) Amount of tax deferred, the amount of B&O tax exempted, the amount of B&O tax credit taken, or the amount of B&O tax reduced under the preferential rate;

(b) For persons claiming the tax deferral under chapter 82.60 or 82.63 RCW:

(i) The number of new products or research projects by general classification; and

((~~(c)~~)) (ii) The number of trademarks, patents, and copyrights associated with activities at the investment project;

(c) For persons claiming the B&O tax credit under RCW 82.04.4452:

(i) The qualified research and development expenditures during the calendar year for which the credit was claimed;

(ii) The taxable amount during the calendar year for which the credit was claimed;

(iii) The number of new products or research projects by general classification;

(iv) The number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed; and

(v) Whether the credit has been assigned and who assigned the credit.

(d) The following information for employment positions in Washington:

(i) The total number of employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment. Refer to subsection (7) of this section for information about full-time, part-time, and temporary employment positions;

(iii) The number of employment positions according to the wage bands of less than $30,000; $30,000 or greater, but less than $60,000; and $60,000 or greater. A wage band containing fewer than three individuals may be combined with the next lowest wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands; and

(e) Additional information the department requests that is necessary to measure the results of, or determine eligibility for the tax adjustments.

(i) The department is required to report to the state legislature summary descriptive statistics by category and the effectiveness of ((~~the~~)) certain tax adjustments, such as job creation, company growth, and such other factors as the department selects or as the statutes identify. The department has included questions related to measuring these effects.

(ii) In addition, the department has included questions related to:

(A) The person's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.02565 and 82.12.02565; and

(B) The Unified Business Identifier used with the Washington state employment security department and all employment security department reference numbers used on quarterly tax reports that cover the employment positions reported in the annual survey.

(5) **What is total employment in the annual survey?**

(a) The annual survey requires information on all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the survey. Total employment includes persons who are on leaves of absence such as sick leave, vacation, disability leave, jury duty, military leave, and workers compensation leave, regardless of whether those persons are receiving wages. Total employment does not include separation from employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(b) **Examples.** Assume these facts for the following examples. National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield, WA and Kennewick, WA. NCE received a deferral of taxes under chapter 82.60 RCW for sales and use taxes on its new manufacturing site in Kennewick, WA.

(i) NCE employs two hundred workers in Ridgefield manufacturing construction cranes. NCE employs two hundred fifty workers in Kennewick manufacturing bulldozers and other earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax adjustments, NCE's annual survey must report a total of four hundred fifty employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax adjustments.

(ii) On November 20th, NCE lays off seventy-five workers. NCE notifies ten of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The seventy-five employment positions are excluded from NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire ten employees, those employment positions are vacant on December 31st.

(iii) On December 31st, NCE has one hundred employees on vacation leave, five employees on sick leave, two employees on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of employees on vacation, sick leave, and military leave must be included in NCE's annual survey. The one employee scheduled to retire must be included in the annual survey because the employment position is filled on December 31st. The three vacant positions are not included in the annual survey.

(iv) In June, NCE hires two employees from a local college to intern in its engineering department. When the academic year begins in September, one employee ends the internship. The other employee's internship continues until the following June. NCE must report one employment position on the annual survey, representing the one intern employed on December 31st.

(6) **When is an employment position located in Washington state?** The annual survey seeks information about Washington employment positions only. An employment position is located in Washington state if:

(a) The service of the employee is performed entirely within the state;

(b) The service of the employee is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

(c) The service of the employee is performed both within and without the state, and the employee's base of operations is within the state;

(d) The service of the employee is performed both within and without the state, but the service is directed or controlled in this state; or

(e) The service of the employee is performed both within and without the state and the service is not directed or controlled in this state, but the employee's individual residence is in this state.

(f) **Examples.** Assume these facts for the following examples. Acme Computer, Inc. develops computer software and claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Acme Computer, headquartered in California, has employees working at four

locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee services within Washington state.

(ii) John is an Acme Computer salesperson. John travels throughout Washington, Oregon, and Idaho promoting sales of new Acme Computer products. John's activities are directed by his manager in Acme Computer's Spokane office. John's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) Jane, vice-president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position must not be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Although Jane regularly performs services within Washington state, her activities are directed or controlled in Oregon.

(iv) Roberta, a service technician, travels throughout the United States servicing Acme Computer products. Her activities are directed from Acme Computer's corporate offices in California, but she works from her home office in Tacoma. Roberta's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Roberta performs services both within and without the state and the service is not directed or controlled in this state, but her residence is in Washington state.

(7) **What are full-time, part-time and temporary employment positions?** The survey must separately identify the number of full-time, part-time, and temporary employment positions as a percent of total employment.

(a) **Full-time and part-time employment positions.** A position is considered full-time or part-time if the employer intends for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months, excluding any leaves of absence.

(i) A full-time position is a position that requires the employee to work, excluding overtime hours, thirty-five hours per week for fifty-two consecutive weeks, four hundred fifty-five hours a quarter for four consecutive quarters, or one thousand eight hundred twenty hours during a period of twelve consecutive months.

(ii) A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive their current wage, the position must be reported as a full-time employment position.

(b) **Temporary positions.** There are two types of temporary positions.

(i) **Employees of the person required to complete the survey.** In the case of a temporary employee directly employed by the person required to complete the survey, a temporary position is a position intended to be filled for a period of less than fifty-two consecutive weeks or twelve consecutive months. For example, seasonal employment positions are temporary positions. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this section.

(ii) **Workers furnished by staffing companies.** A temporary position also includes a position filled by a worker furnished by a staffing company, regardless of the duration of the placement. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this section. In addition, the person filling out the annual survey must provide the following additional information:

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

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

(C) Average duration of all staffing company employees.

(c) **Examples.** Assume these facts for the following examples. Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices at a facility located in Everett, WA. Worldwide Materials claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Worldwide Materials has one hundred employees.

(i) On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked forty hours a week and were expected to work for fifty-two consecutive weeks. Worldwide Materials must report these employees as being employed in a full-time position. Although the five employees are not currently working, they are on workers' compensation leave and Worldwide Materials had intended for the full-time positions to be filled for at least fifty-two consecutive weeks.

(ii) In September, Worldwide Materials hires two employees on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the position is intended to be filled for a period exceeding twelve consecutive months, Worldwide Materials must report these positions as two full-time positions.

(iii) Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, fifty-two weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) On November 1st, a Worldwide Materials engineer begins twelve weeks of family and medical leave. The engi-

neer was expected to work forty hours a week for fifty-two consecutive weeks. While the engineer is on leave, Worldwide Materials hires a staffing company to furnish a worker to complete the engineer's projects. Worldwide Materials must report the engineer as a full-time position on the annual survey. Worldwide Materials must also report the worker furnished by the staffing company as a temporary employment position and include the information as required in (b) of this subsection.

(v) Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week, but are expected to work twelve consecutive months. The three research employees are paid a comparable wage as other research employees who are required to work a set schedule of forty hours a week. Although the three research employees may work fewer hours, they are receiving comparable wages as other research employees working forty hours a week. Worldwide Materials must report these positions as full-time employment positions, because each position is equivalent to a full-time employment position.

(vi) Worldwide Materials has a large order to fulfill and hires ten employees for the months of June and July. Five of the employees leave at the end of July. Worldwide Materials decides to have the remaining five employees work on an on-call basis for the remainder of the year. As of December 31st, three of the employees are working for Worldwide Materials on an on-call basis. Worldwide Materials must report three temporary employment positions on the annual survey and include these positions in the information required in subsections (5), (8), and (9) of this section.

(8) **What are wages?** For the purposes of the annual survey, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, or otherwise as reported on the W-2 forms of employees. Stock options granted as compensation to employees are wages to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer. The compensation of a proprietor or a partner is determined in one of two ways:

(a) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(b) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances is the compensation.

(9) **What are employer-provided benefits?** The annual survey requires persons to report the number of employees that have employer-provided medical, dental, and retirement benefits, by each of the wage bands. An employee has employer-provided medical, dental, and retirement benefits if the employee is currently eligible to participate or receive the benefit. A benefit is "employer-provided" if the medical, dental, and retirement benefit is dependent on the employer's establishment or administration of the benefit. A benefit that is equally available to employees and the general public is not an "employer-provided" benefit.

(a) **What are medical benefits?** "Medical benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical and/or dental care services.

(i) Health plans include any:

(A) "Employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA);

(B) "Health plan" or "health benefit plan" as defined in RCW 48.43.005;

(C) Self-funded multiple employer welfare arrangement as defined in RCW 48.125.010;

(D) "Qualified health insurance" as defined in Section 35 of the Internal Revenue Code;

(E) "Archer MSA" as defined in Section 220 of the Internal Revenue Code;

(F) "Health savings plan" as defined in Section 223 of the Internal Revenue Code;

(G) "Health plan" qualifying under Section 213 of the Internal Revenue Code;

(H) Governmental plans; and

(I) Church plans.

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

(b) **What are dental benefits?** "Dental benefits" means a dental health plan offered by an employer as a benefit to its employees. "Dental health plan" has the same meaning as "health plan" in (a) of this subsection, but is for the purpose of providing for employees or their beneficiaries, through the purchase of insurance or otherwise, dental care services. "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) **What are retirement benefits?** "Retirement benefits" means compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. An employer contribution to the retirement plan is not required for a retirement plan to be employer-provided. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods after employment is terminated. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **Examples.** Assume these facts for the following examples. Medical Resource, Inc. is a pharmaceutical manufacturer located in Spokane, WA. Medical Resource, Inc.

claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. It employs two hundred full-time employees and fifty part-time employees. Medical Resource, Inc. also hires a staffing company to furnish seventy-five workers.

(i) Medical Resource, Inc. offers its employees two different health plans as a medical benefit. Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Plan A until completing thirty days of employment. Plan B costs employees $200 each month. Full-time and part-time employees are eligible for Plan B after six months of employment. One hundred full-time employees are enrolled in Plan A. One hundred full-time and part-time employees are enrolled in Plan B. Forty full-time and part-time employees chose not to enroll in either plan. Ten part-time employees are not yet eligible for either Plan A or Plan B. Medical Resource, Inc. must report two hundred employees as having employer-provided medical benefits, because this is the number of employees enrolled in the health plans it offers.

(ii) Medical Resource, Inc. does not offer medical benefits to the employees of the staffing company. However, twenty-five of these workers have enrolled in a health plan through the staffing company. Medical Resource, Inc. must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) Medical Resource, Inc. does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all employees with a 30% discount on any dental care service. No action, other than Medical Resource, Inc. employment, is required by employees to receive this benefit. Unlike the medical benefit, employees are eligible for the dental benefit as of the first day of employment. This benefit is not provided to the workers furnished by the staffing company. Medical Resource, Inc. must report two hundred and fifty employment positions as having dental benefits, because this is the number of employees enrolled in this dental plan.

(iv) Medical Resource, Inc. offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource, Inc. makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, two hundred and twenty-five workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan. One hundred of these workers receive matching contributions. Medical Resource, Inc. must report two hundred employment positions as having employer-provided retirement benefits, because this is the number of employees enrolled in the 401(k) Plan.

(v) Medical Resource, Inc. coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered to bank customers. Employees who open an IRA with the bank can arrange to have their contributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource, Inc. cannot report that these fifty employees have employer-provided retirement benefits. IRAs are not an employer-provided benefit because the ability to establish the IRA is not dependent on Medical Resource, Inc.'s participation or sponsorship of the benefit.

(10) **Is the annual survey confidential?** The annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax adjustment taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (b) and (c) of this subsection. More confidentiality provisions in regards to the annual surveys are as follows:

(a) **Failure to timely file a complete annual survey subject to disclosure.** If ((~~the following taxpayers fail to timely file a complete annual survey for claiming the tax adjustment~~)) a taxpayer fails to file a complete annual survey as required by law, then the fact that ((~~such~~)) the taxpayer((~~s~~)) fails to timely file a complete annual survey and the amount required to be repaid as a result of the taxpayer's failure to file a complete annual survey is not confidential((~~:~~

~~(i) Persons receiving deferral of taxes under chapter 82.75 RCW on an eligible investment project in biotechnology products (RCW 82.32.645(6));~~

~~(ii) Persons claiming the B&O tax exemption provided by RCW 82.04.4266 for fruits and vegetables, RCW 82.04.4268 for dairy products, and RCW 82.04.4269 for seafood products (RCW 82.32.610(5)); and~~

~~(iii) Persons claiming the B&O tax credit provided by RCW 82.04.449 for customized employment training (RCW 82.32.650(5))~~)) and may be disclosed to the public upon request.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If ((~~the following~~)) a taxpayer((~~s~~)) reports a tax adjustment amount on the annual survey that is different than the amount actually claimed on the ((~~taxpayers'~~)) taxpayer's tax returns or otherwise allowed by the department, then the amount actually claimed or allowed may be disclosed((~~:~~

~~(i) Persons claiming the high technology B&O tax credit provided by RCW 82.04.4452 (RCW 82.04.4452 (6)(d)(i));~~

~~(ii) Persons claiming the B&O tax rate provided by RCW 82.04.260(12) for timber products (RCW 82.32.630 (2)(d))~~)).

(c) **Tax adjustment is less than ten thousand dollars.** If the tax adjustment ((~~of the following taxpayers~~)) is less than ten thousand dollars during the period covered by the annual survey, then ((~~such~~)) the taxpayer((~~s~~)) may request the department to treat the amount of the tax adjustment as confidential under RCW 82.32.330. The request must be made for each survey in writing, dated and signed by the owner, corporate officer, partner, guardian, executor, receiver, administrator, or trustee of the business, and filed with the department's special programs division at the address provided above in subsection (3) of this section.

((~~(i) Persons claiming the high technology B&O tax credit provided by RCW 82.04.4452 (RCW 82.04.4452 (6)(d)(ii)); and~~

~~(ii) Persons claiming the B&O tax credit provided by RCW 82.04.4487 for engaging in qualified preproduction development in the field of aeronautics (RCW 82.32.635 (2)(d)).~~))

(11) **What are the consequences for failing to timely file a complete annual survey?**

(a) **What is a "complete annual survey"?** An annual survey is complete if:

(i) The annual survey is filed on the form required by this section or in an electronic format as required by law; and

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

Responses such as "varied," "various," or "please contact for information" are not good faith responses to a question.

(b) ((**High technology business and occupation (B&O) tax credit.** If a person claiming the B&O tax credit provided by RCW 82.04.4452 for persons engaged in qualified research and development fails to timely file a complete annual survey by the date due, the person is not eligible to take or assign the credit in the year the person failed to timely complete the annual survey. See RCW 82.04.4452. For example, if a person claims the credit in 2006 but fails to file a complete annual survey by March 31, 2007, then the person is not eligible to take or assign the credit in 2007. If a person claims the B&O tax credit during this period of ineligibility, the department will declare the amount of taxes for which the credit was claimed during the period of ineligibility to be immediately due and payable with interest, as provided in chapter 82.32 RCW.

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

(c) **Tax deferrals for investment projects in rural counties.** If a recipient of the deferral fails to timely file a complete annual survey required under RCW 82.60.070 by the date due, 12.5% of the total deferred tax is immediately due. See RCW 82.60.070. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee is responsible for payment to the extent the lessee has received the economic benefit. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessment may be assessed and imposed. For example, if a person fails to file a complete annual survey by March 31, 2007, then 12.5% of the total deferred tax is immediately due, with applicable penalties and interest beginning to accrue on the due date.

(d) **Tax deferrals for investment projects for high technology businesses.** If a recipient of the deferral fails to timely file a complete annual survey required under RCW 82.63.020 by the date due, 12.5% of the total deferred tax is immediately due with interest, but not penalties, as provided in chapter 82.32 RCW. See RCW 82.63.045. Interest is computed retroactively to the date the tax deferral was claimed and accrues until the liability is paid in full. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(e) **Business and occupation (B&O) tax exemption for fruit and vegetable, dairy product, and seafood product businesses.** If a person fails to timely file a complete annual survey for the B&O tax exemption under RCW 82.04.4266, 82.04.4268, or 82.04.4269 by the due date, the amount of taxes exempted for the previous calendar year is immediately due and payable. See RCW 82.32.610. Interest, but not penalties, applies to the amounts due under this subsection. The amount due must be calculated using a rate of 0.138%. Interest is computed retroactively to the date the tax exemption was claimed and accrues until the liability is paid in full.

