WSR 13-21-033
PERMANENT RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed October 9, 2013, 7:57 a.m., effective November 9, 2013]

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

Purpose: The purpose of the proposed rule changes is to replace existing local rules with similar federal regulations for selected consumer products and spray coatings. The federal regulations will be adopted by reference with provisions to allow for local implementation of the adopted regulations.

Existing local regulations are outdated. The rule changes will make Southwest Clean Air Agency's (SWCAA) program consistent with currently applicable federal requirements.

Citation of Existing Rules Affected by this Order: Amending SWCAA 493-100, 493-200, 493-300, 493-400, 493-500.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 13-13-009 on June 7, 2013.

Changes Other than Editing from Proposed to Adopted Version: Two changes were made from proposed to adopted version.

(1) In response to comments, local exceedance fee provisions were removed from the rule language of SWCAA 493-300.

(2) In response to comments, SWCAA added applicability language to each rule section to clarify that the rules only apply locally.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 3, 2013.

Robert D. Elliott
Executive Director

AMENDATORY SECTION (Amending WSR 96-10-026, filed 4/25/96, effective 5/26/96)

((~~SWAPCA~~)) SWCAA 493-100 CONSUMER PRODUCTS

((~~Reserved for adoption by reference of the U.S. Environmental Protection Agency's (EPA) equivalent rule. The EPA proposed rule was published in the federal register on Tuesday, April 2, 1996; Federal Register Vol. 61, No. 64, page 14531; 40 CFR 59, [AD-FRL-5451-7].~~))

(1) **Adoption by reference.** The National Volatile Organic Compound Emission Standards for Consumer Products contained in 40 CFR 59, Subpart C and appendices as in effect on July 1, 2011 are hereby adopted by reference. The term "administrator" as defined in 40 CFR 59.202 shall include the Executive Director of SWCAA. Exceptions to this adoption by reference are listed in subsection (3).

(2) **Applicability.** SWCAA 493-100 applies to the sale or use of consumer products within the jurisdiction of the Southwest Clean Air Agency.

(3) **Exceptions.** The following sections of 40 CFR 59, Subpart C are not adopted by reference:

(a) 40 CFR 59.204 *Innovative product provisions*; and

(b) 40 CFR 59.206 *Variances*.

(4) **Variances.**

(a) Any regulated entity who cannot comply with the requirements of this section because of extraordinary circumstances beyond reasonable control may apply in writing to the Executive Director for a variance. The variance application shall include the following information:

(i) The specific grounds upon which the variance is sought;

(ii) The proposed date(s) by which compliance with the provisions of this subpart will be achieved. Such date(s) shall be no later than 5 years after the issuance of a variance; and

(iii) A compliance plan detailing the method(s) by which compliance will be achieved.

(b) Upon receipt of a variance application containing the information required in subsection (3)(a), the Executive Director will publish a notice of such application on SWCAA's website and, if requested by any party, will hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements of this subpart is necessary and will be granted. If requested, a hearing will be held no later than 75 days after receipt of a variance application. Notice of the time and place of the hearing will be sent to the applicant by certified mail not less than 30 days prior to the hearing. At least 30 days prior to the hearing, the variance application will be made available to the public for inspection. Information submitted to the Executive Director by a variance applicant may be claimed as confidential. The Executive Director may consider such confidential information in reaching a decision on a variance application. Interested members of the public will be allowed a reasonable opportunity to testify at the hearing.

(c) The Executive Director will grant a variance if the following criteria are met:

(i) There are circumstances beyond the reasonable control of the applicant so that complying with the provisions of this subpart by the compliance date would not be technologically or economically feasible; and

(ii) The compliance plan proposed by the applicant can be implemented and will achieve compliance as expeditiously as possible.

(d) Any variance order will specify a final compliance date by which the requirements of this subpart will be achieved and increments of progress necessary to assure timely compliance.

(e) A variance shall cease to be effective upon failure of the regulated entity to comply with any term or condition of the variance.

(f) Upon the application of any party, the Executive Director may review, and for good cause, modify or revoke a variance after holding a public hearing in accordance with the procedures described in subsection (3)(b).

(5) **Variance Fee.** Each variance application must be accompanied by a fee of $800.

AMENDATORY SECTION (Amending WSR 96-10-026, filed 4/25/96, effective 5/26/96)

((~~SWAPCA~~)) SWCAA 493-200 ((~~SPRAY PAINTS~~)) AEROSOL COATINGS

(1) **Adoption by reference.** The National Volatile Organic Compound Emission Standards for Aerosol Coatings contained in 40 CFR Part 59, Subpart E as in effect on July 1, 2011 are hereby adopted by reference. The term "administrator" as defined in 40 CFR 59.503 shall include the Executive Director of SWCAA. Exceptions to this adoption by reference are listed in subsection (3).

(2) **Applicability.** SWCAA 493-200 applies to the sale or use of aerosol coatings within the jurisdiction of the Southwest Clean Air Agency.

(3) **Exceptions.** The following sections of 40 CFR 59, Subpart E are not adopted by reference:

(a) 40 CFR 59.509 *Can I get a variance?*.

(4) **Variances.**

(a) Any regulated entity that cannot comply with the requirements of this section because of circumstances beyond its reasonable control may apply temporary variance. The variance application must include the following information:

(i) The specific products for which the variance is sought;

(ii) The specific provisions of the subpart for which the variance is sought;

(iii) The specific grounds upon which the variance is sought;

(iv) The proposed date(s) by which the regulated entity will achieve compliance with the provisions of this subpart. This date must be no later than 3 years after the issuance of a variance; and

(v) A compliance plan detailing the method(s) by which the regulated entity will achieve compliance with the provisions of this subpart.

(b) Within 30 days of receipt of the original application and within 30 days of receipt of any supplementary information that is submitted, the Executive Director will send a regulated entity written notification of whether the application contains sufficient information to make a determination. If an application is incomplete, the Executive Director will specify the information needed to complete the application, and provide the opportunity for the regulated entity to submit written supplementary information or arguments to the Executive Director to enable further action on the application. The regulated entity must submit this information to the Executive Director within 30 days of being notified that its application is incomplete.

(c) Within 60 days of receipt of sufficient information to evaluate the application, the Executive Director will send a regulated entity written notification of approval or disapproval of a variance application. This 60-day period will begin after the regulated entity has been sent written notification that its application is complete.

(d) A variance will be issued if the following criteria are met to the satisfaction of the Executive Director:

(i) Complying with the provisions of this subpart would not be technologically or economically feasible; and

(ii) The compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(e) A variance must specify dates by which the regulated entity will achieve increments of progress towards compliance, and will specify a final compliance date by which the regulated entity will achieve compliance with this subpart.

(f) A variance will cease to be effective upon failure of the party to whom the variance was issued to comply with any term or condition of the variance.

(5) **Variance Fee.** Each variance application must be accompanied by a fee of $800.

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

((~~SWAPCA 493-200-010 Applicability~~

~~(1) SWAPCA 493-200-010 through 493-200-060 apply to any manufacturer, distributor, retailer or commercial applicator of spray paint for sale or use in the Vancouver AQMA.~~))

((~~SWAPCA 493-200-020 Definitions~~))

((~~As used in SWAPCA 493-200:~~

~~(1) **"Adhesive"** means a product used to bond one surface to another.~~

~~(2) **"Anti-Static Spray"** means a product used to prevent or inhibit the accumulation of static electricity.~~

~~(3) **"Art Fixative or Sealant"** means a clear coating, including art varnish, workable art fixative, and ceramic coating, which is designed and labeled exclusively for application to paintings, pencil, chalk, or pastel drawings, ceramic art pieces, or other closely related art uses, to provide a final protective coating or to fix preliminary stages of art work while providing a workable surface for subsequent revisions.~~

~~(4) **"ASTM"** means the American Society for Testing and Materials.~~

~~(5) **"Auto Body Primer"** means an automotive primer or primer surface coating designed and labeled exclusively to be applied to a vehicle body substrate for the purpose of corrosion resistance and building a repair area which can be sanded to a smooth condition after drying.~~

~~(6) **"Automotive Bumper and Trim Product"** means a product, including adhesion promoters and chip sealants, designed and labeled exclusively to repair and refinish automotive bumpers and plastic trim parts.~~

~~(7) **"Automotive Underbody Coating"** means a flexible coating which contains asphalt or rubber and is labeled~~

exclusively for use on the underbody of motor vehicles to resist rust, abrasion and vibration, and to deaden sound.

(8) **"Aviation Propeller Coating"** means a coating designed and labeled exclusively to provide abrasion resistance and corrosion protection for aircraft propellers.

(9) **"Aviation or Marine Primer"** means a coating designed and labeled exclusively to meet federal specification TT-P-1757.

(10) **"Belt Dressing"** means a product applied on auto fan belts, water pump belting, power transmission belting, industrial equipment belting, or farm machinery belting to prevent slipping, and to extend belt life.

(11) **"Cleaner"** means a product designed and labeled primarily to remove soil or other contaminants from surfaces.

(12) **"Clear Coating"** means a coating which is colorless, containing resins but no pigments, except flatting agents, and is designed and labelled to form a transparent or translucent solid film.

(13) **"Coating Solids"** means the nonvolatile portion of a spray paint, consisting of the film forming ingredients, including pigments and resins.

(14) **"Complying Spray Paint"** means a spray paint which complies with the VOC content limits in SWAPCA 493-100-020.

(15) **"Consumer"** means any person who purchases or acquires any spray paint for personal, family, or household use. Persons acquiring a spray paint product for resale are not considered consumers of that product.

(16) **"Commercial Applicator"** means any person who purchases, acquires, applies, or contracts for the application of spray paint for commercial, industrial or institutional uses, or any person who applies spray paint in the course of an activity from which compensation is derived.

(17) **"Corrosion Resistant Brass, Bronze, or Copper Coating"** means a clear coating formulated and labeled exclusively to prevent tarnish and corrosion of uncoated brass, bronze or copper metal surfaces.

(18) **"Distributor"** means any person who sells or supplies spray paint for the purposes of resale or distribution in commerce. "Distributor" includes activities of a self distributing retailer related to the distribution of products to individual retail outlets. "Distributor" does not include manufacturers except for a manufacturer who sells or supplies spray paint products directly to a retail outlet. "Distributor" does not include consumers.

(19) **"Dye"** means a product containing no resins which is used to color a surface or object without building a film.

(20) **"Electrical Coating"** means a coating designed and labeled to be used exclusively to coat electrical components such as electric motor windings to provide electrical insulation or corrosion protection.

(21) **"Enamel"** means a coating which cures by chemical cross-linking of its base resin and is not resoluble in its original solvent.

(22) **"Engine Paint"** means a coating designed and labeled exclusively as such, which is used exclusively to coat engines and their components.

(23) **"Environmental Protection Agency" or "EPA"** means the United States Environmental Protection Agency.

(24) **"Exact Match Finish, Automotive"** means a topcoat which meets all of the following criteria:

(a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied automotive coating during the touch-up of automobile finishes;

(b) The product is labeled with the original equipment manufacturer's name for which it was formulated; and

(c) The product is labeled with one of the following:

(1) The original equipment manufacturer's (OEM) color code;

(2) The color name; or

(3) Other designation identifying the specific OEM color to the purchaser.

(d) Notwithstanding subsections (a) through (c) of this section, automotive clear coatings designed and labeled exclusively for use over automotive exact match finishes to replicate the original factory applied finish shall be considered to be automotive exact match finishes.

(25) **"Exact Match Finish, Engine Paint"** means a coating which meets all of the following criteria:

(a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied engine paint;

(b) the product is labeled with the original equipment manufacturer's name for which it was formulated; and

(c) the product is labeled with one of the following:

(1) The OEM color code;

(2) The color name; or

(3) Other designation identifying the specific OEM color to the purchaser.

(26) **"Exact Match Finish, Industrial"** means a coating which meets all of the following criteria:

(a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied industrial coating during the touch-up of manufactured products;

(b) The product is labeled with the original equipment manufacturer's name for which it was formulated; and

(c) The product is labeled with one of the following:

(1) The OEM color code;

(2) The color name; or

(3) Other designation identifying the specific OEM color to the purchaser.

(27) **"Exempt compounds"** means compounds of carbon specifically excluded from the definition of VOC.

(28) **"Flat Paint Product"** means a coating which, when fully dry, registers specular gloss less than or equal to 15 on an 85° gloss meter, or less than or equal to 5 on a 60° gloss meter, or which is labeled as a flat coating.

(29) **"Flatting Agent"** means a compound added to a coating to reduce the gloss of the coating without adding color to the coating.

(30) **"Floral Spray"** means a coating designed and labeled exclusively for use on fresh flowers, dried flowers, or other items in a floral arrangement for the purpose of coloring, preserving or protecting their appearance.

(31) **"Fluorescent Coating"** means a coating labeled as such which converts absorbed incident light energy into emitted light of a different hue.

(32) **"Glass Coating"** means a coating designed and labeled exclusively to be applied to glass or other transparent

material, to create a soft, translucent light effect, or to create a tinted or darkened color while retaining transparency.

(33) **"Ground/Traffic Marking Coating"** means a coating designed and labeled exclusively to be applied to dirt, gravel, grass, concrete, asphalt, warehouse floors, or parking lots. Such coatings must be in a container equipped with a valve and sprayhead designed to direct the spray downward when the can is held in an inverted position.

(34) **"High Temperature Coating"** means a coating, excluding engine paint, which is designed and labeled exclusively for use on substrates which will, in normal use, be subjected to temperatures in excess of 400 degrees Fahrenheit.

(35) **"Hobby/Model/Craft Coating"** means a coating which is designed and labeled exclusively for hobby applications and is sold in aerosol containers of 6 ounces in weight or less.

(36) **"Ink"** means a fluid or viscous substance used in the printing industry to produce letters, symbols or illustrations, but not to coat an entire surface.

(37) **"Lacquer"** means a thermoplastic film-forming finish dissolved in organic solvent, which dries primarily by solvent evaporation, and is resoluble in its original solvent.

(38) **"Layout Fluid" or "Toolmaker's Ink"** means a coating designed and labeled exclusively to be sprayed on metal, glass or plastic, to provide a glare-free surface on which to scribe designs, patterns or engineering guide lines prior to shaping the piece.

(39) **"Leather Preservative"** means a leather treatment material applied exclusively to clean, condition or preserve leather.

(40) **"Lubricant"** means a substance such as oil, petroleum distillates, grease, graphite, silicone, lithium, etc., that is applied to surfaces to reduce friction, heat, or wear when applied between surfaces.

(41) **"Manufacturer"** means the company, firm or establishment which is listed on the product container or package. If the product container or package lists two companies, firms or establishments, the manufacturer is the party which the product was "manufactured for" or "distributed by", as noted on the product container or package.

(42) **"Marine Spar Varnish"** means a coating designed and labeled to be exclusively used as a protective sealant for marine wood products.

(43) **"Maskant"** means a coating applied directly to a component to protect surfaces during chemical milling, anodizing, aging, bonding, plating, etching, or other chemical operations.

(44) **"Metallic Coating"** means a topcoat which contains at least 0.5 percent by weight elemental metallic pigment in the formulation, including propellant, and is labeled as "metallic", or with the name of a specific metallic finish such as "gold", "silver", or "bronze".

(45) **"Mold Release"** means a coating applied to molds to prevent products from sticking to mold surfaces.

(46) **"Multi-Component Kit"** means a spray paint system which requires the application of more than one component, (e.g. foundation coat and top coat), where both components are sold together in one package.

(47) **"Noncomplying spray paint"** means a spray paint which does not comply with the VOC content limits in SWAPCA 493-200-030.

(48) **"Non-Flat Paint Product"** means a coating which, when fully dry, registers a specular gloss greater than 15 on an 85° gloss meter or greater than 5 on a 60° gloss meter.

(49) **"Photograph Coating"** means a coating designed and labeled exclusively to be applied to finished photographs to allow corrective retouching, protection of the image, changes in gloss level, or to cover fingerprints.

(50) **"Pleasure Craft"** means privately owned boats used for noncommercial purposes.

(51) **"Pleasure Craft Finish Primer/Surface/Undercoat"** means any coating designed and labeled exclusively to be applied before the application of a pleasure craft topcoat for the purpose of corrosion resistance and adhesion of a topcoat, and which promotes a uniform surface by filling in surface imperfections.

(52) **"Pleasure Craft Topcoat"** means a coating designed and labeled exclusively to be applied to a pleasure craft as a final coat above the water line and above and below the water line when stored out of water. This category does not include clear coatings.

(53) **"Primer"** means a coating labeled as such, which is designed to be applied to a surface to promote a bond between that surface and subsequent coats.

(54) **"Propellant"** means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from a container.

(55) **"Retailer"** means any person who sells, supplies, or offers spray paint for sale directly to consumers or commercial applicators.

(56) **"Retail Outlet"** means any establishment where spray paints are sold, supplied, or offered for sale directly to consumers or commercial applicators.

(57) **"Rust Converter"** means a product which is designed and labeled exclusively to convert rust to an inert material, and which has a minimum acid content of 0.5 percent by weight, and which has a maximum coating solids content of 0.5 percent by weight.

(58) **"Shellac Sealer"** means a clear or pigmented coating formulated solely with the resinous secretion of the lac beetle (Laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

(59) **"Slip-Resistant Coating"** means a coating designed and labeled exclusively as such which is formulated with synthetic grit, and used as a safety coating.

(60) **"Spatter Coating/Multicolor Coating"** means a coating labeled exclusively as such in which spots, globules, or spatters of contrasting colors appear on or within the surface of a contrasting or similar background.

(61) **"Spray Paint"** means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marking applications.

(62) **"Spray Paint Category"** means the applicable category which best describes a spray paint listed in SWAPCA 493-200-030.

(63) **"Stain"** means a coating labeled as such which is designed and labeled to change the color of a surface without concealing the surface from view.

(64) **"SWAPCA"** means the Southwest Air Pollution Control Authority.

(65) **"Topcoat"** means a coating applied over any coating, for the purpose of appearance, identification, or protection.

(66) **"Vancouver Air Quality Maintenance Area" or "Vancouver AQMA"** is the Vancouver portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in the Washington State Implementation Plan. The Vancouver AQMA includes the southern portion of Clark County, Washington.

(67) **"Vinyl/Fabric/Polycarbonate Coating"** means a coating designed and labeled exclusively to coat vinyl, fabric, or polycarbonate substrates.

(68) **"Volatile Organic Compound" or "VOC"** means those compounds of carbon defined in SWAPCA 400-030(89). For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in SWAPCA 493-200-060.

(69) **"VOC Content"** means the ratio of the weight of VOC to the total weight of the product contents expressed as follows:

$$\text{VOC Content} = W_{VOC}/W_{TOTAL} \times 100$$

Where:

W_{VOC} = the weight of volatile organic compounds; and

W_{TOTAL} = the total weight of the product's contents.