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

(f) **Tax deferrals for investment projects for fruit and vegetable, dairy product, and seafood product businesses.** If a recipient of the deferral fails to file a complete annual survey required under RCW 82.74.040 by the date due, 12.5% of the total deferred tax is immediately due with interest, but not penalties, as provided in chapter 82.32 RCW. See RCW 82.74.040. Interest begins to accrue on the due date and accrues until the liability is paid in full. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(4), the lessee must be responsible for payment to the extent the lessee has received the economic benefit.

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

(g) **Tax deferrals for investment projects for biotechnology products.** If a recipient of the deferral fails to file a complete annual survey required under RCW 82.32.645 by the due date, 12.5% of the total deferred tax is immediately due with interest, but not penalties, as provided in chapter 82.32 RCW. See RCW 82.32.645. Interest begins to accrue on the due date and accrues until the liability is paid in full.

(h) **Business and occupation (B&O) tax credit for customized employment training.** If a person fails to timely file a complete annual survey for the B&O tax credit under RCW 82.04.449 by the due date, the amount of tax credit claimed for the previous calendar year is immediately due and payable. See RCW 82.32.650. Interest, but not penalties, applies to the amounts due under this subsection. Interest is computed retroactively to the date the tax credit was claimed and accrues until the liability is paid in full.

If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.

(i) **Reduced business and occupation (B&O) tax credit for timber products.** If a person fails to timely file a complete annual survey for the reduced B&O tax rate under

~~RCW 82.04.260(12) by the due date, the amount of tax reduced for the previous calendar year is immediately due and payable. See RCW 82.32.630. Interest, but not penalties, applies to the amounts due under this subsection. Interest is computed retroactively to the date the reduced taxes were due and accrues until the liability is paid in full.~~

~~If a person fails to file the survey by the due date as the result of circumstances beyond the control of the taxpayer, the person may request a thirty-day extension of the due date. See WAC 458-20-228 for more information on circumstances beyond the control of the taxpayer. The request must be made in writing before the due date to the address provided in subsection (3)(c) of this section.~~)) If a person claims a tax adjustment that requires an annual survey under this section but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the amount of the tax adjustment claimed for the previous calendar year becomes immediately due. If the tax adjustment is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit. Interest, but not penalties, will be assessed on these amounts. The interest will be assessed at the rate provided for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax adjustment was claimed, and accrues until the taxes for which the tax adjustment was claimed are repaid.

(c) **Extension for circumstances beyond the control of the taxpayer.** If the department finds that the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the survey. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

In making a determination whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions adopted by the department in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment of untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(d) **One-time only extension.** A taxpayer who fails to file an annual survey required under this section by the due date of the survey is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) An extension is for ninety days from the original due date of the annual survey.

(iii) No taxpayer may be granted more than one ninety-day extension.

WSR 10-22-088
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed November 1, 2010, 1:04 p.m., effective December 2, 2010]

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

Purpose: The division of developmental disabilities (DDD) is amending chapter 388-845 WAC, DDD home and community based waivers to add a fifth waiver, known as the children's intensive in-home behavioral supports (CIIBS). These rules are necessary to implement the CIIBS waiver and incorporate changes reflected in the waivers submitted to the federal Centers for Medicare and Medicaid Services under 1915 (c) of the Social Security Act and implement section 205 (1)(i), chapter 329, Laws of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0055, 388-845-0065, 388-845-0100, 388-845-0111, 388-845-0120, 388-845-0200, 388-845-0500, 388-845-0505, 388-845-0900, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1110, 388-845-1150, 388-845-1200, 388-845-1300, 388-845-1400, 388-845-1600, 388-845-1605, 388-845-1620, 388-845-1650, 388-845-1700, 388-845-1800, 388-845-1900, 388-845-2000, 388-845-2005, 388-845-2100, 388-845-2200, 388-845-3000, 388-845-3085, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, chapter 194, Laws of 2009, and section 205 (1)(i), chapter 329, Laws of 2008.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 10-09-100 on April 21, 2010.

Changes Other than Editing from Proposed to Adopted Version: See Revisor's note below.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 18, Amended 38, 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 18, Amended 38, Repealed 0.

Date Adopted: November 1, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-23 issue of the Register.

WSR 10-22-089
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed November 1, 2010, 1:38 p.m., effective December 2, 2010]

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

Purpose: WAC 458-20-14601 (Rule 14601) provides tax reporting instructions for financial institutions doing business both inside and outside the state of Washington.

WAC 458-20-194 (Rule 194) explains the apportionment requirements of persons entitled to apportion income under RCW 82.04.460(1). It also describes Washington nexus standards for business activities subject to apportionment under RCW 82.04.460(1). Rule 194 applies to persons subject to the service and other activities, international investment income, licensed boarding home, and low-level radioactive waste disposal business and occupation (B&O) tax classifications, and who are not required to apportion their income under another statute or rule.

Chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus provisions addressed in these rules, effective June 1, 2010. The department amended these rules to recognize that the guidance provided in the rules does not apply after May 31, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-14601 (Rule 14601) Financial institutions—Income apportionment and 458-20-194 (Rule 194) Doing business inside and outside the state.

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

Adopted under notice filed as WSR 10-17-081 on August 16, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: November 1, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-11-033, filed 5/15/97, effective 7/1/97)

WAC 458-20-14601 Financial institutions—Income apportionment. (1) **Introduction.**

(a) This section provides tax reporting instructions for financial institutions doing business both inside and outside the state of Washington, and applies to tax liability incurred through May 31, 2010. Chapter 23, Laws of 2010 sp. sess. (2ESSB 6143) changed the apportionment reporting requirements for financial institutions effective June 1, 2010. Refer to WAC 458-20-19404 (Financial institutions—Income apportionment) for tax liability incurred on and after June 1, 2010.

Financial businesses that do not meet the definition of "financial institution" in subsection (3)(j) of this section and other businesses taxable under RCW 82.04.290 should refer to WAC 458-20-194 (Doing business inside and outside the state) for tax liability incurred on or before May 31, 2010.

(b) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

(2) **Apportionment and allocation.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state shall allocate and apportion its apportionable income as provided in this section. All gross income that is not includable in apportionable income shall be allocated pursuant to the provisions of chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, shall allocate and apportion its gross income as provided in this section.

(b) The apportionment percentage is determined by adding the taxpayer's receipts factor (as described in subsection (4) of this section), property factor (as described in subsection (5) of this section), and payroll factor (as described in subsection (6) of this section) together and dividing the sum by three. If one of the factors is missing, the two remaining factors are added together and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(c) Each factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with the provisions of this section, financial institutions will file returns using factors calculated based on the most recent calendar year for which information is available. A reconciliation shall be filed for each year within thirty days of the time that the taxpayer files its federal income tax returns for that year, but not later than October 30th of the following year. For example, for returns filed for taxable activities occurring during calendar 1998, a taxpayer would use factors calculated based on its 1996 information. A reconciliation would be filed for 1998 using factors based on 1998 information as soon as the information was available to the taxpayer, but not later than thirty days after the time fed-

eral income tax returns were due for 1998, or October 30, 1999. In the case of consolidations, mergers, or divestitures, a taxpayer shall make the appropriate adjustments to the factors to reflect its changed operations.

(d) If the allocation and apportionment provisions of this section do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) A calculation of tax liability utilizing the cost of doing business method outlined in RCW 82.04.460(1);

(iii) The exclusion of any one or more of the factors;

(iv) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(v) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this section:

(a) **"Apportionable income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(b) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(c) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(d) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this section to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(e) **"Compensation"** means wages, salaries, commissions and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Federal Internal Revenue Code. In the case of employees not subject to the Federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Federal Internal Revenue Code shall be made as though such employees were subject to the Federal Internal Revenue Code.

(f) **"Credit card"** means credit, travel or entertainment card.

(g) **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

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

(i) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(j) **"Financial institution"** means:

(i) Any corporation or other business entity chartered under Titles 30, 31, 32, 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. §§21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. §1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. §§611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. §3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(ix) Any corporation or other business entity who receives gross income taxable under RCW 82.04.290, and whose voting interests are more than fifty percent owned, directly or indirectly, by any person or business entity described in (j)(i) through (viii) of this subsection other than an insurance company liable for the insurance premiums tax under RCW 48.14.020 or any other company taxable under chapter 48.14 RCW;

(x) A corporation or other business entity that derives more than fifty percent of its total gross income for federal income tax purposes from finance leases. For purposes of this subsection, a "finance lease" means a lease which meets two requirements:

(A) It is the type of lease permitted to be made by national banks (see 12 U.S.C. 24(7), 12 U.S.C. 24(10), Comptroller of the Currency-Regulations, Part 23-Leasing (added by 56 Fed. Reg. 28314, June 20, 1991, effective July 22, 1991), and Regulation Y of the Federal Reserve System 12 CFR 225.25, as amended); and

(B) It is the economic equivalent of an extension of credit, i.e., the lease is treated by the lessor as a loan for federal income tax purposes. In no event does a lease qualify as an extension of credit where the lessor takes depreciation on such property for federal income tax purposes.

For this classification to apply, the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement;

(xi) Any other person or business entity, other than an insurance general agent taxable under RCW 82.04.280(5), an insurance business exempt from the business and occupation tax under RCW 82.04.320, a real estate broker taxable under RCW 82.04.255, a securities dealer or international investment management company taxable under RCW 82.04.290 (2), that derives more than fifty percent of its gross receipts from activities that a person described in (j)(ii) through (viii) and (x) of this subsection is authorized to transact. For purposes of this subparagraph, the computation of apportionable income shall not include income from nonrecurring, extraordinary items;

(xii) The department is authorized to exclude any person from the application of (j)(xi) of this subsection upon such person proving, by clear and convincing evidence, that the activity producing the receipts of such person is not in substantial competition with those persons described in (j)(ii) through (viii) and (x) of this subsection.

(k) **"Gross income of the business," "gross income," or "income"** has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(l) **"Gross rents"** means the actual sum of money or other consideration payable for the use or possession of real property. "Gross rents" includes, but is not limited to:

(i) Any amount payable for the use or possession of real property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(ii) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(iii) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or grantor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable period. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(iv) The following are not included in the term "gross rents":

(A) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

(D) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

(m) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: Properties treated as loans under Section 595 of the Federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(n) **"Loan secured by real property"** means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(o) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(p) **"Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(q) **"Person"** has the meaning given in RCW 82.04.030.

(r) **"Principal base of operations"** with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly:

(i) Starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer; or

(ii) Communicates with his or her customers or other persons; or

(iii) Performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(s) **"Real property owned"** and **"tangible personal property owned"** mean real and tangible personal property, respectively:

(i) On which the taxpayer may claim depreciation for federal income tax purposes; or

(ii) Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax).

Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(t) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(u) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country.

(v) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(w) **"Taxable in another state"** means either:

(i) That a taxpayer is subject in another state to a gross receipts or franchise tax for the privilege of doing business, a franchise tax measured by net income, a corporate stock tax (including a bank shares tax), a single business tax, or an earned surplus tax, or any other tax which is imposed upon or measured by gross or net income; or

(ii) That another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not.

(x) **"Taxable period"** means the calendar year during which tax liability is incurred.

(y) **"Transportation property"** means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.

(4) **Receipts factor.**

(a) **General.** Except as provided in subsection (7) of this section, the receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) **Receipts from the lease of real property.** The numerator of the receipts factor includes income from the lease or rental of real property owned by the taxpayer if the property is located within this state or income from the sublease of real property if the property is located within this state.

(c) **Receipts from the lease of tangible personal property.**

(i) Except as described in (c)(ii) of this subsection, the numerator of the receipts factor includes income from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Income from the lease or rental of transportation property owned by the taxpayer is included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft is used in this state and the amount of income that is to be included in the numerator of this state's receipts factor is determined by multiplying all the income from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) **Interest from loans secured by real property.**

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subparagraph is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subparagraph shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(e) **Interest from loans not secured by real property.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) **Net gains from the sale of loans.** The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (4)(d) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) **Receipts from credit card receivables.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) **Net gains from the sale of credit card receivables.** The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (g) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) **Credit card issuer's reimbursement fees.** The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (g) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) **Receipts from merchant discount.** The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) **Loan servicing fees.**

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under (d) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under (e) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(l) **Receipts from services.** The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(m) **Receipts from investment assets and activities and trading assets and activities.**

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (m)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (m)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the

arbitrage book and foreign currency transactions, (but excluding amounts described in (m)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this paragraph, average value shall be determined using the rules for determining the average value of tangible personal property set forth in subsection (5) of this section.

(iii) In lieu of using the method set forth in (m)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (m)(ii)(a) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (m)(iii) of this subsection, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(n) **Attribution of certain receipts to commercial domicile.** All receipts which would be assigned under this section to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Property factor.**

(a) **General.** Except as provided in subsection (7) of this section, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable period, the average value of the real and tangible personal property owned by the taxpayer that is located or used within this state during the taxable period, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable period, and the denominator of which is the average value of all such property located or used inside and outside this state during the taxable period.

(b) **Value of property owned by the taxpayer.**

(i) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established under regulatory or financial accounting guidelines which is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this section.

(iii) Credit card receivables are valued at their out-standing principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(c) **Average value of property owned by the taxpayer.** The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable period and the value on the last day of the taxable period and dividing the sum by two. If averaging on this basis does not properly reflect average value, the department may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the department or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property inside and outside this state

and on all subsequent returns unless the taxpayer receives prior permission from the department or the department requires a different method of determining average value.

(d) **Average value of real property and tangible personal property rented to the taxpayer.**

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and which is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) Where the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the department or by the taxpayer when approved in writing by the department. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the department or the department requires a different method of valuation.

(e) **Location of real property and tangible personal property owned by or rented to the taxpayer.**

(i) Except as described in (e)(ii) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere during the tax reporting period. If the extent of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered. Thus, a motor vehicle will not be considered as used in Washington if there is no requirement for the vehicle to be licensed or registered in Washington.

(f) **Location of loans.**

(i)(A) A loan is located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(B) A loan is properly assigned to the regular place of business with which it has a majority of substantive contacts. A loan assigned by the taxpayer to a regular place of business outside the state shall be presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(III) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(ii) The presumption of proper assignment of a loan provided in (f)(i)(A) of this subsection may be rebutted by a preponderance of the evidence, showing that the majority of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is located within this state if: The taxpayer had a regular place of business within this state at the time the loan was made; and the taxpayer fails to show, by a preponderance of the evidence, that the majority of substantive contacts regarding such loan did not occur within this state.

((~~(C)~~)) (A) If a loan is assigned by the taxpayer to a place outside this state which is not a regular place of business, it is presumed, subject to rebuttal on a preponderance of evidence, that the majority of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in subsection (3)(d) of this section, was within this state.

((~~(D)~~)) (B) To determine the state in which the majority of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval" and "administration" are defined as follows:

(I) *Solicitation.* Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(II) *Investigation.* Investigation is the procedure whereby employees of the taxpayer determine the credit worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(III) *Negotiation.* Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination and security required). Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(IV) *Approval.* Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the

taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(V) *Administration.* Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.

(g) **Location of credit card receivables.** For purposes of determining the location of credit card receivables, credit card receivables are treated as loans and are subject to the provisions of (f) of this subsection.

(h) **Period for which properly assigned loan remains assigned.** A loan that has been properly assigned to a state shall remain assigned to that state for the length of the original term of the loan, absent any change in material fact. If the original term of the loan is modified (extended or reduced), the loan may be properly assigned to another state if the loan has a majority of substantive contact to a regular place of business there.

(6) **Payroll factor.**

(a) **General.** Except as provided in subsection (7) of this section, the payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable period by the taxpayer for compensation of employees and the denominator of which is the total compensation paid both inside and outside this state during the taxable period. The payroll factor shall include all compensation paid to employees.