(70) **"Webbing/Veiling Coating"** means a spray product designed and labeled exclusively to produce a stranded or spider-webbed decorative effect.

(71) **"Weld-Through Primer"** means a coating designed and labeled exclusively to provide a bridging or conducting effect to provide corrosion protection following welding.

(72) **"Wood Stain"** means a coating which is formulated to change the color of a wood surface without concealing the surface from view.

(73) **"Wood Touch-Up/Repair/Restoration Coatings"** means coatings designed and labeled exclusively to provide an exact color or sheen match on finished wood products.))

((SWAPCA 493-200-030 Spray Paint Standards and Exemptions))

(((1) General Requirements. Where required by SWAPCA 493-200-040, spray paint shall not exceed the VOC content limits in Table C, as modified by the special conditions and exemptions in SWAPCA 493-200-030(2) and SWAPCA 493-200-030(3).

Table C
SPRAY PAINT VOC CONTENT LIMITS

Spray Paint Category	VOC Content Percent-by-weight
General Coatings	
Clear Coating	67.0
Flat Paint Products	60.0
Fluorescent Coatings	75.0
Lacquer Coating Products	80.0
Metallic Coating	80.0
Non-Flat Paint Products	65.0
Primer	60.0
Specialty Coatings	
Art Fixative or Sealant	95.0
Auto Body Primer	80.0
Automotive Bumper and Trim Products	95.0
Aviation or Marine Primer	80.0
Aviation Propeller Coating	84.0
Corrosion Resistant Brass, Bronze, or Copper Coatings Exact Match Finish	92.0
Engine Enamel	80.0
Automotive	88.0
Industrial	88.0
Floral Spray	95.0
Glass Coating	95.0
Ground Traffic Marking Coating	66.0
High Temperature Coating Hobby/Model/Craft Coating	80.0*
Enamel	80.0
Lacquer	88.0
Clear or Metallic	95.0
Marine Spar Varnish	85.0
Photograph Coating	95.0
Pleasure Craft Finish Primer Surface or Undercoater	75.0
Pleasure Craft Topcoat	80.0
Shellac Sealer	
Clear	88.0
Pigmented	75.0
Slip-Resistant Coating	80.0
Spatter/Multicolor Coating	80.0

Vinyl/Fabric/Polycarbonate Coating	95.0
Webbing/Veil Coating	90.0
Weld-Through Primer	75.0
Wood Stains	95.0
Wood Touch-Up, Repair, or Restoration Coatings	95.0

*The VOC limit for High-Temperature Coatings shall be 88.0% until July 1, 1999, after which the 80.0% limit shall apply.

(2) Special Conditions. The following conditions shall apply to spray paint subject to VOC content limits under SWAPCA 493-200-030(1):

(a) The total weight of VOC contained in a multi-component kit shall not exceed the total weight of VOC that would be allowed in the multi-component kit had each component product met the applicable VOC standards.

(1) Except as provided in SWAPCA 493-200-030 (2)(b)(B) if anywhere on the principal display panel of any spray paint or in any promotion of the product, any representation is made that the product may be used as, or is suitable for use as a spray paint for which a lower VOC standard is specified in SWAPCA 493-200-030(1), then the lower VOC standard shall apply.

(2) If a spray paint is subject to both a general coating limit and a specialty coating limit under SWAPCA 493-200-030(1), and the product meets all the criteria of the applicable specialty coating category as specified in SWAPCA 493-200-020, then the specialty coating limit shall apply instead of the general coating limit.

(3) Exemption. SWAPCA 493-200-030(1) shall not apply to aerosol lubricants, mold releases, automotive underbody coating, electrical coatings, cleaners, belt dressings, anti-static sprays, layout fluids and removers, adhesives, maskants, rust converters, dyes, inks, leather preservatives, or spray paint assembled by adding bulk paint to aerosol containers of propellant and solvent used for minor finish repairs during the original manufacture of products.))

((**SWAPCA 493-200-040 Requirements for Manufacture, Sale and Use of Spray Paint**))

(((1) **Manufacturers.** Except as provided in SWAPCA 493-200-040(6), any person who manufactures spray paint after July 1, 1996 which is sold, offered for sale, supplied or distributed, directly or indirectly, to a retail outlet in the Vancouver AQMA shall:

(a) Manufacture complying spray paint for spray paint marketed in the Vancouver AQMA;

(b) Clearly display the following information on each product container such that it is readily observable upon hand-held inspection without removing or disassembling any portion of the product container or packaging:

(1) The maximum VOC content of the spray paint, expressed as a percentage by weight;

(2) The spray paint category as defined in SWAPCA 493-200-020, or an abbreviation of the spray paint category; and

(3) The date on which the product was manufactured, or a code indicating such date; and

(c) Notify direct purchasers of products manufactured for sale within the Vancouver AQMA upon determining that any noncomplying spray paint has been supplied in violation of this rule.

(2) **Distributors.** Except as provided in SWAPCA 493-200-040(6), any distributor of spray paint manufactured after July 1, 1996 which is sold, offered for sale, supplied or distributed to a retail outlet within the Vancouver AQMA shall:

(a) Distribute to the Vancouver AQMA only spray paints are labeled as required under subsection SWAPCA 493-200-040 (1)(b);

(b) Distribute to the Vancouver AQMA only spray paints labeled with VOC contents that meet the VOC limits specified in SWAPCA 493-200-030; and

(c) Notify direct purchasers of products distributed for sale within the Vancouver AQMA upon determining that any noncomplying spray paint has been supplied in violation of this rule.

(3) **Retailers.**

(a) Except as provided in SWAPCA 493-200-040(6), no retailer shall knowingly sell within the Vancouver AQMA any noncomplying spray paint manufactured after July 1, 1996.

(b) Upon notification by SWAPCA, a manufacturer, or a distributor that any noncomplying spray paint has been supplied, a retailer shall remove noncomplying spray paint from consumer accessible areas of retail outlets within the Vancouver AQMA.

(4) **Commercial Applicators.** Except as provided in SWAPCA 493-200-040(6), no commercial applicator shall, within the Vancouver AQMA, knowingly use or contract for the use of any noncomplying spray paint manufactured after July 1, 1996.

(5) **Label Alteration.** No person shall remove, alter, conceal or deface the information required in SWAPCA 493-200-040 (1)(b) prior to final sale of the product.

(6) **Exception.** For spray paint which has been granted a compliance extension under SWAPCA 493-500-020, SWAPCA 493-200-040 applies to spray paint manufactured after the date specified in the compliance extension.))

((**SWAPCA 493-200-050 Recordkeeping and Reporting Requirements**))

(((1) **Recordkeeping.** Manufacturers subject to SWAPCA 493-200-040 shall maintain the following records for at least 2 years after a product is sold, offered for sale, supplied or distributed by the manufacturer, directly or indirectly, to a retail outlet in the Vancouver AQMA:

(a) VOC content records of spray paint based methods provided in SWAPCA 493-200-060;

(b) An explanation of any code indicating the date of manufacture of any spray paint; and

(c) Information used to substantiate an application for a compliance extension SWAPCA 493-500-020;

(2) **Reporting.** Following request and within a reasonable period of time, records specified in SWAPCA 493-200-050(1) shall be made available to SWAPCA.

(3) **Exemption from disclosure.** If a person claims that any Records or Information, as defined in RCW 70.94.205 "Confidentiality of records and information", is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in SWAPCA 493-500-030.))

((**SWAPCA 493-200-060 Inspection and Testing Requirements**))

(((1) The owner or operator of a facility subject to SWAPCA 493-200-010 through 493-200-060 shall, at any reasonable time, make the facility available for inspection by SWAPCA.

(2) Upon request of SWAPCA, any person subject to SWAPCA 493-200-010 through 493-200-060 shall furnish samples of spray paint products selected by SWAPCA from available stock for testing by SWAPCA to determine compliance with SWAPCA 493-200-030.

(3) Except as provided in SWAPCA 493-200-060(5), testing to determine compliance with SWAPCA 493-200-030 shall be performed using:

(a) VOC Content. The VOC content shall be determined by:

(1) The procedures set forth in Bay Area Air Quality Management District Manual of Procedures, Volume III, Laboratory Procedures, Method 35, "Determination of Volatile Organic Compounds (VOC) in Solvent Based Aerosol Paints," as amended January 19, 1994, and, for water-containing spray paints, by ASTM D5325-92, "Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints", November 15, 1992; or

(2) Calculation of VOC content from records of amounts of constituents used to manufacture the product and the chemical compositions of the individual product constituents.

(b) Exempt Compounds. If a method specified in subsection (a) of this section to measure VOC also measures exempt compounds, the exempt compounds may be excluded from the VOC content if the amount of such compounds is accurately quantified. SWAPCA may require a manufacturer to provide methods and results demonstrating, to the satisfaction of SWAPCA, the amount of exempt compounds in the spray paint or the spray paint's emissions.

(4) Except as provided in Section (5) of this rule, testing to establish the spray paint category as defined in SWAPCA 493-200-020 shall be performed using:

(a) Metal Content. The metal content of metallic aerosol coating products shall be determined by South Coast Air Quality Management District Test Method 311 (SCAQMD "Laboratory Methods of Analysis for Enforcement Samples" manual), June 1, 1991, after removal of the propellant following the procedure in ASTM Method 5325-92, "Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints", November 15, 1992.