(b) **Compensation relating to independent contractors.** Payments made to any independent contractor or any other person not properly classifiable as an employee is excluded from both the numerator and denominator of the factor.

(c) **When compensation paid in this state.** Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both inside and outside the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both inside and outside this state, the employee's compensation will be attributed to this state:

(A) If the employee's principal base of operations is inside this state; or

(B) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(7) **Alternative factor calculation.**

(a) **General.** A taxpayer may elect to use the alternative factors calculation as provided in this subsection. The alternative factors calculation requires the use of all three factors provided below. A taxpayer making such an election must keep books and records sufficient to explain the calculations. Such an election, once made, must continue for a full calendar year.

(b) **Receipts factor.** The alternative receipts factor may be calculated by excluding from both the numerator and the denominator of the receipts factor as calculated in subsection (4) of this section gross income attributable to items that would not be subject to tax under the provisions of RCW 82.04.290, whether from activities inside or outside of the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all receipts from the rental of tangible personal property in Washington from the numerator and all receipts from the rental of tangible personal property, wherever located, in the denominator.

(c) **Property factor.** The alternative property factor may be calculated by excluding from both the numerator and the denominator of the property factor as calculated in subsection (5) of this section property, the income from which would be considered wholesale or retail sales under chapter 82.04 RCW, whether from activities inside or outside the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all tangible personal property rented to customers in Washington from the numerator and all tangible personal property rented to customers, wherever located, in the denominator.

(d) **Payroll factor.** The alternative payroll factor may be calculated by excluding from both the numerator and the denominator of the payroll factor as calculated in subsection (6) of this section that amount paid to employees in connection with earning gross income which would not be subject to tax under RCW 82.04.290, whether earned from activities inside or outside of the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all compensation paid to employees in connection with activities that are not taxable under RCW 82.04.290 from the numerator and all compensation paid to employees wherever located that would not be taxable under RCW 82.04.290 if it had been earned in Washington.

((~~(8) **Effective date.**~~

~~(a) **General.** This section applies to gross income that is reportable with respect to periods beginning on and after July 1, 1997.~~

~~(b) **Transition period election.** A financial institution may notify the department of its intention to apportion its gross receipts in the manner prescribed in RCW 82.04.460(1) and WAC 458-20-194. Such election may continue until the earlier of the date the financial institution elects to report in accordance with this section, but not later than January 1, 2000.~~))

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 05-24-054, filed 12/1/05, effective 1/1/06)

WAC 458-20-194 Doing business inside and outside the state. (1) **Introduction.**

(a) This section ((~~applies to~~)) explains the apportionment requirements of persons entitled to apportion income under RCW 82.04.460(1), and applies only to tax liability incurred during the period of January 1, 2006, through May 31, 2010. Chapter 23, Laws of 2010, sp. sess. (2ESSB 6143) changed the apportionment provisions of RCW 82.04.460(1) effective June 1, 2010. ((~~Specifically~~)) This section specifically applies to taxpayers who maintain places of business both within and without the state that contribute to the rendition of services and who are taxable under RCW 82.04.290, 82.04.-2908, or any other statute that provides for apportionment under RCW 82.04.460(1) during this period.

Persons subject to the service and other activities, international investment income, licensed boarding home, and low-level radioactive waste disposal business and occupation (B&O) tax classifications, and who are not required to apportion their income under another statute or rule, should use this section. In addition, this section describes Washington nexus standards for business activities subject to apportionment under RCW 82.04.460(1) for tax liability incurred between January 1, 2006, through May 31, 2010. Nexus is described in subsection (2) of this section; separate accounting in subsection (3) of this section; and cost apportionment in subsection (4) of this section.

(b) Readers may also find helpful information in the following rules:

((~~(i) WAC 458-20-14601 (Financial institutions—Income apportionment).~~

~~(ii) WAC 458-20-170 (Constructing and repairing of new or existing buildings or other structures upon real property).~~

~~(iii) WAC 458-20-179 (Public utility tax).~~

~~(iv) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).~~

~~(v) WAC 458-20-236 (Baseball clubs and other sport organizations).~~)) (i) WAC 458-20-19401, Minimum nexus thresholds for apportionable activities. This section describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19402, Single factor receipts apportionment—Generally. This section describes the general application of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19403, Single factor receipts apportionment—Royalties. This section describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-19404, Single factor receipts apportionment—Financial institutions. This section describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(v) WAC 458-20-14601, Financial institutions—Income apportionment. This section describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(c) The examples included in this section identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(2) **Nexus.**

(a) **Place of business - minimum presence necessary for tax.** The following discussion of nexus applies only to gross income from activities subject to apportionment under this rule. A place of business exists in a state when a taxpayer engages in activities in the state that are sufficient to create nexus. Nexus is that minimum level of business activity or connection with the state of Washington which subjects the business to the taxing jurisdiction of this state. Nexus is created when a taxpayer is engaged in activities in the state, either directly or through a representative, for the purpose of performing a business activity. It is not necessary that a taxpayer have a permanent place of business within a state to create nexus.

(b) **Examples.** The following examples demonstrate Washington's nexus principles.

(i) Assume an attorney licensed to practice only in Washington performs services for clients located in both Washington and Florida. All of the services are performed within Washington. The attorney does not have nexus with any state other than Washington.

(ii) Assume the same facts as the example in (b)(i) of this subsection, plus the attorney attends continuing education classes in Florida related to the subject matter for which his Florida clients hired him. The attorney's presence in Florida for the continuing education classes does not create nexus because he is not engaging in business in Florida.

(iii) Assume the same facts as the example in (b)(ii) of this subsection, plus the attorney is licensed to practice law in Florida and frequently travels to Florida for the purpose of conducting discovery and trial work. Even though the attorney does not maintain an office in Florida, the attorney has nexus with both Washington and Florida.

(iv) Assume an architectural firm maintains physical offices in both Washington and Idaho. The architectural firm has nexus with both Washington and Idaho.

(v) Assume an architectural firm maintains its only physical office in Washington, and when the firm needs a presence in Idaho, it contracts with nonemployee architects in Idaho instead of maintaining a physical office in Idaho. Employees of the Washington firm do not travel to Idaho. Instead, the contract architects interact directly with the clients in Idaho, and perform the services the firm contracted to perform in Idaho. The architectural firm has nexus with both Washington and Idaho.

(vi) Assume the same facts as the example in (b)(v) of this subsection except the contracted architects never meet with the firm's clients and instead forward all work products to the firm's Washington office, which then submits that work product to the client. In this case, the architectural firm does not have nexus with Idaho. The mere purchase of services from a subcontractor located in another state that does not act

as the business' representative to customers does not create nexus.

(vii) Assume that an accounting firm maintains its only office in Washington. The accounting firm enters into contracts with individual accountants to perform services for the firm in Oregon and Idaho. The contracted accountants represent the firm when they perform services for the firm's clients. The firm has nexus with Washington, Oregon, and Idaho.

(viii) Assume that an accounting firm maintains its only office in Washington and has clients located in Washington, Oregon, and Idaho. The accounting firm's employees frequently travel to Oregon to meet with clients, review client's records, and present their findings, but do not travel to Idaho. The accounting firm has nexus with Washington and Oregon, but does not have nexus with Idaho.

(ix) Assume that a sales representative earns commissions from the sale of tangible personal property. The sales representative is located in Oregon and does not enter Washington for any business purpose. The sales representative contacts Washington customers only by telephone and earns commissions on sales of tangible personal property to Washington customers. The sales representative does not have nexus with Washington and the commissions earned on sales to Washington customers are not subject to Washington's business and occupation tax.

(x) The examples in this subsection (2) apply equally to situations where the Washington activities and out-of-state activities are reversed. For example, in example (b)(ix) of this subsection, if the locations were reversed, the sales representative would have nexus with Washington, but not in Oregon.

(3) **Separate accounting.**

(a) **In general.** "Separate accounting" refers to a method of accounting that segregates and identifies sources or activities which account for the generation of income within the state of Washington. Separate accounting is distinct from cost apportionment, which assigns a formulary portion of total worldwide income to Washington. A separate accounting method must be used by a business entitled to apportion its income under RCW 82.04.460(1) if this use results in an accurate description of gross income attributable to its Washington activities.

(b) **Accuracy.** Separate accounting is accurate only when the activities that significantly contribute, directly or indirectly, to the production of income can be identified and segregated geographically. Separate accounting thus links taxable income to activities occurring in a discrete jurisdiction. The result is inaccurate when services directly supporting these activities occur in different jurisdictions. For example, if a taxpayer provides investment advice to clients in Washington, but performs all of its research and due diligence activities in another state, then separate accounting would not be accurate. However, if instead of research and due diligence, only the client billing activity is performed in another state, then separate accounting would be allowed.

(c) **Approved methods of separate accounting.** The following methods of separate accounting are acceptable to the department, if accurate:

(i) **Billable hours of employees or representative third parties performing services in Washington.** If a business charges clients an hourly rate for the performance of services, and the place of performance of the employee, contractor, or other individual whose time is billed is reasonably ascertainable, then the billable hours may be used as a basis for separate accounting. The gross amount received from hours billed for services performed in Washington should be reported.

(ii) **Specific projects or contracts.** A business may assign the revenue from specific projects or contracts in or out of Washington by the primary place of performance. For example:

(A) A consulting business with no other presence in Washington that agrees to provide on-site management consulting services for a Washington business and receives five hundred thousand dollars in payment for the project must report five hundred thousand dollars in gross income to Washington.

(B) If the same business gets another Washington client for on-site management consulting, and receives another payment of five hundred thousand dollars, the business must report an additional five hundred thousand dollars in gross income to Washington.

(C) If a business contracts to distribute advertisements for another business within the state of Washington, the gross amount received for this action should be reported as Washington income.

(iii) **Other reasonable and accurate methods—Notice to the department.**

(A) A taxpayer may report with, or the department may require, the use of one of the alternative methods of separate accounting.

(B) A taxpayer reporting under this subsection must notify the department at the time of filing that it is using an alternative method and provide a brief description of the method employed. If a taxpayer reports using an alternate method, the same method must be used for all subsequent tax reporting periods unless it is demonstrated another method is necessary under the standard in (c)(iii)(E) of this subsection.

(C) If on review of a taxpayer's return(s) the department determines another method is necessary to fairly represent the extent of a taxpayer's business activity in Washington, then the department may impose the method for all returns within the statute of limitations. Statutory interest applies to both balances due and refund or credit claims arising under this section. Further, applicable penalties will be imposed on balances due arising under this section. However, if the taxpayer reported using the separate accounting method in (c)(i) or (ii) of this subsection or cost apportionment under subsection (4)(a) through (h) of this section, the department may impose the alternate method for future periods only.

(D) A taxpayer may request that the department approve an alternative method of separate accounting by submitting a request for prior ruling pursuant to WAC 458-20-100. Such letter ruling may be subject to audit verification before issuance.

(E) The taxpayer or the department, in requesting or imposing an alternate method of separate accounting, must demonstrate by clear and convincing evidence that the separate accounting methods in (c) of this subsection do not fairly

represent the extent of the taxpayer's business activity in Washington.

(4) **Cost apportionment.**

(a) **Apportionment ratio.**

(i) Each cost must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Taxpayers must file returns using costs calculated based on the taxpayer's most recent fiscal year for which information is available, unless there is a significant change in business operations during the current period. A significant change in business operations includes commencement, expansion, or termination of business activities in or out of Washington, formation of a new business entity, merger, consolidation, creation of a subsidiary, or similar change. If there is a significant change in business operations, then the taxpayer must estimate its cost apportionment formula based on the best records available and then make the appropriate adjustments when the final data is available.

(ii) The apportionment ratio is the cost of doing business in Washington divided by the total cost of doing business as described in RCW 82.04.460(1). The apportionment ratio is calculated under this section as follows. The denominator of the apportionment ratio is the worldwide costs of the apportionable activity and the numerator is all costs specifically assigned to Washington plus all costs assigned to Washington by formula, as described below. Costs are calculated on a worldwide basis for the tax reporting period in question. The tax due to Washington is calculated by multiplying total income times the apportionment ratio times the tax rate. Available tax credits may be applied against the result. Statutory interest and penalties apply to underreported income. For the purposes of this rule, "total income" means gross income under the tax classification in question, less deductions, calculated as if the B&O tax classification applied on a worldwide basis.

(b) **Place of business requirement.** A taxpayer must maintain places of business within and without Washington that contribute to the rendition of its services in order to apportion its income. This "place of business" requirement, however, does not mean that the taxpayer must maintain a physical location as a place of business in another taxing jurisdiction in order to apportion its income. If a taxpayer has activities in a jurisdiction sufficient to create nexus under Washington standards, then the taxpayer is deemed to have a "place of business" in that jurisdiction for apportionment purposes. See subsection (2) of this section.

(c) **Noncost expenditures.** The following is a list of expenditures that are not costs of doing business within the meaning of RCW 82.04.460 and are therefore excluded from both the numerator and the denominator of the apportionment ratio. Expenditures that are not costs of doing business include expenditures that exchange one business asset for another; that reflect a revaluation of an asset not consumed in the course of business; or federal, state, or local taxes measured by gross or net business income. This list is not exclusive. Costs of an activity taxable under another B&O tax classification are also excluded from the apportionment ratio. Similarly, the costs of acquiring a business by merger or otherwise, including the financing costs, are not the costs of doing the apportioned business activity and must be excluded from the cost apportionment calculation.

(i) The cost of acquiring assets that are not depreciated, amortized, or otherwise expensed on the taxpayer's books and records on the basis of generally accepted accounting principles (GAAP), or a loss incurred on the sale of such assets. For example, expenditures for land and investments are excluded from the cost apportionment formula.

(ii) Taxes (other then taxes specifically related to items of property such as retail sales or use taxes and real and personal property taxes).

(iii) Asset revaluations such as stock impairment or goodwill impairment.

(iv) Costs of doing a business activity subject to the B&O tax under a classification other than RCW 82.04.290 or 82.04.2908. For example, if a taxpayer were subject to manufacturing, wholesaling and service and other activities B&O tax, the costs associated with a warehouse and a manufacturing plant (property and employee costs) are excluded from the cost apportionment formula. But if costs support both the service activity and either manufacturing or wholesaling (for example, costs associated with headquarters or joint operating centers), then those costs must be included in the cost apportionment formula without segregating the service portion of the costs.

(d) **Specifically assigned costs.** Real or tangible personal property costs, employee costs, and certain payments to third parties are specifically assigned under (e) through (g) of this subsection.

(e) **Property costs.**

(i) **Definitions.** Real or tangible personal property costs are defined to include:

(A) Depreciation as reported on the taxpayer's books and records according to GAAP, provided that if a taxpayer does not maintain its books and records in accordance with GAAP, it may use tax reporting depreciation. A taxpayer may not change its method of calculating depreciation costs without approval of the department;

(B) Maintenance and warranty costs for specific property;

(C) Insurance costs for specific property;

(D) Utility costs for specific property;

(E) Lease or rental payments for specific property;

(F) Interest costs for specific property; and

(G) Taxes for specific property.

(ii) **Assignment of costs.** Real or tangible personal property costs are assigned to the location of the property. Property in transit between locations of the taxpayer to which it belongs is assigned to the destination state. Property in transit between a buyer and seller and included by a taxpayer in the denominator of the apportionment ratio in accordance with its regular accounting practices is assigned to the destination state. Mobile or movable property located both within and without Washington during the measuring period is assigned in proportion to the total time within Washington during the measuring period. An automobile assigned to a traveling employee is assigned to the state to which the

employee's compensation is assigned below or to the state in which the automobile is licensed. Where a business contracts for the maintenance, warranty services, or insurance of multiple properties, the relative rental or depreciation expense may be used to assign these costs.

(f) **Employee costs.**

(i) **Definitions.** For the purposes of this subsection:

(A) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to or accrued to employees for personal services. Employer contributions under a qualified cash plan, deferred arrangement plan, and nonqualified deferred compensation plan are considered compensation. Stock based compensation is considered compensation under this rule to the extent included in gross income for federal income tax purposes.

(B) "Employee" means any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee, but does not include corporate officers.

(ii) **Allocation method.** Employee costs include all compensation paid to employees and all employment based taxes and other fees, for example, amounts paid related to unemployment compensation, labor and industries insurance premiums, and the employer's share of Social Security and medicare taxes. An employee's compensation is assigned to Washington if the taxpayer reports the employee's wages to Washington for unemployment compensation purposes. Employee wages reported for federal income tax purposes may be used to assign the remaining compensation costs.

(g) **Representative third-party costs.**

(i) **Definitions.** For the purposes of this section:

"Representative third party" includes an agent, independent contractor, or other representative of the taxpayer who provides services on behalf of the taxpayer directly to customers. The term includes leased employees who meet the standards under (g) of this subsection.

(ii) **Allocation method.** Payments to a representative third party are assigned to the third party's place of performance. For example, if a business subcontracts with a representative third party who provides services on behalf of the taxpayer from a California location, the cost of compensating the representative third party is assigned to California. This is true even if the third party provides services to Washington customers. Conversely, the cost of compensating a representative third party providing services to California customers from a Washington location is assigned to Washington.

(iii) **Examples.**

(A) X, a Washington business, hires Taxpayer to design and write custom software for a document management system. Taxpayer subcontracts with Z, whose employees determine the needs of X, negotiate a statement of work, write the custom software, and install the software. Z's employees perform all of these services on-site at the X business location. Taxpayer's payments to Z are representative third-party costs and specifically assigned to Washington.

(B) Taxpayer, a service provider, subcontracts with X, who agrees to maintain a customer service center where staff will answer telephone inquiries about Taxpayer's services. X in turn subcontracts with Z, whose employees actually respond to questions from a phone center located in California. The payments by taxpayer to X are representative third-party costs with respect to Taxpayer because X is responsible for providing the staff of the service center. The payments to X are specifically assigned to California.

(C) Taxpayer sells various manufacturers' products at wholesale on a commission basis. Taxpayer subcontracts with X, who agrees to act as Taxpayer's sales representative on the West Coast. Taxpayer has various other sales representatives working on as independent contractors, who are assigned territories, but may make sales from an office or through in-person visits, or a combination of both. Taxpayer does not maintain records sufficient to show the representatives' places of performance. Taxpayer may use sales records and the standards under (h) of this subsection to assign commissions by each subcontractor.

(h) **Costs assigned by formula.**

(i) Costs not specifically assigned under (e) through (g) of this subsection and not excluded from consideration by (c) of this subsection are assigned to Washington by formula. These costs are multiplied by the ratio of sales in Washington over sales everywhere. For example, if a business has one thousand dollars in other unassigned costs and sales of ten thousand dollars in each of the four states in which it has nexus under Washington standards (including Washington), twenty-five percent ($10,000/$40,000), or two hundred fifty dollars of the other costs are assigned to Washington.

(ii) Sales are assigned to where the customer receives the benefit of the service. If the location where the services are received is not readily determinable, the services are attributed to the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services are attributed to the office of the customer to which the services are billed.

(iii) If under the method described above a sale is attributed to a location where the taxpayer does not have nexus under Washington standards, the sale must be excluded from both the numerator and denominator of the sales ratio. For the purposes of this calculation only, the department will presume a taxpayer has nexus anywhere the taxpayer has employees or real property, or where the taxpayer reports business and occupation, franchise, value added, income or other business activity taxes in the state. The burden is on the taxpayer to demonstrate nexus exists in other states.

(i) **Alternative methods.**

(i) A taxpayer may report with, or the department may require, the use of one of the alternative methods of cost apportionment described below:

(A) The exclusion of one or more categories of costs from consideration;

(B) The specific allocation of one or more categories of costs which will fairly represent the taxpayer's business activity in Washington; or

(C) The employment of another method of cost apportionment that will effectuate an equitable apportionment of the taxpayer's gross income.

(ii) A taxpayer reporting under (i) of this subsection must notify the department at the time of filing that it is using an alternative method and provide a brief description of the method employed. If a taxpayer reports using an alternate

method, the same method must be used for all subsequent tax reporting periods unless it is demonstrated another method is necessary under the standard in (i)(v) of this subsection.

(iii) If on review of a taxpayer's return(s) the department determines another method is necessary to fairly represent the extent of a taxpayer's business activity in Washington, the department may impose the method for all returns within the statute of limitations. Statutory interest applies to both balances due and refund or credit claims arising under this section. Further, applicable penalties will be imposed on balances due arising under this section. However, if the taxpayer reported using the cost apportionment method in (a) through (h) of this subsection and separate accounting is unavailable, the department may impose the alternate method for future periods only.

(iv) A taxpayer may request that the department approve an alternative method of cost apportionment by submitting a request for prior ruling pursuant to WAC 458-20-100. Such letter ruling may be subject to audit verification before issuance.

(v) The taxpayer or the department, in requesting or imposing an alternate method, must demonstrate by clear and convincing evidence that the cost apportionment method in (a) through (h) of this subsection does not fairly represent the extent of the taxpayer's business activity in Washington.

~~((5) **Effective date.** This amended rule shall be effective for tax reporting periods beginning on January 1, 2006, and thereafter.~~))

WSR 10-22-090
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed November 1, 2010, 1:46 p.m., effective November 1, 2010]

Effective Date of Rule: November 1, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule is exempt under RCW 34.05.380 (3)(a) because chapter 18.290 RCW required the department to begin licensing genetic counselors on August 1, 2010.

Purpose: Chapter 246-825 WAC, Genetic counselors, implements 2009 legislation, SSB 5608 (chapter 18.290 RCW), which requires licensure of genetic counselors. The rule establishes enforceable standards of practice, and qualifications for licensure including, education and examination requirements, and fees.

Statutory Authority for Adoption: RCW 18.290.020.

Adopted under notice filed as WSR 10-18-076 on August 31, 2010.

A final cost-benefit analysis is available by contacting Jennifer Coiteux, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4766, (360) 236-2901, e-mail jennifer.coiteux@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 12, 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 12, Amended 0, Repealed 0.

Date Adopted: November 1, 2010.

Mary C. Selecky
Secretary

Chapter 246-825 WAC

GENETIC COUNSELORS

NEW SECTION

WAC 246-825-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **"ABGC"** means the American Board of Genetic Counseling, a national organization for certification and recertification of genetic counselors.

(2) **"ABMG"** means the American Board of Medical Genetics, a national organization for certification and recertification of genetic counselors and geneticists with medical or other doctoral degrees.

(3) **"Collaborating physician"** means a physician licensed under chapter 18.71 RCW, or an osteopathic physician licensed under chapter 18.57 RCW, who is board certified in clinical genetics specialty or board certified in a specialty relevant to the practice of the genetic counselor(s) and provides medical direction and support as documented in a written collaborative agreement. No employment relationship is required or implied for this interaction.

(4) **"Continuing education"** means postlicensure professional genetic counselor education accredited or approved by NSGC, ABGC or any other entity approved by the secretary, and designed to maintain and improve competence and promote professional development in the practice of genetic counseling.

(5) **"Department"** means the department of health.

(6) **"Genetic counselor"** means an individual licensed under chapter 18.290 RCW to engage in the practice of genetic counseling.

(7) **"Licensed health care provider"** means a physician licensed under chapter 18.71 RCW, physician assistant licensed under chapter 18.71A RCW, osteopathic physician licensed under chapter 18.57 RCW, osteopathic physician assistant licensed under chapter 18.57A RCW, advanced registered nurse practitioner licensed under chapter 18.79 RCW, or naturopathic physician licensed under chapter 18.36A RCW.

(8) **"NSGC"** means the National Society of Genetic Counselors, a professional membership society which pro-

motes the genetic counseling profession as an integral part of health care delivery, and offers educational programs.

(9) **"Secretary"** means the secretary of the department of health.

(10) **"Supervisor"** means:

(a) A genetic counselor licensed under this chapter;

(b) A physician licensed under chapter 18.71 RCW with a current ABMG certification in clinical genetics specialty; or

(c) An osteopathic physician licensed under chapter 18.57 RCW, with a current ABMG certification in clinical genetics specialty.

NEW SECTION

WAC 246-825-020 Practice parameters. (1) Except as provided in WAC 246-825-030(1), a genetic counselor shall not diagnose, test or treat any genetic disease or condition or other disease or condition.

(2) If a genetic counselor finds any indication of a disease or condition that requires professional service outside the scope of practice defined in RCW 18.290.010, the genetic counselor shall refer that client to a licensed health care provider as defined in WAC 246-825-010(7).

NEW SECTION

WAC 246-825-030 Collaborative agreement. (1) Under a collaborative agreement, a licensed genetic counselor may order laboratory tests or recommend other evaluations to diagnose a hereditary condition or determine the carrier status of one or more family members, including testing for inherited disorders. The collaborative agreement shall include:

(a) A written statement identifying and signed by the collaborating physician and genetic counselor who are party to the agreement.

(b) A general statement of the procedures, decision criteria, or categories of care that a genetic counselor is to follow when ordering genetic tests or other evaluations.

(c) A selection of the most appropriate, accurate, and cost-effective methods of diagnosis.

(2) Any modification to the collaborative agreement shall be treated as a new agreement.

(3) A collaborative agreement must be reevaluated at least every two years and the document reexecuted if any modification is made.

(4) A signed copy of the collaborative agreement must be maintained by all parties and available for inspection by the department upon request.

NEW SECTION

WAC 246-825-050 Examination required. (1) An applicant for licensure as a genetic counselor shall take and pass the ABGC certification examination or other examination approved by the secretary, or have passed the ABMG general genetics and genetic counseling specialty examinations or the ABMG clinical genetics specialty or subspecialty certification examination.

(2) An applicant may appeal failure of the examination through ABMG's or ABGC's exam failure procedure.

NEW SECTION

WAC 246-825-060 Licensure requirements. (1) An applicant for licensure as a genetic counselor must:

(a) Have a master's degree from a genetic counseling training program that is accredited or was accredited at the time of the applicant's graduation by the ABGC or an equivalent program as determined by the ABGC; or

(b) Have a doctorate from a medical genetics training program that is accredited by ABMG or an equivalent program as determined by the ABMG; and

(2) Meet examination requirements under WAC 246-825-050; and

(3) Complete four clock hours of AIDS education and training as required under chapter 246-12 WAC, Part 8; and

(4) Pay fees required under WAC 246-825-990(2); and

(5) Provide any other written declarations or documentation, as required by the secretary.

NEW SECTION

WAC 246-825-080 Licensure by endorsement. (1) An applicant for licensure as a genetic counselor who is currently licensed under the laws of another state shall file an application with the department and submit:

(a) Documentation verifying that the applicant meets the education requirements under WAC 246-825-060;

(b) Documentation that the applicant holds an unrestricted active license to practice as a genetic counselor in another state;

(c) Proof of passing the ABGC certification examination or the ABMG general genetics and genetic counseling specialty examinations or the ABMG clinical genetics specialty or subspecialty certification examinations;

(d) Documentation of completion of four clock hours of AIDS education and training as required under chapter 246-12 WAC, Part 8;

(e) Any other written declarations or documentation, as required by the secretary; and

(f) Fees required under WAC 246-825-990(2).

(2) The secretary may examine an endorsement application to determine whether the licensing standards of the other state are substantially equivalent to the licensing standards in Washington state.

(3) An endorsement applicant may also apply for a temporary practice permit as established under WAC 246-12-050.

NEW SECTION

WAC 246-825-100 Qualification for provisional license. (1) An individual who has met all the requirements for licensure except for passing the examination may apply for a provisional license to engage in supervised practice as a genetic counselor.

(2) Applicants may be eligible for a provisional license, if they:

(a) Have met the education requirements of WAC 246-825-060 (1)(a) or (b); and

(b) File documentation of supervised practice as outlined under WAC 246-825-105 with the department; and

(c) Pay fees required under WAC 246-825-990(3).

(3) An applicant for provisional licensure shall not practice as a genetic counselor until his or her application for such licensure has been approved.

(4) A provisional license shall expire on the practitioner's birthday as provided under WAC 246-12-020 or upon the earliest of the following:

(a) A license is granted; or

(b) A notice of decision is mailed.

(5) A provisional license may be renewed a maximum of three times.

NEW SECTION

WAC 246-825-105 Documentation and supervision—Provisional license. (1) An individual practicing under the authority of a provisional license shall practice genetic counseling only under the general supervision of a supervisor.

(a) The applicant for provisional license must provide the name, business address and telephone number, professional license number, and signature of the supervisor.

(b) The supervisor's license and ABGC or ABMG certification shall be current and in good standing at all times during the supervisory relationship.

(c) The provisionally licensed genetic counselor and the supervisor shall notify the department in writing of any change relating to the working relationship within fifteen days of the change. In the event of a change of supervisor, a provisional licensee shall not practice as a genetic counselor at any time between the end of one supervisory relationship and the department's receipt and approval of the new supervisor.

(2) General supervision includes:

(a) On-going availability to engage in direct communication, either face-to-face or by electronic means;

(b) Active, ongoing review of the genetic counselor's services, as appropriate, for quality assurance and professional support;

(c) Description of contingency plans to include the unplanned unavailability of the primary supervisor; and

(d) Identification and professional license number of an alternate supervisor, as appropriate to the practice setting.

(3) General supervision does not require the physical presence of the supervisor. The supervisor shall be readily accessible for consultation and assistance to the provisionally licensed genetic counselor.

NEW SECTION

WAC 246-825-110 Continuing education. (1) Licensed genetic counselors must complete a minimum of seventy-five continuing education hours or 7.5 continuing education units (CEUs) every three years following the first license renewal. One contact hour equals 0.1 CEU. No more than fifteen continuing education hours or 1.5 CEUs may be earned for professional development activity credits within a reporting cycle.

(2) Professional development activities include, but are not limited to:

(a) Teaching or providing clinical supervision; authoring or coauthoring an article or chapter in peer-review journal; genetics education outreach; leadership activities.

(b) Lecturing or instructing professional groups.

(c) Teaching genetics related courses for undergraduate, graduate, or other health provider groups.

Multiple credits shall not be given to presenters for multiple presentations of the same program.

(3) Practice-based competency courses or programs may consist of postgraduate studies, seminars, lectures, workshops (including distance learning), and professional conferences. Practice-based competencies include, but are not limited to:

(a) Communication - convey detailed genetic information to diverse audiences clearly and concisely while bridging cultural, socioeconomic and educational difference.

(b) Critical thinking - perform complicated risk calculations; evaluate medical, family and psychosocial histories; distill genetic and psychosocial information; participate in diagnostic evaluations; and develop effective case management plan.

(c) Interpersonal counseling, and psychosocial assessment - use an empathetic approach to identify a patient's concerns, clarify beliefs and values, promote preventative health measures and facilitate informed decision making.

(d) Professional ethics and values.

(4) Courses and programs accredited or approved by the following organizations qualify for continuing education credit for licensed genetic counselors.

(a) ABGC;

(b) ABMG;

(c) NSGC; or

(d) Other courses or programs as approved by the secretary.

(5) Continuing education contact hours or CEUs may not be carried over from one reporting cycle to another.

(6) A genetic counselor may request an extension or to be excused from meeting the continuing education requirements due to illness or other extenuating circumstances.

NEW SECTION

WAC 246-825-130 Auditing for compliance. Licensed genetic counselors must comply with auditing and documentation requirements under chapter 246-12 WAC, Part 7. If audited, the licensee will be required to submit documentation of completed continuing education activities.

(1) Acceptable documentation of continuing education includes:

(a) Certificates indicating the date, number of contact hours awarded, program title, and participant's name; or

(b) An original letter on official stationary from the continuing education program's sponsor indicating the date, number of contact hours awarded, program title, and participant's name.

(2) The secretary may require additional information as needed to assess compliance.

NEW SECTION

WAC 246-825-140 Expired license. (1) A genetic counselor may not practice at any time while his or her license is expired. If the license has expired, the practitioner must meet the requirements under chapter 246-12 WAC, Part 2.

(2) If a license is expired for three years or more the practitioner must meet the requirements under chapter 246-12 WAC, Part 2 and demonstrate competence in one of the following ways:

(a) Provide verification of current active practice in another state or U.S. jurisdiction or Canada, and ABGC or ABMG certification.