(b) Specular Gloss. Specular gloss of flat and non-flat coatings shall be determined by ASTM Method D523-89, March 31, 1989.

(c) Acid Content. The acid content of rust converters shall be determined by ASTM Method D-1613-85, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates used in Paint, Varnish, Lacquer, and Related Products", May 31, 1985, after removal of the propellant following the procedure in ASTM Method D-5325-92, "Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints", November 15, 1992.

(5) Alternative test methods which are shown to accurately determine the VOC content, exempt compounds, metal content, specular gloss, or acid content in a spray paint may also be used if approved in writing by EPA and SWAPCA.))

AMENDATORY SECTION (Amending WSR 96-10-026, filed 4/25/96, effective 5/26/96)

((SWAPCA)) SWCAA 493-300 ARCHITECTURAL COATINGS

(1) **Adoption by reference.** The National Volatile Organic Compound Emission Standards for Architectural Coatings contained in 40 CFR Part 59, Subpart D and appendices as in effect on July 1, 2011 are hereby adopted by reference. The term "administrator" as defined in 40 CFR 59.401 shall include the Executive Director of SWCAA.

(2) **Applicability.** SWCAA 493-300 applies to the sale or use of architectural coatings within the jurisdiction of the Southwest Clean Air Agency.

((**SWAPCA 493-300-010 Applicability**

(1) SWAPCA 493-300 applies to any manufacturer, distributor, retailer, or commercial applicator of architectural coatings for sale or use in the Vancouver AQMA.))

((**SWAPCA 493-300-020 Definitions**))

((As used in SWAPCA 493-300:

(1) **"AAMA"** means the American Architectural Manufacturers Association.

(2) **"Alkali-Resistant Primers"** means high performance primers formulated to resist reaction with alkaline materials including, but not limited to, lime, cement, and soap.

(3) **"Antenna Coatings"** means coatings formulated and recommended for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

(4) **"Anti-Fouling Coatings"** means high performance coatings formulated and recommended for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms, including, but not limited to, coatings registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.) and nontoxic foul release coatings.

(5) **"Anti-Graffiti Coatings"** means clear or opaque high performance coatings specifically labelled as anti-graffiti coatings and both formulated and recommended for appli-

cation to graffiti-prone surfaces to deter adhesion of graffiti and to facilitate graffiti removal.

(6) **"Appurtenance"** means an accessory to a stationary structure, whether installed or detached at the proximate site of installation, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating, air conditioning, or other fixed mechanical equipment or large stationary tools; lamp posts; partitions; piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks and fire escapes; and window screens.

(7) **"Architectural Coatings"** means coatings formulated and recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs.

(8) **"ASTM"** means the American Society for Testing and Materials.

(9) **"Below-Ground Wood Preservatives"** means coatings formulated and recommended to protect below-ground wood from decay or insect attack which are registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.).

(10) **"Bituminous Coatings and Mastics"** means coatings and mastics formulated and recommended for roofing, pavement sealing, or waterproofing that incorporate bitumens as a principal component. Bitumens are black or brownish materials which are soluble in carbon disulfide, which consist mainly of hydrocarbons, and which are obtained from natural deposits or as residues from the distillation of crude petroleum or low grades of coal. Bitumens include asphalt, tar, pitch and asphaltite.

(11) **"Bond Breakers"** means coatings formulated and recommended for application to concrete to prevent the formation of a bond to a subsequently placed concrete layer.

(12) **"Chalkboard Resurfacers"** means coatings formulated and recommended for application to chalkboards to restore a suitable surface for writing with chalk.

(13) **"Clear Coating"** means a coating that when dry allows light to pass so the substrate may be distinctly seen.

(14) **"Clear & Semitransparent Stains"** means transparent or translucent coatings formulated and recommended for application to wood-based substrates to impart a desired color without completely concealing the surface or its natural texture or grain pattern.

(15) **"Clear & Semitransparent Wood Preservatives"** means coatings formulated and recommended to protect exposed wood from decay or insect attack, registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.), that may change the color of the substrate but do not completely conceal the substrate.

(16) **"Clear Waterproofing Sealers & Treatments"** means coatings which are formulated and recommended for application to porous substrates for the primary purpose of preventing the penetration of water and which do not alter the surface appearance or texture.

(17) **"Coating Category"** means the applicable category which best describes the coating as listed in this rule.

(18) **"Colorant"** means a concentrated pigment dispersion of water, solvent, or binder that is added to an architectural coating or tint base after the coating or tint base has been shipped from its place of manufacture.

(19) **"Commercial Applicator"** means any person who purchases, hires, acquires, applies or contracts for the application of architectural coatings for commercial, industrial or institutional uses, or any person who applies architectural coatings for compensation.

(20) **"Complying Architectural Coating"** means a coating which complies with the VOC content limits of SWAPCA 493-300-030.

(21) **"Concrete Curing Compounds"** means coatings formulated and recommended for application to recently cast concrete to retard the evaporation of water.

(22) **"Concrete Protective Coatings"** means high build coatings formulated and recommended for application in a single coat over concrete, plaster, or other cementitious surface. These coatings are formulated to be primerless, one-coat systems which can be applied over form release compounds or uncured concrete. These coatings prevent spalling of concrete in freezing temperatures by providing long term protection from water and chloride ion intrusion.

(23) **"Distributor"** means any person who sells or supplies architectural coating for the purposes of resale or distribution in commerce. "Distributor" includes activities of a self-distributing retailer related to the distribution of products to individual retail outlets. "Distributor" does not include manufacturers except for a manufacturer who sells or supplies products directly to a retail outlet. "Distributor" does not include consumers.

(24) **"Dry Fog Coatings"** means coatings formulated and recommended only for circumstances in which overspray droplets are desired to dry before contacting incidental surfaces in the vicinity of a surface coating activity.

(25) **"Environmental Protection Agency", or "EPA"** means the United States Environmental Protection Agency.

(26) **"Exempt compounds"** means compounds of carbon excluded from the definition of VOC.

(27) **"Exterior Coatings"** means coatings formulated and recommended for use in conditions exposed to the weather.

(28) **"Extreme High Durability Coatings"** means air dry flouropolymer based coatings formulated and recommended for the protection of architectural subsections and which meet the weathering requirements of AAMA 605.2-1985 Section 7.9.

(29) **"Fire Retardant/Resistive Coatings"** means clear or opaque coatings formulated and recommended to retard ignition and flame spread, or to delay melting or structural weakening due to high heat, and which are fire-tested and rated by a certified laboratory for use in bringing buildings or construction materials into compliance with building code requirements applicable to the place of use.

(30) **"Flat Coatings"** means coatings which register gloss less than 15 on an 85 degree meter and less than 5 on a 60 degree meter according to ASTM Method D523, Standard Test Method for Specular Gloss.

(31) **"Floor Coatings"** means coatings formulated and recommended for application to flooring, including, but not limited to, decks, porches, and steps, and which have a high degree of abrasion resistance.

(32) **"Flow Coatings"** means coating materials formulated and recommended to maintain the protective coating systems present on utility transformers.

(33) **"Form-Release Compounds"** means coatings formulated and recommended for application to concrete forms to prevent formation of a bond between the form and concrete cast within.

(34) **"Graphic Arts Coatings" or "Sign Paints"** means coatings formulated and recommended for hand-application either on-site or in-shop by artists using brush or roller techniques to indoor or outdoor signs (excluding structural components) and murals, including lettering enamels, poster colors, and copy blockers.

(35) **"Heat-Reactive Coatings"** means high performance phenolic based coatings requiring a minimum temperature of 191° Celsius (C) [375° Fahrenheit (F)] to 204° C (400° F) to obtain complete polymerization or cure. These coatings are formulated and recommended for commercial and industrial use to protect substrates from degradation and maintain product purity in which one or more of the following extreme conditions exist:

(a) Continuous or repeated immersion exposure to 90 to 98% sulfuric acid or oleum;

(b) Continuous or repeated immersion exposure to strong organic solvents;

(c) Continuous or repeated immersion exposure to petroleum processing at high temperatures and pressures; or,

(d) Continuous or repeated immersion exposure to food or pharmaceutical products which may or may not require high temperature sterilization.

(36) **"High Temperature Coatings"** means high performance coatings formulated and recommended for application to substrates exposed continuously or intermittently to temperatures above 201° C (394° F).

(37) **"Impacted Immersion Coatings"** means high performance maintenance coatings formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage caused by floating ice or debris.

(38) **"Industrial Maintenance Coatings"** means high performance architectural coatings including primers, sealers, undercoaters, intermediate coats, and topcoats formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions:

(a) Immersion in water, wastewater or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation;

(b) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, chemical mixtures or solutions;

(c) Repeated exposure to temperatures above 120° C (248° F);

(d) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or

(e) Exterior exposure of metal structures and structural components.

(39) **"Interior Coatings"** means coatings formulated and recommended for use in conditions not exposed to natural weathering.

(40) **"Interior Clear Wood Sealers"** means low viscosity coatings formulated and recommended for sealing and preparing porous wood by penetrating the wood and creating a uniform and smooth substrate for a finish coat of paint or varnish.

(41) **"Lacquers"** means clear or opaque wood finishes, including lacquer sanding sealers, formulated with cellulosic or synthetic resins to cure by evaporation without chemical reaction, and to provide a solid, protective film.

(42) **"Lacquer Stains"** means interior semitransparent stains formulated and recommended specifically for use in conjunction with clear lacquer finishes and lacquer sanding sealers.

(43) **"Manufacturer"** means the company, firm or establishment which is listed on the coating container. If the container lists two companies, firms or establishments, the manufacturer is the party which the coating was "manufactured for" or "distributed by", as noted on the product.

(44) **"Magnesite Cement Coatings"** means coatings formulated and recommended for application to magnesite cement decking to protect against water erosion.

(45) **"Mastic Texture Coatings"** means coatings formulated and recommended for concealing holes, minor cracks, or surface irregularities, and which are applied in a single coat of at least 10 mils (0.010 inches) dry film thickness.

(46) **"Metallic Pigmented Coatings"** means non-bituminous coatings containing at least 0.4 pounds of metallic pigment per gallon (0.048 kilograms per liter) of coating, including but not limited to zinc pigment.

(47) **"Multi-Color Coatings"** means coatings that exhibit more than one color when applied and which are packaged in a single container.

(48) **"Noncomplying Architectural Coating"** means a coating which does not comply with the VOC content limits of SWAPCA 493-300-030.

(49) **"Nonferrous Metal Lacquers & Surface Protectants"** means clear coatings formulated and recommended for application to ornamental architectural surfaces of bronze, stainless steel, copper, brass or anodized aluminum to prevent oxidation, corrosion, or surface degradation.

(50) **"Non-Flat Coatings"** means coatings that register a gloss of 15 or greater on an 85-degree gloss meter, or 5 or greater on a 60-degree gloss meter.

(51) **"Not Otherwise Specified" or "N.O.S."** means not otherwise specified as a coating category.

(52) **"Nuclear Power Plant Coatings"** means any protective coating formulated and recommended to seal porous surfaces such as steel or concrete that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to service-life cumulative radiation exposure as determined by ASTM D4082-83, relatively easy to decontaminate as determined by ASTM D4256-83, and resistant to various chemicals to which the coatings are likely to be exposed as determined by ASTM D3912-80. General protective requirements are outlined by the Department of Energy, formerly U.S. Atomic Energy Commission, Regulatory Guide 1.54).

(53) **"Opaque Coating"** means a coating producing a dry film that does not allow light to pass, so the substrate is concealed from view.

(54) **"Opaque Stains"** means coatings labeled as stains that are recommended to hide a surface but not conceal its texture.

(55) **"Opaque Waterproofing Sealers & Treatments"** means coatings with pigments that are formulated and recommended for application to porous substrates for the primary purpose of preventing the penetration of water and which alter the surface appearance and texture.

(56) **"Opaque Wood Preservatives"** means coatings formulated and recommended to protect wood from decay or insect attack, and that are not classified as clear, semitransparent, or below-ground wood preservatives, and are registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 136 et seq.).

(57) **"Other Surfaces"** means paved parking areas (both publicly and privately owned), airport runways, airport taxiways, driveways, sidewalks, bikepaths and curbs.

(58) **"Post-Consumer Coating"** means a leftover architectural coating collected as a waste product from previous users that is employed as a raw material in the manufacture of a recycled coating product for reentry to the marketplace.

(59) **"Pre-treatment Wash Primers"** means primers which contain a minimum of 0.5 percent acid by weight, and that are applied directly to bare metal surfaces in thin films to provide corrosion resistance, and to promote adhesion of subsequent topcoats.

(60) **"Primers"** means coatings formulated and recommended for application directly to substrates to provide a firm bond between the substrate and subsequent coats.

(61) **"Public Streets & Highways"** means publicly owned surfaces used primarily for vehicular traffic such as streets, roads, and highways.

(62) **"Quick-Dry Enamels"** means non-flat coatings that:

(a) Are capable of being applied directly from the container under normal conditions, with ambient temperatures between 19° Celsius (C) [60° Fahrenheit (F)] and 27° C (80° F); and

(b) When tested in accordance with ASTM Method D1640, Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature, are set to touch in two hours or less, are tack free in four hours or less, and dry hard in eight hours or less by the mechanical method.

(63) **"Quick-Dry Primers, Sealers, and Undercoaters"** means primers, sealers and undercoaters which are dry to touch in one-half hour, and can be recoated in two hours, when tested in accordance with ASTM D1640, Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature.

(64) **"Recycled Coating Product"** means an architectural coating that contains post-consumer coating.

(65) **"Repair and Maintenance Thermoplastic Coatings"** means industrial maintenance coatings with a primary resin of vinyl or chlorinated rubber which are formulated and recommended solely for the repair of existing coatings that also have a primary resin of vinyl or chlorinated rubber without the full removal of the existing coating system.

(66) **"Retailer"** means any person who sells, supplies, or offers architectural coatings for sale directly to consumers or commercial applicators.

(67) **"Retail Outlet"** means any establishment where architectural coatings are sold, supplied, or offered for sale directly to consumers or commercial applicators.

(68) **"Roof Coatings"** means non-bituminous and non-thermoplastic rubber coatings formulated and recommended for application to exterior roofs for the primary purpose of preventing penetration of the substrate by water, or reflecting heat and reflecting ultraviolet radiation.

(69) **"Rust Preventive Coatings"** means coatings formulated and recommended for use in preventing the corrosion of ferrous metal surfaces.

(70) **"Sanding Sealers"** means clear wood coatings formulated and recommended for application to bare wood to seal the wood and to provide a coating that can be sanded to create a smooth surface.

(71) **"Sealers"** means coatings formulated and recommended for application to substrates for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate; to prevent harm to subsequent coatings from materials in the substrate; to block stains, odors, or efflorescence; to seal water, smoke or fire damage; or to condition chalky surfaces.

(72) **"Shellacs"** means a clear or pigmented coating formulated with natural resins soluble in alcohol (including but not limited to, the resinous secretions of the lac beetle, Laciffer, lacca). Shellacs dry by evaporation without chemical reaction and provide a quick-drying, solid protective film that may be used for blocking stains.

(73) **"Solicit"** means to require for use or to specify, by written or oral contract.

(74) **"SWAPCA"** means the Southwest Air Pollution Control Authority.

(75) **"Swimming Pool Coatings"** means coatings formulated and recommended to coat the interior of swimming pools and to resist swimming pool chemicals.

(76) **"Thermoplastic Rubber Coatings & Mastics"** means coatings and mastics formulated and recommended for application to roofing and other structural surfaces which incorporate no less than 40% thermoplastic rubbers by weight of the total resin solids and may also contain other ingredients, including, but not limited to, fillers, pigments, and modifying resins.

(77) **"Tint Base"** means an architectural coating to which colorants are added after the coating has been shipped from its place of manufacture.

(78) **"Topcoat"** means a coating applied over any coating, for the purpose of appearance, identification, or protection.

(79) **"Traffic Marking Paints"** means coatings formulated and recommended to be used for marking or striping streets, highways and other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots and airport runways.

(80) **"Undercoaters"** means coatings formulated and recommended to provide a smooth surface for subsequent coats.

(81) **"Vancouver Air Quality Maintenance Area" or "Vancouver AQMA"** is the Washington portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in the Washington State Implementation Plan. (The Vancouver AQMA includes the southern portion of Clark County, Washington.)

(82) **"Varnishes"** means clear or semitransparent coatings which are not lacquers or shellacs, and which are formulated to provide a durable, solid protective film. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

(83) **"Volatile Organic Compound" or "VOC"** means compounds of carbon defined in SWAPCA 400-030(86). For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in SWAPCA 493-300-060.

(84) **"VOC Content"** means the weight of VOCs contained in a volume of architectural coating. For products listed in SWAPCA 493-300-030(1) Table D, VOC content shall be determined on a "VOC Per Liter - Less Water Basis" of "VOC Per Gallon - Less Water Basis".

(85) **"VOC Per Liter or Gallon - Less Water Basis"** means the weight of VOCs per combined volume of VOC and coating solids at the maximum thinning level recommended by the manufacturer, less water, less exempt compounds, and before the addition of colorants added to tint bases, and shall be calculated as follows:

$$\text{VOC Content} = W_{VOC}/(V_M - V_{H2O} - V_{EC})$$

Where: W_{VOC} = weight of VOCs not consumed during curing, in grams or in pounds.

V_M = volume of material prior to curing, in liters or in gallons.

V_{H2O} = volume of water not consumed during curing, in liters or in gallons.

V_{EC} = volume of exempt compounds not consumed during curing, in liters or in gallons.))

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

((**SWAPCA 493-300-030 Standards**))

(((1) Where required by SWAPCA 493-300-040, architectural coatings shall not exceed the VOC content limits listed in Table D on a "VOC Per Liter or Gallon - Less Water Basis" as modified by the special conditions and exemptions in SWAPCA 493-300-030(2) and SWAPCA 493-300-030(3).