(b) Provide verification of a current unrestricted active credential in another state or U.S. jurisdiction or Canada.

(c) Take and pass the ABGC certification examination or other examination approved by the secretary no more than six months prior to applying for licensure.

NEW SECTION

WAC 246-825-990 License fees. (1) Licenses must be renewed every year on the practitioner's birthday as provided under chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title	Fee
Application	300.00
Renewal	300.00
Late renewal penalty	150.00
Expired license reissuance	150.00
Duplicate license	30.00
Certification of licensure	30.00

(3) The following nonrefundable fees will be charged for provisional license:

Title	Fee
Application	30.00
Renewal	30.00
Late renewal penalty	30.00
Duplicate provisional license	30.00

WSR 10-22-095
PERMANENT RULES
PARKS AND RECREATION COMMISSION

[Filed November 2, 2010, 8:40 a.m., effective December 3, 2010]

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

Purpose: Washington state parks commission determined to repeal chapter 352-24 WAC, following an agency review and recommendations. State Parks has implemented a series of policies relating to leasing of parklands. The agency has integrated the agency's concession leasing and real property agreement program and this merger resulted in WAC 352-24-010 no longer requiring a direct agency process of authorizing concession leases.

Citation of Existing Rules Affected by this Order: Repealing WAC 352-24-010.

Statutory Authority for Adoption: RCW 79A.05.030.

Adopted under notice filed as WSR 10-18-056 on August 27, 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 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 0, Repealed 0.

Date Adopted: November 2, 2010.

Valeria Evans
Management Analyst

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 352-24-010	Approval of concessions and leases—Concession policies.

WSR 10-22-103
PERMANENT RULES
DEPARTMENT OF COMMERCE

[Filed November 2, 2010, 11:37 p.m., effective December 3, 2010]

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

Purpose:

- To bring the rules into conformance with legislative changes to the Growth Management Act that occurred in 2009 and 2010.
- To adopt rules guiding implementation of RCW 36.70A.540 Affordable housing incentive programs.
- To address a petition to the agency requesting modifications to WAC 365-190-050 Agricultural resource lands, 365-196-425 Rural Element and 365-196-405 Land use element.

Citation of Existing Rules Affected by this Order: Amending chapters 365-190 and 365-196 WAC.

Statutory Authority for Adoption: RCW 36.70A.050, 36.70A.190.

Adopted under notice filed as WSR 10-17-043 on August 11, 2010.

Changes Other than Editing from Proposed to Adopted Version: Minor, nonsubstantive changes were made to WAC 365-190-050 to address comments and improve clarity.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 10, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 10, 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: November 1, 2010.

Rogers Weed
Director

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-050 Agricultural resource lands. (1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas ((~~and to markets and suppliers~~));

(vi) Predominant parcel size;

(vii) Land use settlement patterns and their compatibility with agricultural practices;

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby; ((~~and~~))

(x) Land values under alternative uses; and

(xi) Proximity to markets.

(4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating ((~~at least the minimum~~)) an amount of agricultural resource lands ((~~needed~~)) sufficient to maintain and enhance the economic viability ((~~for~~)) of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities. ((~~Economic viability in this context is that amount of designated agricultural resource land needed to maintain the economic viability of the agricultural sector in the county over the long term.~~))

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using

local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-030 Applicability. (1) Where these guidelines apply.

(a) This chapter applies to all counties and cities that are required to plan or choose to plan under RCW 36.70A.040.

(b) WAC 365-196-830 addressing protection of critical areas applies to all counties and cities, including those that do not fully plan under RCW 36.70A.040.

(c) As of May 1, 2009, the following counties and cities within them are not required to fully plan under RCW 36.70A.040: Adams, Asotin, Cowlitz, Grays Harbor, Klickitat, Lincoln, Okanogan, Wahkiakum, Skamania, and Whitman.

(2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches.

(3) How the growth management hearings board((~~s~~)) use these guidelines. The growth management hearings board((~~s~~)) must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, board((~~s~~)) must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself.

(4) When a county or city should consider the procedural criteria. Counties and cities should consider these procedural criteria when amending or updating their comprehensive plans, development regulations or county-wide planning policies. Since adoption of the act, counties and cities and others have adopted a variety of agreements and frameworks to collaboratively address issues of local concern and their responsibilities under the act. The procedural criteria do not trigger an independent obligation to revisit those agreements. Any local land use planning agreements should, where possible, be construed as consistent with these procedural criteria. Changes to these procedural criteria do not trigger an obligation to review and update local plans and regulations to be consistent with these criteria.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-040 Standard of review. (1) Comprehensive plans and development regulations adopted under the act are presumed valid upon adoption. No state approval is required.

(2) An appeal of a local comprehensive plan or development regulation alleging a violation of the act must be filed with the ((~~appropriate~~)) growth management hearings board (the board). The board must find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the act. To find an action clearly erroneous, the board must be left with a firm and definite conclusion that a mistake was made.

(3) Although a county or city does not have to prove compliance, if challenged, it must provide to the hearings board an index of "the record" - all material used in taking the action which is the subject of the challenge. See WAC 242-02-520. This record should include the documents containing the factual basis for determining that the challenged action complies with the act. This information may be contained in the comprehensive plan or development regulations, in the findings of the adopting ordinance or resolution, or in accompanying background documents, such as staff reports.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-310 Urban growth areas. (1)(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the one hundred-year flood plain of any river or river segment that:

(i) Is located west of the crest of the Cascade mountains; and

(ii) Has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (1)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a flood plain and lack adjacent buildable areas outside the flood plain;

(ii) Urban growth areas where expansions are precluded outside flood plains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the flood plain; or

(B) Expansions outside the flood plain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the flood plain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the flood plain;

(B) Urban development already exists within a flood plain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial

projects including, but not limited to, habitat enhancement or environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) Under (a)(i) of this subsection, "one hundred-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(2) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, at least every ten years, its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. This review should be conducted jointly with the affected cities. The purpose of the ten-year urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding twenty-year planning period. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

((~~(2)~~)) (3) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the county-wide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or county-wide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate

public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations, and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

((~~(3)~~)) (4) Recommendations for meeting requirements.

(a) Selecting and allocating county-wide growth forecasts. This process should involve at least the following:

(i) The total county-wide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low twenty-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total county-wide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that twenty-year growth forecasts and designated urban growth areas be updated at a minimum every ten years. Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the twenty-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the twenty-year forecasts selected.

(iv) Selection of a county-wide employment forecast. Counties, in consultation with cities, should adopt a twenty-year county-wide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The county-wide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties and cities should use a county-wide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a county-wide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densities must be urban. Outside the urban growth areas, densities must be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the twenty-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the twenty-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and util-

ities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the twenty-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the twenty-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next twenty years. The urban growth area should be based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a city or county has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas issues. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the one hundred-year ((~~floodplain~~)) flood plain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of one thousand or more cubic feet per second.

(vii) If there is physically no land available into which a city might expand, it may need to revise its proposed urban

densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding twenty-year period. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has county-wide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided. Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with county-wide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing county-wide planning policies, resolving regional issues, and adjusting growth boundaries.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-325 Providing sufficient land capacity suitable for development. (1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable county-wide planning policies and consistent with the twenty-year population forecast ((~~for~~)) from the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must, at minimum, complete a land capacity analysis that demonstrates sufficient land for development or redevelopment to meet their adopted growth allocation targets during the ten-year review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting required at least every five years, and adopt and implement measures that are reasonably likely to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) Although it is not required, counties and cities may elect to conduct a land capacity analysis during the periodic review and update of comprehensive plans required under RCW 36.70A.130(1).

(e) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient capacity of land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element. In order to achieve sufficiency, the development

regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a city or county can meet its obligation to accommodate the growth allocated through the county-wide population allocation process.

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the county-wide population or employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the twenty-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the twenty-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

(e) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) Periodic evaluation. Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the assumed densities established in the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. This could occur as part of the seven-year review and update required in RCW 36.70A.130 (1)(a). It must occur at a minimum as part of the ten-year urban growth area review required in RCW 36.70A.130 (3)(a) and as part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) Flexible development standards. Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) Evaluation of development capacity impacts of proposed development regulation amendments. Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-405 Land use element. (1) Requirements. The land use element must contain the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, rural uses, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ground water used for public water supplies.

(d) Wherever possible, consideration of urban planning approaches to promote physical activity.

(e) Where applicable, a review of drainage, flooding, and storm water runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) Recommendations for meeting requirements. The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehensive plan, including transportation, housing, capital facilities, and, for counties, the rural element. Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions in the land use element helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

(a) Counties and cities should integrate relevant county-wide planning policies and, where applicable, multicounty planning policies, into the local planning process, and ensure local goals and policies are consistent.

(b) Counties and cities should identify the existing general distribution and location of various land uses, the approximate acreage, and general range of density or intensity of existing uses.

(c) Counties and cities should ((~~conduct an inventory of vacant, partially used and underutilized land to determine~~)) estimate the extent to which existing buildings and housing, together with development or redevelopment of vacant, partially used and underutilized land, can support anticipated growth over the planning period. ((~~Growth anticipated through redevelopment of developed lands should also be considered. This information~~)) Redevelopment of fully built properties may also be considered.

(i) Estimation of development or redevelopment capacity may include:

(A) Identification of individual properties or areas likely to convert because of market pressure or because they are built below allowed densities; or

(B) Use of an estimated percentage of area-wide growth during the planning period anticipated to occur through redevelopment, based on likely future trends for the local area or comparable jurisdictions; or

(C) Some combination of (c)(i)(A) and (B) of this subsection.

(ii) Estimates of development or redevelopment capacity should be ((~~provided through~~)) included in a land capacity analysis as part of a county-wide process described in WAC 365-196-305 and 365-196-310 or, as applicable, WAC 365-196-315.

(d) Counties and cities should identify special characteristics and uses of the land which may influence land use or regulation. These may include:

(i) The location of agriculture, forest and mineral resource lands of long-term commercial significance.

(ii) The general location of any known critical areas that limit suitability of land for development.

(iii) Influences or threats to the quality and quantity of ground water used for public water supplies. These may be identified from information sources such as the following:

(A) Designated critical aquifer recharge areas that identify areas where potentially hazardous material use should be limited, or for direction on where managing development practices that influence the aquifer would be important;

(B) Watershed plans approved under chapter 90.82 RCW; ground water management plans approved under RCW 90.44.400; coordinated water system plans adopted under chapter 70.116 RCW; and watershed plans adopted under chapter 90.54 RCW as outlined in RCW 90.03.386.

(C) Instream flow rules prepared by the department of ecology and limitations and recommendations therein that may inform land use decisions.

(iv) Areas adjacent to general aviation airports where incompatible uses should be discouraged, as required by RCW 36.70A.510 and 36.70.547, with guidance in WAC 365-196-455.

(v) Areas adjacent to military bases where incompatible uses should be discouraged, as required by RCW 36.70A.530 with guidance in WAC 365-196-475.

(vi) Existing or potential open space corridors within and between urban growth areas as required by RCW 36.70A.160 for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Counties and cities may consult WAC 365-196-335 for additional information.

(vii) Where applicable, sites that are particularly well suited for industry. Counties and cities should consult WAC 365-196-310 (3)(c)(iv) for information on industrial land uses. For counties, the process described in WAC 365-196-465 and 365-196-470 may be relevant for industrial areas outside of an urban growth area.

(viii) Other features that may be relevant to this information gathering process may include view corridors, brownfield sites, national scenic areas, historic districts, or other opportunity sites, or other special characteristics which may be useful to inform future land use decisions.

(e) Counties and cities must review drainage, flooding, and storm water runoff in the area or nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. Water quality information may be integrated from the following sources:

(i) Planning and regulatory requirements of municipal storm water general permits issued by the department of ecology that apply to the county or city.

(ii) Local waters listed under Washington state's water quality assessment and any water quality concerns associated with those waters.

(iii) Interjurisdictional plans, such as total maximum daily loads.

(f) Counties and cities must obtain twenty-year population allocations for their planning area as part of a county-wide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis, identify the amount of land suitable for development at a variety of densities consistent with the number and type of residential units likely to be needed over the planning period. At a minimum, cities must plan for the population allocated to them, but may plan for additional population within incorporated areas.

(g) Counties and cities should estimate the level of commercial space, and industrial land needed using information from the economic development element, if available, or from other relevant economic development plans.

(h) Counties and cities should identify the general location and estimated quantity of land needed for public purposes such as utility corridors, landfills or solid waste transfer stations, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. Counties and cities should consider corridors needed for transportation including automobile, rail, and trail use in and between planning areas, consistent with the transportation element and coordinate with adjacent jurisdictions for connectivity.

(i) Counties and cities should select land use designations and implement zoning. Select appropriate commercial, industrial, and residential densities and their distribution based on the total analysis of land features, population to be supported, implementation of regional planning strategies, and needed capital facilities.

(i) It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how this meets the twenty-year population projection.

(ii) Counties and cities should prepare a future land use map including land use designations, municipal and urban growth area boundaries, and any other relevant features consistent with other elements of the comprehensive plan.

(j) Wherever possible, counties and cities should consider urban planning approaches that promote physical activity. Urban planning approaches that promote physical activity may include:

(i) Higher intensity residential or mixed-use land use designations to support walkable and diverse urban, town and neighborhood centers.

(ii) Transit-oriented districts around public transportation transfer facilities, rail stations, or higher intensity development along a corridor served by high quality transit service.

(iii) Policies for siting or colocating public facilities such as schools, parks, libraries, community centers and athletic centers to place them within walking or cycling distance of their users.

(iv) Policies supporting linear parks and shared-use paths, interconnected street networks or other urban forms supporting bicycle and pedestrian transportation.

(v) Policies supporting multimodal approaches to concurrency consistent with other elements of the plan.

(vi) Traditional or main street commercial corridors with street front buildings and limited parking and driveway interruption.

(vii) Opportunities for promoting physical activity through these and other policies should be sought in existing as well as newly developing areas. Regulatory or policy barriers to promoting physical activity for new or existing development should also be removed or lessened where feasible.

(k) Counties and cities may prepare an implementation strategy describing the steps needed to accomplish the vision and the densities and distributions identified in the land use element. Where greater intensity of development is proposed, the strategy may include a design scheme to encourage new development that is compatible with existing or desired community character.

(l) Counties and cities may prepare a schedule for the phasing of the planned development contemplated consistent with the availability of capital facilities as provided in the capital facilities element. WAC 365-196-330 provides additional information regarding development phasing.

(m) Counties and cities should reassess the land use element in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the planned densities and distribution of growth can be achieved within the capacity of available land and water resources and without environmental degradation.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur at least every ten years, along with the ten-year urban growth area review required in RCW 36.70A.130 (3)(a). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;

(ii) Fire and police protection;

(iii) Transportation and public transportation; and

(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;

(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage storm water and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services.

Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDS may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(D) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(E) Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDs - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a

rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(d) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-485 Critical areas. (1) Relationship to the comprehensive plan.

(a) The act requires that the planning goals in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. These goals include retaining open space; enhancing recreation opportunities; conserving fish and wildlife habitat; protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water.

(b) Jurisdictions are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(c) Counties and cities are required to identify open space corridors within and between urban growth areas for multiple purposes, including those areas needed as critical habitat by wildlife.

(d) RCW 36.70A.070(1) requires counties and cities to provide for protection of the quality and quantity of ground water used for public water supplies in the land use element. Where applicable, the land use element must review drainage, flooding, and storm water runoff in the area and in nearby jurisdictions, and provide guidance to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(e) Because the critical areas regulations must be consistent with the comprehensive plan, each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program.

(f) In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. Nonregulatory measures include but are not limited to: Incentives, public education, and public recognition, and could include innovative programs such as the purchase or transfer of development rights. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(2) Requirements. Prior to the original development of comprehensive plans under the act, counties and cities were required to designate critical areas and adopt development regulations protecting them. Any previous designations and

regulations must be reviewed in the comprehensive plan process to ensure consistency between previous designations and the comprehensive plan. Critical areas include the following areas and ecosystems:

(a) Wetlands;

(b) Areas of critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(3) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later than the initial identification and regulation of critical areas. Upon the adoption of the initial comprehensive plans, such designations and regulations were to be reviewed and, where necessary, altered to achieve consistency with the comprehensive plan. Subsequently, jurisdictions updating local critical areas ordinances are required to include the best available science.

(b) The department has issued guidelines for the classification and designation of critical areas which are contained in chapter 365-190 WAC.

(c) Critical areas should be designated and protected wherever the applicable environmental conditions exist, whether within or outside of urban growth areas. Critical areas may overlap each other, and requirements to protect critical areas apply in addition to the requirements of the underlying zoning.

(d) The review of existing designations during the comprehensive plan adoption process should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, counties and cities must address the requirements to include the best available science in developing policies and development regulations to protect the functions and values of critical areas, and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. To the extent that new information is available or errors have been discovered, the review process should take this information into account.

(e) The department recommends that planning jurisdictions identify the policies by which decisions are made on when and how regulations will be used and when and how other means will be employed (purchases, development rights, etc.). See WAC 365-196-855.

(4) Avoiding impacts through appropriate land use designations.

(a) Many existing data sources can identify, in advance of the development review process, the likely presence of critical areas. When developing and reviewing the comprehensive plan and future land use designations, counties and cities should use available information to avoid directing new growth to areas with a high probability of conflicts between new development and protecting critical areas. Identifying areas with a high probability of critical areas conflicts can help identify lands that are likely to be unsuitable for development and help a county or city better provide sufficient capacity of land that is suitable for development as required by RCW 36.70A.115. Impacts to these areas could be minimized through measures such as green infrastructure planning, open space acquisition, open space zoning, and the purchase or transfer of development rights.

(b) When considering expanding the urban growth area, counties and cities should avoid including lands that contain large amounts of mapped critical areas. Counties and cities should not designate new urban areas within the one hundred-year flood plain unless no other alternatives exist, and if included, impacts on the flood plain must be mitigated((~~, including the provisions in RCW 36.70A.110(8)~~)). RCW 36.70.110(8) prohibits expansion of the urban growth area into the one hundred-year flood plain in some cases. See WAC 365-196-310.

(c) If critical areas are included in urban growth areas, they still must be designated and protected. See WAC 365-196-310.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-550 Essential public facilities. (1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with county-wide planning policies, counties and cities should create their own lists of "essential public facilities," to include at a minimum those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW 36.70A.200 as essential public facilities:

(i) Airports;

(ii) State education facilities;

(iii) State or regional transportation facilities;

(iv) Transportation facilities of statewide significance as defined in RCW 47.06.140. These include:

(A) The interstate highway system;

(B) Interregional state principal arterials including ferry connections that serve statewide travel;

(C) Intercity passenger rail services;

(D) Intercity high-speed ground transportation;

(E) Major passenger intermodal terminals excluding all airport facilities and services;

(F) The freight railroad system;

(G) The Columbia/Snake navigable river system;

(H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;

(I) High capacity transportation systems.

(v) Regional transit authority facilities as defined under RCW 81.112.020;

(vi) State and local correctional facilities;

((~~(vi)~~)) (vii) Solid waste handling facilities;

(((~~(vii)~~))) (viii) In-patient facilities, including substance abuse facilities;

(((~~(viii)~~))) (ix) Mental health facilities;

(((~~(ix)~~))) (x) Group homes;

(((~~(x)~~))) (xi) Secure community transition facilities;

(((~~(xi)~~))) (xii) Any facility on the state ten-year capital plan maintained by the office of financial management.

(e) Essential public facility criteria apply to the facilities and not the operator. Cities and counties may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited by" a city or county or a private organization or individual. When a city or county is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process must be consistent with and implement applicable county-wide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substantially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or county-wide nature.

(iii) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the city or county. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for county-wide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where county-wide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Counties and cities may also adopt criteria for identifying an essential public facility.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(e) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-570 Secure community transition facilities. Requirements.

(1) Secure community transition facilities are essential public facilities.

(2) Counties and cities must either establish an essential public facility siting process, or amend their existing process to allow for the siting of secure community transition facilities, or be subject to preemption by the Washington state department of social and health services consistent with RCW 71.09.342.

(3) A failure to act before the September 1, 2002, deadline does not constitute noncompliance for the purposes of grants and loans, and does not subject a county or city to a failure to act challenge to ((~~a~~)) the growth management hearings board.

(4) If a county or city does not adopt an essential public facility siting process or does not amend its existing process to allow for the siting of a secure community transition facility, then the Washington state department of social and health services may preempt local development regulations as necessary to site and operate a secure community transition facility under RCW 71.09.285 through 71.09.342. If the Washington state department of social and health services preempts local development regulations, the county or city may still participate in the siting process as provided in RCW 71.09.342.

(5) A local secure community transition facility siting process established by a city or county must be consistent with, and no more restrictive than, the siting process established in RCW 71.09.285 through 71.09.342. The Washington state department of social and health services has final authority to determine if a locally adopted siting process allows for the siting of secure community transition facilities in compliance with RCW 71.09.285.

NEW SECTION

WAC 365-196-580 Integration with the Shoreline Management Act. (1) For shorelines of the state, the goals and policies of the Shoreline Management Act as set forth under RCW 90.58.020 are added as one of the goals of this chapter as set forth under RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures under chapter 90.58 RCW rather than the goals, policies, and procedures set forth in chapter 36.70A RCW for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with chapter 36.70A RCW except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under chapter 36.70A RCW to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined under RCW 90.58.030; a segment of a master program relating to critical areas, as provided under RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided under RCW 90.58.080. The adoption or update of development regulations to protect critical areas under chapter 36.70A RCW prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of

this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if:

(A) The redevelopment or modification is consistent with the local government's master program; and

(B) The local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of (c) of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in (c) of this subsection, has the same meaning as defined under RCW 90.58.065.

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of chapter 36.70A RCW, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or the act is intended to affect whether or to what extent agricultural activities, as defined under RCW 90.58.065, are subject to chapter 36.70A RCW.

(e) The provisions under RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section; however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required under chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

(5) Shorelines of the state shall not be considered critical areas under chapter 36.70A RCW except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided under RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized under RCW 90.58.030 (2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2).

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if necessary, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update every seven years on a schedule established in RCW 36.70A.130(4).

(i) Deadlines for completion of periodic review are as follows:

Table WAC 365-196-610.1
Deadlines for Completion of Periodic Review 2010 - 2021

Update must be complete by December 1 of:	Affected counties and the cities within:
((~~2011/2018~~)) 2014/2021	Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, Whatcom
((~~2012/2019~~)) 2015/2022	Cowlitz, Island, Lewis, Mason, San Juan, Skagit, Skamania
((~~2013/2020~~)) 2016/2023	Benton, Chelan, Douglas, Grant, Kittitas, Spokane, Yakima
((~~2014/2021~~)) 2017/2024	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Orielle, Stevens, Wahkiakum, Walla Walla, Whitman

(ii) Certain counties and cities may take up to an additional three years to complete the update.

(A) The eligibility of a county for the three-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than fifty thousand and a growth rate of less than seventeen percent.

(C) A city is eligible if it has a population of less than five thousand, and either a growth rate of less than seventeen percent or a total population growth of less than one hundred persons.

(D) Growth rates are measured using the ten-year period preceding the due date listed in RCW 36.70A.130(4).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire three-year extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance;

(ii) Analysis of the population allocated to a city or county from the most recent ten-year urban growth area review;

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the seven-year update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent ten-year urban growth area review;

(B) Consideration of critical areas and resource lands ordinances;

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ten-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the twenty-year plan, counties and cities should consider updating them as part of the seven-year periodic update, or the ten-year urban growth area update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.-106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the seven-year periodic review process. Cities and counties may not conduct the seven-year periodic review and a docket of amendments as separate processes in the same year.

(b) Relationship to the ten-year urban growth area (UGA) review.

(i) At least every ten years, cities and counties must review the areas and densities contained in the urban growth area and, if necessary, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding twenty-year period, as required in RCW 36.70A.130(3). This is referred to in this section as the ten-year urban growth area review.

(ii) The ten-year urban growth area review and the seven-year periodic update may be combined or may occur separately. The seven-year periodic update requires an assessment of the most recent twenty-year population forecast by the office of financial management, but does not require that land use plans or urban growth areas be updated to accommodate existing or future growth forecasts, which must be undertaken as part of the ten-year UGA review. Counties and cities may consider the most recent forecast from the office of financial management, and the adequacy of existing land supplies to meet their existing growth forecast allocations, in determining when to initiate the ten-year urban growth area review.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-640 Comprehensive plan amendment procedures. (1) Each county or city should provide for an ongoing process to ensure:

(a) The comprehensive plan is internally consistent and consistent with the comprehensive plans of adjacent counties and cities. See WAC 365-196-500 and 365-196-510; and

(b) The development regulations are consistent with and implement the comprehensive plan.

(2) Counties and cities should establish procedures governing the amendment of the comprehensive plan. The location of these procedures may be either in the comprehensive plan, or clearly referenced in the plan.

(3) Amendments.

(a) All proposed amendments to the comprehensive plan must be considered by the governing body concurrently and may not be considered more frequently than once every year, so that the cumulative effect of various proposals can be ascertained. If a county or city's final legislative action is taken in a subsequent calendar year, it may still be considered part of the prior year's docket so long as the consideration of the amendments occurred within the prior year's comprehensive plan amendment process.

(b) Amendments may be considered more often under the following circumstances:

(i) The initial adoption of a subarea plan ((~~that does not modify the comprehensive plan policies and designations applicable to the subarea~~)). Subarea plans adopted under this subsection (3)(b)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred-year

flood plain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(((~~ii~~))) (iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(((~~iii~~))) (iv) The amendment of the capital facilities element of a comprehensive plan that is part of the adoption or amendment of a county or city budget;

(((~~iv~~))) (v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in agreement with the public participation program established by the county or city under RCW 36.70A.140, and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment;

(((~~v~~))) (vi) To resolve an appeal of the comprehensive plan filed with the growth management hearings board; or

(((~~vi~~))) (vii) In the case of an emergency.

(4) Emergency amendments. Public notice and an opportunity for public comment must precede the adoption of emergency amendments to the comprehensive plan. Provisions in RCW 36.70A.390 apply only to moratoria or interim development regulations. They do not apply to comprehensive plans amendments. If a comprehensive plan amendment is necessary, counties and cities should adopt a moratoria or interim zoning control. The county or city should then consider the comprehensive plan amendment concurrently with the consideration of permanent amendments and only after public notice and an opportunity for public comment.

(5) Evaluating cumulative effects. RCW 36.70A.130 (2)(b) requires that all proposed amendments in any year be considered concurrently so the cumulative effect of the proposals can be ascertained. The amendment process should include an analysis of all proposed amendments evaluating their cumulative effect. This analysis should be prepared in conjunction with analyses required to comply with the State Environmental Policy Act under chapter 43.21C RCW.

(6) Docketing of proposed amendments.

(a) RCW 36.70A.470(2) requires that comprehensive plan amendment procedures allow interested persons, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest amendments of comprehensive plans or development regulations. This process should include a means of docketing deficiencies in the comprehensive plan that arise during local project review. These suggestions must be docketed and considered at least annually.

(b) A consideration of proposed amendments does not require a full analysis of every proposal within twelve months if resources are unavailable.

(c) As part of this process, counties and cities should specify what information must be submitted and the submittal deadlines so that proposals can be evaluated concurrently.

(d) Once a proposed amendment is received, the county or city may determine if a proposal should receive further consideration as part of the comprehensive plan amendment process.

(e) Some types of proposed amendments require a significant investment of time and expense on the part of both applicants and the county or city. A county or city may specify in its policies certain types of amendments that will not be carried forward into the amendment process on an annual basis. This provides potential applicants with advance notice of whether a proposed amendment will be carried forward and can help applicants avoid the expense of preparing an application.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-745 Explicit statutory directions. (1) The legislature expressly amended numerous statutes outside of chapter 36.70A RCW that relate to the act. These amendments define the relationship of such existing statutes to comprehensive plans and development regulations under the act. Examples include:

(a) RCW 19.27.097 (state building code - evidence of adequate supply of potable water);

(b) RCW 35.13.005 (annexation of unincorporated areas - prohibited beyond urban growth areas);

(c) RCW 35.58.2795 (municipal corporations - six-year transit plan consistent with comprehensive plans);

(d) RCW 35.77.010 (city streets - six-year comprehensive street program consistent with comprehensive plans);

(e) RCW 35A.14.005 (annexation by code cities - prohibited beyond urban growth areas);

(f) Section 201, chapter 7, Laws of 2010 (community facilities districts may only include land within urban growth areas);

(g) RCW 36.81.121 (county roads - six-year comprehensive road program consistent with act comprehensive plans);

(((~~g~~))) (h) RCW 36.94.040 (sewerage, water, drainage systems - incorporation of relevant comprehensive plan provisions into sewer or water general plan);

(((~~h~~))) (i) RCW 43.20.260 (water system plans consistent with comprehensive plans and development regulations);

(((~~i~~))) (j) RCW 43.21C.240 (project review under the act);

(((~~j~~))) (k) RCW 57.16.010 (water districts - district comprehensive water plan consistent with urban growth area restrictions);

(((~~k~~))) (l) RCW 58.17.060 (short plats - written findings about appropriate provisions for infrastructure);

(((~~l~~))) (m) RCW 58.17.110 (subdivisions - written findings about appropriate provisions for infrastructure);

(((~~m~~))) (n) RCW 59.18.440 (land development - authority of entities planning under the act to require relocation assistance);

(((~~n~~))) (o) RCW 70.118B.040(3) (requirements for large on-site sewage systems to be consistent with the requirements of any comprehensive plans or development regulations adopted under the act);

(((~~o~~))) (p) RCW 86.12.200 (comprehensive flood control management plans - may be incorporated into comprehensive plans under the act); and

(((~~p~~))) (q) RCW 90.46.120 (use of water from wastewater treatment facility - consideration in regional water supply plan or potable water supply service planning).

(2) As enacted, the act included the creation of a new chapter (chapter 47.80 RCW) authorizing and assigning duties to regional transportation planning organizations. These organizations were expressly given responsibilities for ensuring the consistency of transportation planning throughout a region containing multiple local governmental jurisdictions.

(3) As enacted, the act included the addition of new sections (RCW 82.02.050 through 82.02.090) concerning impact fees on development in counties or cities that plan under the act. These sections explicitly authorize and condition the use of such fees as part of the financing of public facility system improvements needed to serve new development.

NEW SECTION

WAC 365-196-870 Affordable housing incentives. (1) Background.

(a) The act calls on counties and cities to encourage the availability of affordable housing. Addressing the need for affordable housing will require a broad variety of tools to address local needs. This section describes certain affordable housing incentive programs (incentive programs) that counties and cities may implement.

(b) The powers granted in RCW 36.70A.540 are supplemental and additional to the powers otherwise held by local governments, and nothing in RCW 36.70A.540 shall be construed as a limit on such powers.

(c) Counties and cities may use incentive programs to implement other policies in their comprehensive plan in addition to affordable housing; for instance, encouraging higher densities that reduce the need for land and increase the efficiency of providing public services.

(d) Incentive programs may apply to residential, commercial, industrial and/or mixed-use developments.

(e) Incentive programs may be implemented through development regulations, conditions on rezoning or permit decisions, or any combination of these.

(f) Incentive programs may apply to part or all of a city or county. A county or city may apply different standards to different areas within their jurisdiction, or to different development types.

(g) Incentive programs may be modified to meet local needs.

(h) Incentive programs may include provisions not expressly provided in RCW 36.70A.540 or 82.02.020.

(2) Counties and cities may establish an incentive program that is either required or optional.

(a) Counties and cities may establish an optional incentive program. If a developer chooses not to participate in an optional incentive program, a county or city may not condition, deny or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent the optional incentive provisions of this program.

(b) Counties and cities may establish an incentive program that requires a minimum amount of affordable housing that must be provided by all residential developments built under the revised regulations. The minimum amount of affordable housing may be a percentage of the units or floor area in a development or of the development capacity of the site under the revised regulations. These programs may be established as follows:

(i) The county or city identifies certain land use designations within a geographic area where increased residential development will help achieve local growth management and housing policies.