Table D

ARCHITECTURAL COATING VOC CONTENT LIMITS

VOC PER LITER or GALLON - LESS WATER BASIS

Coating Category	VOC (g/l)	VOC (lb/gal)
Alkali Resistant Primers	550	4.58
Antenna Coatings	500	4.16
Anti-Fouling Coatings	450	3.75
Anti-Graffiti Coating	600	5.00
Bituminous Coatings and Mastics	500	4.16
Bond Breakers	600	5.00
Chalkboard Resurfacers	450	3.75
Concrete Curing Compounds	350	2.91
Concrete Protective Coatings	400	3.33
Dry Fog Coatings	400	3.33
Extreme High Durability Coatings	800	6.66
Fire-Retardant/Resistive Coatings		
Clear	850	7.08
Opaque	450	3.75
Flat Coatings - N.O.S.		
Exterior	250	2.08
Interior	250	2.08
Floor Coatings	400	3.33
Flow Coatings	650	5.41
Form Release Compounds	450	3.75
Graphic Arts Coatings or Sign Paints	500	4.16
Heat Reactive Coatings	420	3.5
High Temperature Coatings	650	5.41
Impacted Immersion Coatings	780	6.50
Industrial Maintenance Coatings	450	3.75
Lacquers	680	5.66
Lacquer Stains	780	6.50
Magnesite Cement Coatings	600	5.00
Mastic Texture Coatings	300	2.50
Metallic Pigmented Coatings	500	4.16
Multi-Color Coatings	580	4.83
Nonferrous Metal Lacquers & Surface Protectants	870	7.25
Non-Flat Coatings - N.O.S:		
Exterior	380	3.16
Interior	380	3.16
Nuclear Power Plant Coatings	450	3.75
Pretreatment Wash Primers	780	6.50
Primers and Undercoaters - N.O.S.	350	2.91

Quick-Dry Coatings		
Enamels	450	3.75
Primers, Sealers and Undercoaters	450	3.75
Repair and Maintenance Thermoplastic Coatings	650	5.41
Roof Coatings	250	2.08
Rust Preventive Coatings	400	3.33
Sanding Sealers - (other than lacquer)	550	4.58
Sealers - (including interior clear wood sealers)	400	3.33
Shellacs:		
Clear	650	5.41
Opaque	550	4.58
Stains & Wood Preservatives:		
Below Ground Wood Preservatives	550	4.58
Clear & Semitransparent	550	4.58
Opaque	350	2.91
Swimming Pool Coatings	850	7.08
Thermoplastic Rubber Coatings & Mastics	550	4.58
Traffic Marking Paints		
Public Streets & Highways	150*	1.25
Other Surfaces	250	2.08
Varnishes	450	3.75
Waterproofing Sealers & Treatments:		
Clear	600	5.00
Opaque	400	3.33

*Prior to Jan. 1, 1997, a VOC content limit of 250 grams per liter (2.08 lbs/gallon) applies to Traffic Marking Paints for Public Streets & Highways.

(2) Special Conditions. The following conditions shall apply to architectural coatings subject to VOC content limits under SWAPCA 493-300-030(1):

(a) Notwithstanding the definition of coating category in SWAPCA 493-300-020, if anywhere on the coating container, or in any promotion of an architectural coating, any representation is made that the coating may be used as, or is suitable for use as a coating for which a lower VOC limit is specified in SWAPCA 493-300-030(1), then the lower VOC limit shall apply. This requirement shall not apply to:

(1) High Temperature Coatings, which may be represented as metallic pigmented coatings for use consistent with the High Temperature Coating definition;

(2) Lacquer, which may be recommended for use as sanding sealers in conjunction with clear lacquer topcoats;

(3) Metallic Pigmented Coatings, which may be recommended for use as primers, sealers, undercoaters roof coatings, or industrial maintenance coatings;

(4) Shellacs;

(5) Fire Retardant/Resistive Coatings;

(6) Sanding sealers which may be represented as quick dry sealers; and,

(7) Varnish, which may be recommended for use as a floor coating.

(b) VOC Content of Recycled Coating Products.

(1) For coatings manufactured domestically containing post-consumer coating, compliance with the VOC limits of Table D of this rule shall be determined by the adjusted VOC content at the maximum thinning recommended by the manufacturer using the following equation:

$$VOC_{ADJUSTED} = VOC_{ACTUAL} \times [1 - (Recycled\%/100)]$$

Where:

$VOC_{ADJUSTED}$ = The adjusted VOC content of a recycled coating product expressed as grams VOC per liter or pounds per gallon, less water.

VOC_{ACTUAL} = The VOC content of the recycled coating product as determined by procedures specified in SWAPCA 493-300-060(3) with the exception that VOCs in colorants of post-consumer coatings shall not be excluded from the VOC determination.

Recycled % = The volume percent of the recycled coating product that is post-consumer coating as determined by SWAPCA 493-300-030 (2)(b)(B).

(2) The percent recycled shall be determined using the following equation:

$$Recycled\% = VOL_{POST\text{-}CONS} \times 100/(VOL_{POST\text{-}CONS} + VOL_{VIRGIN})$$

Where:

$VOL_{POST\text{-}CONS}$ = The volume of post-consumer coating per gallon used in the production of a recycled coating product.

VOL_{VIRGIN} = The volume of virgin coating materials used in the production of a recycled coating product.

(3) Exemptions. SWAPCA 493-300-030(1) shall not apply to:

(a) Colorants added to tint bases by a retailer or commercial applicator.

(b) Coatings that are sold in containers with a volume of not more than one quart (32 fluid ounce or 0.95 liter) or in non-refillable aerosol containers.))

((**SWAPCA 493-300-040 Requirements for Manufacture, Sale and Use of Architectural Coating**))

(((1) **Manufacturers.** Except as provided in SWAPCA 493-300-040(6), any person who manufactures architectural coatings after July 1, 1996 which are sold, offered for sale, supplied or distributed, directly or indirectly, to a retail outlet in the Vancouver AQMA shall:

(a) Manufacture complying architectural coatings for architectural coatings marketed in the Vancouver AQMA;

(b) Clearly display the following information on each product container such that it is readily observable upon hand-held inspection without removing or disassembling any portion of the product container or packaging:

(1) The date on which the product was manufactured, or a code indicating such date;

(2) The maximum VOC content of the coating, at the maximum thinning recommended by the manufacturer, expressed as grams of VOC per liter or pounds VOC per gallon of coating, less water and exempt compounds, or distinguishing markings that identify the product's VOC content as described above, through reference to printed information that accompanies the product through distribution and is displayed at the point of sale;

(3) A statement of the manufacturer's maximum recommended thinning with diluents other than water, and, if thinning of the coating prior to use under normal environmental and application conditions is not necessary, a statement indicating the product is not to be thinned under normal circumstances; and

(4) For containers of recycled coating products, the phrase "CONTAINS NOT LESS THAN ____ PERCENT POST-CONSUMER COATING" where the percent, by volume, of the recycled coating is inserted before the word "percent".

(c) Notify direct purchasers of products manufactured for sale within the Vancouver AQMA upon determining that any noncomplying architectural coatings have been supplied in violation of SWAPCA 493-300-040.

(2) **Distributors.** Except as provided in SWAPCA 493-300-040(6), any distributor of architectural coating manufactured after July 1, 1996 which is sold, offered for sale, supplied or distributed to a retail outlet within the Vancouver AQMA shall:

(a) Ensure that architectural coatings are labeled as required under subsection (1)(b) of SWAPCA 493-300-040;

(b) Ensure that the VOC content indicated under SWAPCA 493-300-040 (1)(b)(B) does not exceed the VOC standard specified in SWAPCA 493-300-030; and

(c) Notify direct purchasers of products distributed for sale within the Vancouver AQMA upon determining that any noncomplying architectural coatings have been supplied in violation of SWAPCA 493-300-040.

(3) **Retailers.**

(a) Except as provided in SWAPCA 493-300-040(6), no retailer shall knowingly sell within the Vancouver AQMA any noncomplying architectural coating manufactured after July 1, 1996.

(b) Upon notification by SWAPCA, a manufacturer, or a distributor that any noncomplying architectural coating has been supplied, a retailer shall remove noncomplying architectural coatings from consumer-accessible areas of retail outlets within the Vancouver AQMA.

(4) **Commercial Applicators.** Except as provided in SWAPCA 493-300-040(6):

(a) No commercial applicator shall, within the Vancouver AQMA, knowingly use or contract for the use of any noncomplying architectural coating manufactured after July 1, 1996;

(b) No commercial applicator shall, within the Vancouver AQMA, knowingly use any noncomplying architectural coating manufactured after July 1, 1996 in a manner inconsistent with the coating category for which the product is formulated and recommended;

(c) All VOC-containing materials shall be stored in closed containers when not being accessed, filled, emptied, maintained, repaired or otherwise used.

(d) It is recommended that architectural coatings be applied under the conditions and with the application techniques recommended by the coating's manufacturer.

(5) **Label Alteration.** No person shall remove, alter, conceal or deface the information required in SWAPCA 493-300-040 (1)(b) prior to final sale of the product.

(6) **Exceptions.**

(a) Traffic marking paints seasonal requirements.

(1) Traffic marking paints which exceed the VOC content limits of SWAPCA 493-300-030(1) may be manufactured, distributed to retail outlets, offered for sale to commercial applicators, and sold to commercial applicators within the Vancouver AQMA if purchasers are provided with written information indicating that the product shall not be applied within the Vancouver AQMA during the period June 1 through August 31, and the labeling requirements of SWAPCA 493-300-040 (1)(b)(A) and (B) are maintained.

(2) Traffic marking paints which exceed the VOC limits of SWAPCA 493-300-030(1) may be purchased by commercial applicators for use within the Vancouver AQMA provided they shall not be applied during the period June 1 through August 31.

(b) For architectural coatings which have been granted a compliance extension under SWAPCA 493-500-020, this rule applies to coatings manufactured after the date specified in the compliance extension.))

((**SWAPCA 493-300-050 Recordkeeping and Reporting Requirements**))

(((1) **Recordkeeping.** Manufacturers subject to SWAPCA 493-300-040 shall maintain the following records for at least 2 years after an architectural coating is sold, offered for sale, supplied or distributed by the manufacturer, directly or indirectly, to a retail outlet in the Vancouver AQMA:

(a) VOC content records of architectural coatings based on methods provided in SWAPCA 493-300-060;

(b) An explanation of any code indicating the date of manufacture of any architectural coating; and

(c) Information used to substantiate an application for a compliance extension under SWAPCA 493-500-020.

~~(2) **Reporting.** Following request and within a reasonable period of time, records specified in SWAPCA 493-300-050(1) shall be made available to SWAPCA.~~

~~(3) **Exemption from disclosure.** If a person claims that any Records of Information, as defined in RCW 70.94.205 "Confidentiality of records and information", is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in SWAPCA 493-500-030.~~))

((**~~SWAPCA 493-300-060 Inspection and Testing Requirements~~**))

(((~~(1) The owner or operator of a facility subject to SWAPCA 493-300-010 through 493-300-060 shall, at any reasonable time, make the facility available for inspection by SWAPCA.~~

~~(2) Upon request of SWAPCA, any person subject to SWAPCA 493-300-010 through 493-300-060 shall furnish samples of architectural coatings selected by SWAPCA from available stock for testing by SWAPCA to determine compliance with SWAPCA 493-300-030.~~

~~(3) Except as provided in SWAPCA 493-300-060(4), testing to determine compliance with SWAPCA 493-300-030 shall be performed using:~~

~~(a) VOC Content. The VOC content of an architectural coating shall be determined by:~~

~~(1) Procedures set forth in EPA Test Method 24 (40 CFR 60, Appendix A, July 1, 1994); or~~

~~(2) Calculation of VOC content from records of amounts of constituents used to manufacture the product and the chemical compositions of the individual product constituents.~~

~~(b) Exempt Compounds. If the method specified in SWAPCA 493-300-060 (3)(a)(A) also measures compounds excluded from the definition of VOCs, those compounds may be excluded from the VOC content if the amount of such compounds can be accurately quantified. SWAPCA may require a manufacturer to provide conclusive evidence (such as production records, formulation data and test results) demonstrating, to the satisfaction of SWAPCA, the amount of exempt compounds in the architectural coating or the coating's emissions.~~

~~(c) Specular gloss of flat and non-flat coatings shall be determined by ASTM Method D523-89, March 31, 1989.~~

~~(4) Alternative test methods which are shown to accurately determine the VOC content of architectural coatings may also be used if approved in writing by EPA and SWAPCA.~~))

AMENDATORY SECTION (Amending WSR 96-10-026, filed 4/25/96, effective 5/26/96)

((~~SWAPCA~~)) SWCAA 493-400 ((~~MOTOR VEHICLE REFINISHING~~)) AUTOMOBILE REFINISH COATINGS

(1) **Adoption by reference.** The National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings contained in 40 CFR Part 59, Subpart B as in effect on July 1, 2011 are hereby adopted by reference. The term "administrator" as defined in 40 CFR 59.101 shall include the Executive Director of SWCAA. Exceptions to this adoption by reference are listed in subsection (3) below.

(2) **Applicability.** SWCAA 493-400 applies to the sale or use of automobile refinish coatings within the jurisdiction of the Southwest Clean Air Agency.

(3) **Exceptions.** The following sections of 40 CFR 59, Subpart B are not adopted by reference:

(a) 40 CFR 59.106 *Variance*.

(4) **Variances.**

(a) Any regulated entity that cannot comply with the requirements of this section because of circumstances beyond its reasonable control may apply in writing to the Executive Director for a temporary variance. The variance application must include the following information:

(i) The specific grounds upon which the variance is sought;

(ii) The proposed date(s) by which the regulated entity will achieve compliance with the provisions of this subpart. This date must be no later than 5 years after the issuance of a variance; and

(iii) A compliance plan detailing the method(s) by which the regulated entity will achieve compliance with the provisions of this subpart.

(b) Upon receipt of a variance application containing the information required in subsection (3)(a), the Executive Director will publish a public notice of such application on the Agency website and, if requested by any party, will hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements of this subpart is necessary and will be granted. If requested, a hearing will be held no later than 75 days after receipt of a variance application. Notice of the time and place of the hearing will be sent to the applicant by certified mail not less than 30 days prior to the hearing. At least 30 days prior to the hearing, the variance application will be made available to the public for inspection. Information submitted to the Executive Director by a variance applicant may be claimed as confidential. The Executive Director may consider such confidential information in reaching a decision on a variance application. Interested members of the public will be allowed a reasonable opportunity to testify at the hearing.

(c) A variance will be issued if the following criteria are met to the satisfaction of the Executive Director:

(i) Compliance with the provisions of this section would not be technologically or economically feasible; and

(ii) The compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(d) Each variance will specify dates by which the regulated entity will achieve increments of progress towards compliance, and will specify a final compliance date by which the regulated entity will achieve compliance with this subpart.

(e) A variance will cease to be effective upon failure of the party to whom the variance was issued to comply with any term or condition of the variance.

(f) Upon the application of any party, the Executive Director may review and, for good cause, modify or revoke a variance after holding a public hearing in accordance with the provisions of subsection (3)(b).

(5) **Variance Fee.** Each variance application must be accompanied by a fee of $800.

((**SWAPCA 493-400-010 Applicability**

SWAPCA 493-400 applies to any person:

(1) Who sells, offers for sale, distributes or manufactures motor vehicle refinishing coatings for sale in Vancouver AQMA, or

(2) Who owns, leases, operates or controls a motor vehicle refinishing facility in the Vancouver AQMA.))

((**SWAPCA 493-400-020 Definitions**))

((As used in SWAPCA 493-400:

(1) **"Aerosol Spray"** coating means a pre-mixed coating supplied in pressurized containers of 16 ounces or less.

(2) **"Anti-glare/Safety Coating**" means a coating formulated to minimize light reflection to interior areas of a vehicle and which shows a reflectance of 25 or less on a 60 degree gloss meter.

(3) **"Basecoat**" means a pigmented topcoat which is the first topcoat applied as a part of a multistage topcoat system.

(4) **"Basecoat/Clearcoat Topcoat System**" means a topcoat system composed of a basecoat portion and a clearcoat portion. The VOC content of a basecoat/clearcoat topcoat system shall be calculated according to the following formula:

$$VOC_{be/ee} = \frac{VOC_{be} + 2VOC_{ee}}{3}$$

Where: $VOC_{be/ee}$ = the composite VOC content, less water and less exempt compounds to be used for compliance determination under the basecoat/clearcoat topcoat system coating category.

VOC_{be} = the VOC content of any given basecoat as prepared for use, less water and less exempt compounds.

$2VOC_{ee}$ = twice the VOC content of any given clearcoat as prepared for use, less water and less exempt compounds.

(5) **"Bright Metal Trim Repair Coating**" means a coating applied directly to chrome-plated metal surfaces for the purposes of appearance.

(6) **"Clearcoat**" means a topcoat which contains no pigments or only transparent pigments and which is the final topcoat applied as a part of a multistage topcoat system.

(7) **"Elastomeric Materials**" means coatings which are specifically formulated and applied over coated or uncoated flexible plastic substrates for the purpose of adhesion.

(8) **"Exempt compounds**" means compounds of carbon excluded from the definition of VOC.

(9) **"Graphic Design Application**" means the application of logos, letters, numbers, or artistic representations such as murals, landscapes, and portraits.

(10) **"High Volume, Low Pressure Spray", or "HVLP**" means equipment used to apply coatings with a spray device which operates at a nozzle air pressure between 0.1 and 10 pounds per square inch gravity (psig).

(11) **"Impact Resistant Coating**" means any coating applied to a rocker panel for the purpose of chip resistance to road debris.

(12) **"Manufacturer**" means the company, firm or establishment which is listed on the coating container. If the container lists two companies, firms or establishments, the manufacturer is the party which the coating was "manufactured for" or "distributed by", as noted on the product.

(13) **"Midcoat**" means a semi-transparent topcoat which is the middle topcoat applied as part of a three-stage topcoat system.

(14) **"Motor Vehicle**" means a any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(15) **"Motor Vehicle Refinishing**" means the application of surface coating to on-road motor vehicles or non-road motor vehicles, or their existing parts and components, except Original Equipment Manufacturer (OEM) coatings applied at manufacturing plants.

(16) **"Motor Vehicle Refinishing Coating**" means any coating designed for, or represented by the manufacturer as being suitable for motor vehicle refinishing.

(17) **"Motor Vehicle Refinishing Facility**" means a location at which motor vehicle refinishing is performed.

(18) **"Multi Color Coating**" means a coating which is packaged in a single container that exhibits more than one color when applied, and is used to protect surfaces of vehicle cargo areas.

(19) **"Multistage Topcoat System**" means any basecoat/clearcoat topcoat system or any three-stage topcoat system manufactured as a system, and used as specified by the manufacturer.

(20) **"Non-Road Motor Vehicle**" means any motor vehicle other than an on-road motor vehicle. "Non-Road Motor Vehicle" includes, but is not limited to, fixed load vehicles, farm tractors, farm trailers, all terrain vehicles, and golf carts.

(21) **"On-Road Motor Vehicle**" means any motor vehicle which is required to be registered under RCW 46.16 or exempt from registration under RCW 46.04. "On-Road Motor Vehicle" includes, but is not limited to: passenger cars, trucks, vans, motorcycles, mopeds, motor homes, truck tractors, buses, tow vehicles, trailers other than farm trailers, and camper shells.