(ii) The city or county adopts revised regulations to increase development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives.

(iii) The county or city determines that the increased residential development capacity resulting from the revised regulations can be achieved in the designated area, taking into consideration other applicable development regulations.

(3) Steps in establishing an incentive program.

(a) When developing incentive programs, counties and cities should start with the gaps identified in the housing element and develop incentive programs as a strategy to implement the housing element and close some of the identified gaps.

(b) Counties and cities should identify incentives that can be provided to residential, commercial, industrial or mixed-use developments providing affordable housing. Incentives could include density bonuses within the urban growth area, height and bulk bonuses, fee waivers or exemptions, parking reductions, expedited permitting, or other benefits to a development. Counties and cities may provide a variety of incentives and may tailor the type of incentive to the circumstances of a particular development project.

(c) Counties and cities may choose to offer incentives through development regulations, or through conditions on rezones or permit decisions.

(4) Criteria for determining income eligibility of prospective tenants or buyers. When developing an affordable housing incentive program, counties and cities must establish standards for low-income renter or owner occupancy housing consistent with RCW 36.70A.540 (2)(b). The housing must be affordable to and occupied by low-income households.

(a) Low-income renter households are defined as households with incomes of fifty percent or less of the county median family income, adjusted for family size.

(b) Low-income owner households are defined as households with incomes of eighty percent or less of the county median family income, adjusted for family size.

(c) Adjustments to income levels: Counties and cities may, after holding a public hearing, establish lower or higher income levels based on findings that such higher income and corresponding affordability limits are needed to address local housing market. The higher income level may not exceed eighty percent of county median family income for rental housing or one hundred percent of median county family income for owner-occupied housing.

(5) Maximum rent or sales prices: Counties and cities must establish the maximum rent level or sales prices for each low-income housing unit developed under the terms of their affordable housing programs. Counties and cities may adjust these levels based on the average size of the household expected to occupy the unit. These levels may be adjusted

over time with changes in median income and factors affecting the affordability of sales prices to low-income households.

(a) For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit.

(b) For owner-occupied housing units, affordable home prices should be based on conventional or FHA lending standards applicable to low-income first-time homebuyers.

(6) Types of units provided when a developer is using incentives to develop both market rate housing and affordable housing.

(a) Market-rate housing projects participating in the affordable housing incentive program should provide low-income units in a range of sizes comparable to those units that are available for other residents. To the extent practicable, the number of bedrooms in low-income units should be in the same proportion as the number of bedrooms in units within the entire development.

(b) The provision of units within the developments for which a bonus or incentive is provided is encouraged. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided.

(c) The low-income units should have substantially the same functionality as the other units in the development.

(7) Enforcement of conditions: Conditions may be enforced using covenants, options or other agreements executed and recorded by owners and developers of the affordable housing units. Affordable units developed under an incentive program should be committed to affordability for fifty years; however, a local government may accept payments in lieu of continuing affordability.

(8) Payment in lieu of providing units allowed. Counties and cities may also allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site. The payment must not exceed the approximate costs of developing the same number and quality of housing units that would otherwise be developed. The funds or property must be used to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

WSR 10-22-105
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 2, 2010, 12:44 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: On May 17, 2010, the Occupational Safety and Health Administration (OSHA) published in the Federal Register a final rule adding a nonmandatory note to the steel erection standard. The note provides information regarding existing Federal Highway Administration regulations that may apply to employers engaged in activities covered by the standards. The division of occupational safety and health (DOSH) believes that knowledge of these requirements will enhance the safety of employees operating on or near structural steel elements used in highway construction. Although this adoption does not impose any additional or more stringent requirements, it provides information that will enhance employee safety. References were also corrected.

WAC 296-155-704 Hoisting and rigging.

- Subsection (1): Changed the reference from "WAC 296-155-525 and 296-155-526" to "applicable parts of Part L."
- Subsection (3)(d): Changed the reference from "WAC 296-155-525 through 296-155-528" to "applicable parts of Part L."

WAC 296-155-706 Structural steel assembly.

- Subsection (1): Added a note that reads, "Federal Highway Administration (FHWA) regulations incorporate by reference a number of standards, policies, and standard specifications published by the American Association of State Highway and Transportation Officials (AASHTO) and other organizations. (See C.F.R. 625.4). Many of these incorporated provisions may be relevant to maintaining structural stability during the erection process. For instance, as of May 17, 2010, in many cases FHWA requires a Registered Engineer to prepare and seal working drawings for falsework used in highway bridge construction. (See AASHTO Specifications for Highway Bridges, Div. II, Sec. 3.2.1, 15th edition, 1992, which FHWA incorporates by reference in 23 C.F.R. 625.4). FHWA also encourages compliance with AASHTO Specifications that the FHWA regulations do not currently incorporate by reference. (See http://www.fhwa.dot.gov/bridge/lrfd/index.htm.)"
- Subsection (2)(b): Removed the word "reserved."
- Subsection (2)(c): Deleted this subdivision.

Citation of Existing Rules Affected by this Order: Amending WAC 296-155-704 Hoisting and rigging and 296-155-706 Structural steel assembly.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 10-16-122 on August 3, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 2, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 06-05-027, filed 2/7/06, effective 4/1/06)

WAC 296-155-704 Hoisting and rigging. (1) All the applicable provisions of ((~~WAC 296-155-525 and 296-155-526~~)) Part L of this chapter apply to hoisting and rigging.

(2) In addition, subsections (3) through (5) of this section apply regarding the hazards associated with hoisting and rigging.

(3) **General.**

(a) Crane preshift visual inspection.

(i) Cranes being used in steel erection activities must be visually inspected prior to each shift by a competent person. The inspection must include observation for deficiencies during operation and, as a minimum, must include:

• All control mechanisms for maladjustments;

• Control and drive mechanism for excessive wear of components and contamination by lubricants, water or other foreign matter;

• Safety devices, including boom angle indicators, boom stops, boom kick out devices, anti-two block devices, and load moment indicators where required;

• Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

• Hooks and latches for deformation, chemical damage, cracks, or wear;

• Wire rope reeving for compliance with hoisting equipment manufacturer's specifications;

• Electrical apparatus for malfunctioning, signs of excessive deterioration, dirt, or moisture accumulation;

• Hydraulic system for proper fluid level;

• Tires for proper inflation and condition;

• Ground conditions around the hoisting equipment for proper support, including ground settling under and around outriggers, ground water accumulation, or similar conditions;

• The hoisting equipment for level position; and

• The hoisting equipment for level position after each move and setup.

(ii) If any deficiency is identified, an immediate determination must be made by the competent person if the deficiency constitutes a hazard.

(iii) If the deficiency constitutes a hazard, the hoisting equipment must be removed from service until the deficiency has been corrected.

(iv) The operator is responsible for those operations under their direct control. Whenever there is any doubt as to safety, the operator must have the authority to stop and refuse to handle loads until safety has been assured.

(b) A qualified rigger (a rigger who is also a qualified person) must inspect the rigging prior to each shift in accordance with WAC 296-155-330.

(c) The headache ball, hook or load must not be used to transport personnel, except as provided in (d) of this subsection.

(d) Cranes or derricks may be used to hoist employees on a personnel platform when work under this part is being conducted if all the applicable provisions of ((~~WAC 296-155-525 through 296-155-528~~)) Part L of this chapter are met.

(e) Safety latches on hooks must not be deactivated or made inoperable except:

(i) When a qualified rigger has determined that the hoisting and placing of purlins and single joists can be performed more safely by doing so; or

(ii) When equivalent protection is provided in a site-specific erection plan.

(4) **Working under loads.**

(a) Routes for suspended loads must be preplanned to ensure that no employee works directly below a suspended load except when:

(i) Engaged in the initial connection of the steel; or

(ii) Necessary for the hooking or unhooking of the load.

(b) When working under suspended loads, the following criteria must be met:

(i) Materials being hoisted must be rigged to prevent unintentional displacement;

(ii) Hooks with self-closing safety latches or their equivalent must be used to prevent components from slipping out of the hook; and

(iii) All loads must be rigged by a qualified rigger.

(5) **Multiple lift rigging procedure.**

(a) A multiple lift must only be performed if the following criteria are met:

• A multiple lift rigging assembly is used;

• A multiple lift is only permitted when specifically within the manufacturer's specifications and limitations;

• A maximum of five members are hoisted per lift;

Exception: Bundles of decking must not be lifted using the multiple lift rigging procedure, even though they meet the definition of structural members in WAC 296-155-702.

• Only beams and similar structural members are lifted; and

• All employees engaged in the multiple lift have been trained in these procedures in accordance with WAC 296-155-717 (3)(a).

(b) Components of the multiple lift rigging assembly must be specifically designed and assembled with a maximum capacity for total assembly and for each individual attachment point. This capacity, certified by the manufacturer or a qualified rigger, must be based on the manufacturer's specifications with a five to one safety factor for all components.

(c) The total load must not exceed:

• The rated capacity of the hoisting equipment specified in the hoisting equipment load charts; and

• The rigging capacity specified in the rigging-rating chart.

(d) The multiple lift rigging assembly must be rigged with members:

• Attached at their center of gravity and maintained reasonably level;

• Rigged from top down; and

• Rigged at least seven feet (2.1 m) apart.

(e) The members on the multiple lift rigging assembly must be set from the bottom up.

(f) Controlled load lowering must be used whenever the load is over the connectors.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-155-706 Structural steel assembly. (1) Structural stability must be maintained at all times during the erection process.

Note: Federal Highway Administration (FHWA) regulations incorporate by reference a number of standards, policies, and standard specifications published by the American Association of State Highway and Transportation Officials (AASHTO) and other organizations. (See 23 C.F.R. 625.4.) Many of these incorporated provisions may be relevant to maintaining structural stability during the erection process. For instance, as of May 17, 2010, in many cases FHWA requires a registered engineer to prepare and seal working drawings for falsework used in highway bridge construction. (See *AASHTO Specifications for Highway Bridges, Div. II, Sec. 3.2.1, 15th edition, 1992,* which FHWA incorporates by reference in 23 C.F.R. 625.4.) FHWA also encourages compliance with AASHTO Specifications that the FHWA regulations do not currently incorporate by reference. (See http://www.fhwa.dot.gov/bridge/lrfd/index.htm.)

• Make sure that multistory structures have the following:

– Permanent floors installed as the erection of structural members progress;

– No more than eight stories between the erection floor and the upper-most permanent floor; and

– No more than four floors or forty-eight feet (14.6 m), whichever is less, of unfinished bolting or welding above the foundation or uppermost permanent secured floor.

Exception: The above applies except where the structural integrity is maintained as a result of design.

(2) **Walking/working surfaces.**

(a) Shear connectors and other similar devices.

(i) Shear connectors, reinforcing bars, deformed anchors or threaded studs must not be attached to the top flanges of beams, joists or beam attachments so they project vertically from or horizontally across the top flange of the member until after the metal decking, or other walking/working surface has been installed. This becomes a tripping hazard. Examples of shear connectors are headed steel studs, steel bars or steel lugs.

(ii) Installation of shear connectors on composite floors. When shear connectors are used in construction of composite floors, roofs and bridge decks, employees must lay out and install the shear connectors after the metal decking has been installed, using the metal decking as a working platform.

(b) Slip resistance of metal decking. (((~~Reserved.~~)))

(c) ((~~Reserved.~~

~~(d)~~)) Safe access must be provided to the working level. Employees must not slide down ropes, columns, or ladders.

(3) **Plumbing-up.**

(a) When deemed necessary by a competent person, plumbing-up equipment must be installed in conjunction with the steel erection process to ensure the stability of the structure.

(b) When used, plumbing-up equipment must be in place and properly installed before the structure is loaded with construction material such as loads of joists, bundles of decking or bundles of bridging.

(c) Plumbing-up equipment must be removed only with the approval of a competent person.

(4) **Metal decking.**

(a) Hoisting, landing and placing of metal decking bundles.

(i) Bundle packaging and strapping must not be used for hoisting unless specifically designed for that purpose.

(ii) If loose items such as dunnage, flashing, or other materials are placed on the top of metal decking bundles to be hoisted, such items must be secured to the bundles.

(iii) Bundles of metal decking on joists must be landed in accordance with WAC 296-155-709 (5)(d).

(iv) Metal decking bundles must be landed on framing members so that enough support is provided to allow the bundles to be unbanded without dislodging the bundles from the supports.

(v) At the end of the shift or when environmental or job site conditions require, metal decking must be secured against displacement.

(b) Roof and floor holes and openings. Metal decking at roof and floor holes and openings must be installed as follows:

(i) Framed metal deck openings must have structural members turned down to allow continuous deck installation except where not allowed by structural design constraints or constructibility.

(ii) Roof and floor holes and openings must be decked over. Where large size, configuration or other structural design does not allow openings to be decked over (such as elevator shafts, stair wells, etc.) employees must be protected in accordance with chapter 296-155 WAC, Part C-1 or Part K.

(iii) Metal decking holes and openings must not be cut until immediately prior to being permanently filled with the equipment or structure needed or intended to fulfill its specific use and which meets the strength requirements of (c) of this subsection, or must be immediately covered.

(c) **Covering roof and floor openings.** Smoke dome or skylight fixtures that have been installed are not considered covers for the purpose of this section unless they meet the strength requirements of WAC 296-155-505 (4)(g) (Part K).

(d) **Decking gaps around columns.** Wire mesh, exterior plywood, or equivalent, must be installed around columns where planks or metal decking do not fit tightly. The materials used must be of sufficient strength to provide fall protection for personnel and prevent objects from falling through.

(e) **Installation of metal decking.**

(i) Metal decking must be laid tightly and immediately secured upon placement to prevent accidental movement or displacement.

(ii) During initial placement, metal decking panels must be placed to ensure full support by structural members.

(f) **Derrick floors.**

(i) A derrick floor must be fully decked and or planked and the steel member connections completed to support the intended floor loading.

(ii) Temporary loads placed on a derrick floor must be distributed over the underlying support members so as to prevent local overloading of the deck material.

WSR 10-22-109
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed November 2, 2010, 4:34 p.m., effective December 3, 2010]

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

Purpose: The rule amends WAC 246-314-010 Definitions and 246-314-990 Construction review fees. The adopted rules update definitions and clarify the plan review process for those seeking construction review services.

Citation of Existing Rules Affected by this Order: Amending WAC 246-314-010 and 246-314-990.

Statutory Authority for Adoption: Chapter 43.70 RCW.

Adopted under notice filed as WSR 10-16-110 on August 2, 2010.

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

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

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

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

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

Date Adopted: November 2, 2010.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 06-16-118, filed 8/1/06, effective 9/1/06)

WAC 246-314-010 Definitions. ((~~For the purpose of this chapter the following words and phrases will have the following meanings~~)) The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Certified" means facilities that must be certified to participate in medicare or medicaid programs and meet physical environment minimum standards as required in the Code of Federal Regulations.

(2) "Change of approved use only" means a change in the function of a room that does not alter the physical elements.

(3) "((~~Interior~~)) Finishes" ((~~means~~)) includes, but is not limited to, products such as carpet, vinyl wall covering, wall paper, exterior siding, landscaping, or paneling applied to an existing surface as the exposed surface.

(4) "Licensed" means facilities licensed from the state department of health (DOH) or state department of social and health services (DSHS) that must obtain approval from construction review services before licensure activity.

(5) "Permit" means a recommendation to the licensing or certifying authority from construction review services indicating that a facility meets the physical environment rules and the plan review process is complete.

(6) "Program" means the Washington state department of health, construction review services.

(7) "Project" means a change to a facility including new construction, replacement, alterations, additions, expansions, conversions, change of approved use, improvements, remodeling, renovating, and upgrading of the following types of facilities:

(a) "Ambulatory surgery center" defined as a facility that is required to be certified for participation in medicare or medicaid or ambulatory surgical facilities licensed under chapters 70.230 RCW and 246-330 WAC;

(b) "Birthing centers" (formerly maternity homes) and "childbirth centers" licensed under chapters 18.46 RCW and 246-329 WAC;

(c) "Boarding homes" licensed under chapters 18.20 RCW and 388-78A WAC;

((~~(c)~~)) (d) "Correctional facilities" as defined under RCW 43.70.130(8);

((~~(d)~~)) (e) "Hospice care center" licensed under chapters 70.127 RCW and 246-335 WAC;

((~~(e)~~)) (f) "Hospitals" licensed under chapters 70.41 RCW and 246-320 WAC;

((~~(f) "Maternity homes" and "childbirth centers" licensed under chapters 18.46 RCW and 246-329 WAC;~~

~~(g) "Migrant worker housing" licensed under chapter 246-359 WAC. Plan review fees for migrant worker housing are set in chapters 246-358, 246-359, and 246-361 WAC;~~

~~(h)~~)) (g) "Nursing homes" licensed under chapters 18.51 RCW and 388-97 WAC;

((~~(i)~~)) (h) "Private ((~~alcoholism~~)) alcohol and chemical dependency hospitals" licensed under chapters 71.12 RCW and 246-324 WAC;

((~~(j)~~)) (i) "Private psychiatric and alcoholism hospitals" licensed under chapters 71.12 RCW and 246-322 WAC; ((~~and~~

~~(k)~~)) (j) "Residential treatment facilities" licensed under chapters 71.12 RCW and 246-337 WAC; and

(k) "Temporary worker housing" licensed under chapters 70.114A RCW and 246-358 WAC.

(8) "Project cost" means all costs directly associated with the project, initially estimated and corrected by certification to the date of completion of the project and including all fixed and installed clinical equipment in the project and contractor supervision, inspection, and overhead. This cost does not include:

(a) Taxes;

(b) Architectural or engineering fees; and

(c) Land acquisition fees.

(9) "Project sponsor" means the person, persons or organization, planning and contracting for the design and construction of facilities, generally the owner or the owner's representative.

(10) "Technical assistance" means assistance provided by the program to facilities either at the program offices or at the project location including:

(a) Information on the laws, rules and compliance methods and technologies applicable to the regulations;

(b) Information on methods to avoid compliance problems;

(c) Assistance in applying for permits, licensure or certification;

(d) Information on the mission, goals, and objectives of the program; and

(e) Assistance to parties constructing projects not required to be licensed or certified and voluntarily wish to comply with rules or guidelines in the interest of safety or best practices.

(11) "Value of existing construction" means the value of an existing building or portion thereof at the time of project submission, based on the current market value of the structure as documented by the project sponsor, or, as determined by assigning a cost per square foot value.

AMENDATORY SECTION (Amending WSR 06-16-118, filed 8/1/06, effective 9/1/06)

WAC 246-314-990 Construction review fees. (1) Upon prior approval by the program the project sponsor may exclude from the "project cost" the cost for fixed or installed technologically advanced clinical equipment such as but not limited to: Lithotripters, CT scans, linear accelerators, and MRIs.

(2) ((~~The program shall charge a flat fee for the review of the following projects:~~

~~(a) Installation of interior finishes only, one hundred twenty dollars;~~

~~(b) Change of approved use only, one hundred twenty dollars;~~

~~(c) The first submission for review and approval of the site installation of a mobile unit, four hundred seventy dollars. Each additional submission of the same project, two hundred eighty-five dollars;~~

~~(d) The first submission for review and approval of the equipment supplier of a mobile unit, four hundred seventy dollars. Each additional submission of the same project, two hundred eighty-five dollars;~~

~~(e) Each eight staff hours or fraction thereof for technical assistance, four hundred ten dollars. For technical assistance requiring travel, the program may increase the fee to include travel.~~)) **Project fee table.** Except as provided in subsection (4) and (5) of this section, the following fees will be charged for project review based on the cost of the project:

PROJECT FEE TABLE

Project Cost			Project Review Fee
$ 0	to	$ 999	$ 120
1,000	to	1,999	250
2,000	to	2,999	325
3,000	to	4,999	410
5,000	to	9,999	530
10,000	to	19,999	665
20,000	to	29,999	820
30,000	to	39,999	975
40,000	to	49,999	1,125
50,000	to	64,999	1,325
65,000	to	79,999	1,535
80,000	to	99,999	1,845
100,000	to	124,999	2,200
125,000	to	149,999	2,550
150,000	to	199,999	2,970
200,000	to	249,999	3,325
250,000	to	324,999	3,650
325,000	to	449,999	4,100
450,000	to	574,999	4,600
575,000	to	699,999	5,200
700,000	to	849,999	5,825
850,000	to	999,999	6,550
1,000,000	to	1,249,999	7,150
1,250,000	to	2,499,999	7,850
2,500,000	to	2,999,999	8,550
3,000,000	to	3,499,999	9,300
3,500,000	to	4,999,999	10,750
5,000,000	to	6,999,999	12,200
7,000,000	to	9,999,999	13,800
10,000,000	to	14,999,999	15,850
15,000,000	to	19,999,999	17,850
20,000,000	to	29,999,999	19,900
30,000,000	to	39,999,999	23,000
40,000,000	to	59,999,999	25,600
60,000,000	and over		28,700

(3) **Existing building conversions.** Building conversion fees will be based on the value of existing construction ((~~and derived from~~)). Fees will be charged for project review based on the project fee ((~~schedule~~)) table in subsection (2) of this section.

(a) The existing construction value is based on the local area cost data.

(b) Current cost data will be made available and posted on the construction review services web site: http://www.doh.wa.gov/hsqa/fsl/CRS.

(c) Project sponsors may submit specific cost data that accurately describes the estimate good faith value for the program's consideration.

((~~CONSTRUCTION FEE TABLE~~

~~Project Cost~~			~~Project Review Fee~~
~~$ 0~~	~~to~~	~~$ 999~~	~~$ 120~~
~~1,000~~	~~to~~	~~1,999~~	~~250~~
~~2,000~~	~~to~~	~~2,999~~	~~325~~
~~3,000~~	~~to~~	~~4,999~~	~~410~~
~~5,000~~	~~to~~	~~9,999~~	~~530~~
~~10,000~~	~~to~~	~~19,999~~	~~665~~
~~20,000~~	~~to~~	~~29,999~~	~~820~~
~~30,000~~	~~to~~	~~39,999~~	~~975~~
~~40,000~~	~~to~~	~~49,999~~	~~1,125~~
~~50,000~~	~~to~~	~~64,999~~	~~1,325~~
~~65,000~~	~~to~~	~~79,999~~	~~1,535~~
~~80,000~~	~~to~~	~~99,999~~	~~1,845~~
~~100,000~~	~~to~~	~~124,999~~	~~2,200~~
~~125,000~~	~~to~~	~~149,999~~	~~2,550~~
~~150,000~~	~~to~~	~~199,999~~	~~2,970~~
~~200,000~~	~~to~~	~~249,999~~	~~3,325~~
~~250,000~~	~~to~~	~~324,999~~	~~3,650~~
~~325,000~~	~~to~~	~~449,999~~	~~4,100~~
~~450,000~~	~~to~~	~~574,999~~	~~4,600~~
~~575,000~~	~~to~~	~~699,999~~	~~5,200~~
~~700,000~~	~~to~~	~~849,999~~	~~5,825~~
~~850,000~~	~~to~~	~~999,999~~	~~6,550~~
~~1,000,000~~	~~to~~	~~1,249,999~~	~~7,150~~
~~1,250,000~~	~~to~~	~~2,499,999~~	~~7,850~~
~~2,500,000~~	~~to~~	~~2,999,999~~	~~8,550~~
~~3,000,000~~	~~to~~	~~3,499,999~~	~~9,300~~
~~3,500,000~~	~~to~~	~~4,999,999~~	~~10,750~~
~~5,000,000~~	~~to~~	~~6,999,999~~	~~12,200~~
~~7,000,000~~	~~to~~	~~9,999,999~~	~~13,800~~
~~10,000,000~~	~~to~~	~~14,999,999~~	~~15,850~~
~~15,000,000~~	~~to~~	~~19,999,999~~	~~17,850~~
~~20,000,000~~	~~to~~	~~29,999,999~~	~~19,900~~
~~30,000,000~~	~~to~~	~~39,999,999~~	~~23,000~~
~~40,000,000~~	~~to~~	~~59,999,999~~	~~25,600~~
~~60,000,000 and over~~			~~28,700~~))

(4) **Flat fees.** The following projects will receive a discount on project review fees:

(a) Installation of finishes only, one hundred twenty dollars;

(b) Change of approved use only, one hundred twenty dollars;

(c) The first submission for review and approval of the site installation of a mobile unit, four hundred seventy dollars. Each additional submission of the same project, two hundred eighty-five dollars;

(d) The first submission for review and approval of the equipment supplier of a mobile unit, four hundred seventy dollars. Each additional submission of the same project, two hundred eighty-five dollars;

(e) Each eight staff hours or fraction thereof for technical assistance, four hundred ten dollars. For technical assistance requiring travel, the program may increase the fee to include travel expenses;

(f) Special projects as determined by the program that requires minimal or highly repetitive review, four hundred ten dollars for every review/inspection after the initial review;

(g) Plan review and inspection for the on-site installation of the foundation, and hook-ups including, but not limited to, potable water, sewage disposal systems, or gas connections for factory assembled structures, two hundred fifty dollars per site visit regardless of the number of sites installed and completed at the time of inspection;

(h) On-site inspection and plan review for foundation pad for temporary structures including, but not limited to, tents and RVs, one hundred and twenty dollars per site visit regardless of the number of pads installed and completed at the time of inspection.

(5) **Fee reductions.** The program may decrease the project review fees, when:

(a) The project sponsor requests a reduction in the fee according to subsection (1) of this section;

(b) The project is prepared by a state licensed architect or engineer when architectural or engineering services are not required by rule. ((~~In this case~~)) The project may qualify for a reduction of up to fifteen percent;

(c) A facility is converted from another occupancy as defined by the state building code; a facility is converted from one license to another; or, a facility that is currently unlicensed, but was previously licensed through the DOH or DSHS, wishes to be reviewed for ((~~licensure, then the construction review fee reduction of up to fifty percent from that shown on the construction review fee schedule shall be allowed~~)) relicensure. The project may qualify for a reduction of up to fifty percent. The amount of fee reduction will be determined by the estimated amount of systems review required to ensure that the rules have been met((~~;~~)).

((~~(d)~~)) (6) Total fee reductions may not exceed seventy percent of the original estimated project review fee.

((~~(5)~~)) (7) **Refunds.** The program shall refund fees paid when requested by the applicant as follows:

(a) The final attested project cost ((~~as shown on the project completion card~~)) is less than the project ((~~cost shown on the application~~)) estimated on the application. Fees paid may be refunded by the program according to the project fee table in subsection (2) of this section.

(b) If a project is canceled after an application and fee has been received but no plan review or technical assistance has been performed by the program, ((~~three-fourths~~)) seventy-five percent of the fees paid((~~;~~)).

(c) If a project is canceled after an application and fee has been received and plan review or technical assistance has been performed by the department, ((~~one-half~~)) fifty percent of the fees paid((~~;~~)).

((~~(d)~~)) (8) No fees paid by the applicant will be refunded after project cancellation if any of the following applies:

(((~~(i)~~))) (a) More than two on-site visits, conferences, or plan reviews for any purpose have been performed by the program;

(((~~(ii)~~))) (b) One year has elapsed since an application and fee is received by the program, but no permit is issued because applicant failed to complete requirements for permit, and the applicant has not pursued the project in good faith;

(((~~(iii)~~))) (c) The amount to be refunded as calculated by subsection (7)(a), (b), or (c) of this ((~~subsection~~)) section is one hundred twenty dollars or less;

(((~~(iv)~~))) (d) Approval or authorization to begin construction or a permit has been ((~~given~~)) issued or construction has ((~~commenced~~)) begun prior to a request from the applicant to cancel the project; or

(((~~(v)~~))) (e) A written request has not been received to cancel the project.

WSR 10-22-111

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 2, 2010, 5:03 p.m., effective December 3, 2010]

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

Purpose: WAC 246-810-010 and 246-810-016, legislation passed as SSB 6884 (chapter 20, Laws of 2010) that changed the definition of agency to include counties and specifically named juvenile court probation counselors. Individuals who are engaged in counseling services and are employed by a county in Washington can now become agency affiliated counselors (AAC).

Citation of Existing Rules Affected by this Order: Amending WAC 246-810-010 and 246-810-016.

Statutory Authority for Adoption: RCW 18.19.050.

Other Authority: RCW 18.19.020.

Adopted under notice filed as WSR 10-13-096 on June 16, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: November 2, 2010.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-010 Definitions. The definitions in this section apply throughout this chapter unless the content clearly requires otherwise.

(1) "Agency" means:

(a) An agency or facility operated, licensed, or certified by the state of Washington to provide a specific counseling service or services; or

(b) A county as listed in chapter 36.04 RCW.

(2) "Agency affiliated counselor" means a person registered under chapter 18.19 RCW, and this chapter, who is engaged in counseling and employed by an agency listed in WAC 246-810-016 or an agency recognized under WAC 246-810-017 to provide a specific counseling service or services.

(3) "Certified adviser" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-021.

(4) "Certified counselor" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-0201.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

(6) "Consultation" means the professional assistance and practice guidance that a certified counselor receives from a counseling-related professional credentialed under chapter 18.130 RCW. This may include:

(a) Helping the certified counselor focus on counseling practice objectives;

(b) Refining counseling modalities;

(c) Providing support to progress in difficult or sensitive cases;

(d) Expanding the available decision-making resources; and

(e) Assisting in discovering alternative approaches.

(7) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist, or attempt to assist, an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purpose of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(8) "Counselor" means an individual who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, agency affiliated counselors, certified counselors, certified advisers, hypnotherapists, and until July 1, 2010, registered counselors.

(9) "Department" means the Washington state department of health.

(10) "Fee" as referred to in RCW 18.19.030 means compensation received by the counselor for counseling services provided, regardless of the source.

(11) "Hypnotherapist" means a person registered under chapter 18.19 RCW, and this chapter, who is practicing hypnosis as a modality.

(12) "Licensed healthcare practitioner" means a licensed practitioner under the following chapters:

(a) Physician licensed under chapter 18.71 RCW.

(b) Osteopathic physician licensed under chapter 18.57 RCW.

(c) Psychiatric registered nurse practitioner licensed under chapter 18.79 RCW.

(d) Naturopathic physician licensed under chapter 18.36A RCW.

(e) Psychologist licensed under chapter 18.83 RCW.

(f) Independent clinical social worker, marriage and family therapist, or advanced social worker licensed under chapter 18.225 RCW.

(13) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in WAC 246-810-0201 or 246-810-021.

(14) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(15) "Recognized" means acknowledged or formally accepted by the secretary.

(16) "Recognized agency or facility" means an agency or facility that has requested and been recognized under WAC 246-810-017 to employ agency affiliated counselors to perform a specific counseling service, or services for those purposes only.

(17) "Secretary" means the secretary of the department of health or the secretary's designee.

(18) "Supervision" means the oversight that a counseling-related professional credentialed under chapter 18.130 RCW provides.

(19) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-016 Agencies ((~~or~~)), facilities, or counties that can employ agency affiliated counselors. Agencies or facilities that may employ an agency affiliated counselor are:

(1) Washington state departments and agencies listed in the Agency, Commission & Organization Directory available on the state of Washington web site.

(2) Counties as listed in chapter 36.04 RCW.

(3) Community and technical colleges governed by the Washington state board for community and technical colleges.

(((~~3~~))) (4) Colleges and universities governed by the Washington state higher education coordinating board.

(((~~4~~))) (5) Hospitals licensed under chapter 70.41 RCW.

(((~~5~~))) (6) Home health care agencies, home care agencies, and hospice care agencies licensed under chapter 70.127 RCW.

(((~~6~~))) (7) Agencies and facilities licensed or certified under chapters 71.05 or 71.24 RCW.

(((~~7~~))) (8) Psychiatric hospitals, residential treatment facilities, hospitals, and alcohol and chemical dependency entities licensed under chapter 71.12 RCW.

(((~~8~~))) (9) Other agencies or facilities recognized by the secretary as provided in WAC 246-810-017.