(22) **"Person**" means the federal government, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(23) **"Portland-Vancouver Interstate AWMA"** is the interstate nonattainment area for ozone as defined in the Washington and Oregon State Implementation Plans. The Interstate area includes, Clackamas, Washington and Mult-

nomah counties in Oregon and southern portion of Clark County in Washington.

(24) **"Precoat Coating"** means a coating applied to bare metal primarily to deactivate the surface for corrosion resistance to a subsequent water-base primer.

(25) **"Pretreatment Wash Primer"** means a coating which contains at least 0.5% acid, by weight, which is used to provide surface etching and is applied directly to bare metal surfaces to promote corrosion resistance and adhesion.

(26) **"Primer"** means a coating applied for purposes of corrosion resistance or adhesion of subsequent coatings.

(27) **"Primer Sealer"** means a coating applied prior to the application of a topcoat for the purpose of color uniformity, or to promote the ability of a underlying coating to resist penetration by the topcoat.

(28) **"Primer Surface"** means a coating applied for the purpose of corrosion resistance or adhesion, and which promotes a uniform surface by filling in surface imperfections.

(29) **"Public Highway"** means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

(30) **"Rocker Panel"** means the panel area of a motor vehicle which is no more than 10 inches from the bottom of a door, quarter panel, of fender.

(31) **"Rubberized Asphaltic Underbody Coating"** means a coating applied to the wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, of the underside of the motor vehicle itself for the purpose of sound deadening or protection.

(32) **"Specialty Coating"** means any of the following coatings when used in accordance with each coating's specialized design purpose: adhesion promoters, uniform finish blenders, elastomeric materials, impact-resistant coatings, anti-glare safety coatings, rubberized asphaltic underbody coatings, water hold-out coatings, weld-through coatings, bright metal trim repair coatings, and surface appearance additives.

(33) **"Spot Repairs"** means motor vehicle refinishing repairs in which the damaged area to be repaired is limited to only a portion of any given panel so that an entire panel need not be repaired.

(34) **"Stencil Coating"** means an ink or a pigmented coating which is rolled or brushed onto a template or a stamp in order to add identifying letters, symbols, or numbers to motor vehicles, mobile equipment, or their parts and components.

(35) **"Surface Appearance Additive"** means gloss control additives, fish-eye eliminators, retarders, and other additives designed to achieve the surface appearance of the original equipment specifications.

(36) **"SWAPCA"** means the Southwest Air Pollution Control Authority.

(37) **"Three-Stage Coating System"** means a topcoat system composed of a basecoat portion, a midcoat portion, and a transparent clearcoat portion. For compliance purposes, the VOC content of a three-stage coating system shall be calculated according to the following formula:

$$VOC_{3\text{-}stage} = \frac{VOC_{bc} + VOC_{mc} + 2VOC_{cc}}{4}$$

Where: $VOC_{3\text{-}stage}$ = the composite VOC content, less water and less exempt compounds in the three-stage coating system.

VOC_{bc} = the VOC content of any given basecoat as prepared for use, less water and less exempt compounds.

VOC_{mc} = the VOC content of any given midcoat as prepared for use, less water and less exempt compounds.

$2VOC_{cc}$ = twice the VOC content, as prepared for application, of any given clearcoat.

(38) **"Topcoat"** means a coating applied over any coating, for the purpose of appearance, identification, or protection.

(39) **"Touch-up Coating"** means a coating applied by brush or non-refillable aerosol can to cover minor surface damage and dispensed in containers of no more than 8 ounces.

(40) **"Uniform Finish Blender"** means a coating which is applied in spot repairs for the purpose of blending a paint overspray area of a repaired topcoat to match the appearance of an adjacent existing topcoat.

(41) **"Vancouver Air Quality Maintenance Area" or "Vancouver AQMA"** is the Washington portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in the Washington State Implementation Plan. The Vancouver AQMA includes the southern portion of Clark County, Washington.

(42) **"Vehicle"** means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.

(43) **"Volatile Organic Compound" or "VOC"** means those compounds of carbon defined in SWAPCA 400-030(89). For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in SWAPCA 493-400-060.

(44) **"Water Hold-Out Coating"** means a coating applied to the interior cavity areas of doors, quarter panels, and rocker panels for the purpose of corrosion resistance to prolonged water exposure.

(45) **"Weld-Through Coating"** means a coating applied to metal immediately prior to welding to provide corrosion resistance.))

((**SWAPCA 493-400-030 Coating Standards and Exemptions**

(1) Where required by SWAPCA 493-400-040 and 493-400-050, motor vehicle refinishing coatings shall not exceed the VOC content limitations in Table E when prepared in accordance with the manufacturer's instructions, except as provided in SWAPCA 493-400-030(2).

Table E

VOC Content Limits of Motor Vehicle Refinishing Coatings

Coating Type	VOC Content Limits* (lbs/gal)
Pretreatment Wash Primer	6.5
Precoat	6.5
Primer	4.8
Primer Surface	4.8
Primer Sealer	4.6
Topcoat	5.0
Basecoat/Clearcoat Topcoat System	5.0
Three-Stage Coating System	5.2
Multi-Color Coating	5.7
Specialty Coating	7.0

VOC content is determined as prepared for use in accordance with manufacturer's instructions, and shall be calculated by the following equation:

$$\text{Pounds of VOC per gallon} = \frac{W_{voc}}{V_m - V_w - V_{ec}}$$

Where: W_{voc} = Weight of VOC in pounds, or the weight of all volatile compounds less the weight of water, less the weight of exempt compounds;

V_m = Volume of material in gallons;

V_w = Volume of water in gallons;

V_{ec} = Volume of exempt compounds, in gallons.

[Note: * VOC emission limits are expressed as pounds of VOC per gallon of coating excluding the volume of water and exempt compounds.]

(2) Exemptions. The VOC content limits in SWAPCA 493-400-030(1) shall not apply to:

(a) Coatings supplied in aerosol spray cans;

(b) Touch-up coatings;

(c) Stencil coatings;

(d) Coatings used for graphic design applications.))

((**SWAPCA 493-400-040 Requirements for Manufacture and Sale of Coatings**))

(((1) Manufacture. Any person who manufactures motor vehicle refinishing coatings for sale within Clark County, Washington after July 1, 1996 shall:

(a) Provide written instructions for preparation of the product; and

(b) Designate in writing the VOC content of these products as prepared for use in accordance with the manufacturer's instructions.

(2) Shipment to the Vancouver AQMA. Except as provided in SWAPCA 493-400-040(4), no person shall knowingly sell, ship or provide a motor vehicle refinishing coating after July 1, 1996 for use within the Vancouver AQMA unless the VOC content of the product as designated by the manufacturer complies with the VOC content limits in SWAPCA 493-400-030 when prepared in accordance with the manufacturer's instructions.

(3) Sale within Clark County, Washington. Except as provided in SWAPCA 493-400-040(4), no person shall sell motor vehicle refinishing coatings after July 1, 1996 within Clark County, Washington unless the VOC content of the product as designated by the manufacturer complies with the VOC content limits in SWAPCA 493-400-030 when prepared in accordance with the manufacturer's instructions.

(4) Sale for use outside the Portland-Vancouver Interstate AQMA. Motor vehicle refinishing coatings which do not comply with the VOC limitations of SWAPCA 493-400-030 may be sold for shipment to the Vancouver AQMA, or sold within Clark County, Washington if:

(a) The product is to be used outside the boundary of the Portland-Vancouver Interstate AQMA; and

(b) The purchaser provides written certification to the seller in the manner described by SWAPCA 493-400-040(5) that the product is to be used outside of the Portland-Vancouver Interstate AQMA.

(5) Purchase Certifications. When required by SWAPCA 493-400-040(4), certifications of intended use shall at a minimum contain the following information:

(a) Purchaser's name and address;

(b) Date of Purchase;

(c) Name of coating or coating system purchased;

(d) Type of coating;

(e) Quantity of coating purchased;

(f) Address of location where the coating will be used;

(g) A statement certifying that the coating will not be used within the Portland-Vancouver Interstate AQMA to the best of the purchaser's knowledge; and

(h) Purchaser's signature.))

((**SWAPCA 493-400-050 Requirements for Motor Vehicle Refinishing in Vancouver AQMA**))

((Except as provided in SWAPCA 493-400-050(3), persons performing motor vehicle refinishing of on-road motor vehicles within the Vancouver AQMA shall:

(1) After July 1, 1996:

~~(a) Use motor vehicle refinishing coatings which are identified by the manufacturer as complying with the VOC limits established in SWAPCA 493-400-030; and~~

~~(b) Prepare and apply the coatings in accordance with the manufacturer's instructions; and~~

~~(2) After June 1, 1997:~~

~~(a) Clean any spray equipment, including paint lines, in a device which:~~

~~(1) Minimizes solvent evaporation during the cleaning, rinsing, and draining operations;~~

~~(2) Recirculates solvent during the cleaning operation so the solvent is reused; and~~

~~(3) Collects spent solvent to be available for proper disposal or recycling; and~~

~~(b) Apply motor vehicle refinishing coatings by one of the following methods:~~

~~(1) High Volume Low Pressure spray equipment, operated and maintained in accordance with the manufacturer's recommendations;~~

~~(2) Electrostatic application equipment, operated and maintained in accordance with the manufacturer's recommendations;~~

~~(3) Dip coat application;~~

~~(4) Flow coat application;~~

~~(5) Brush coat application;~~

~~(6) Roll coat application;~~

~~(7) Hand-held aerosol cans; or~~

~~(8) Any other coating application method which can be demonstrated to effectively control VOC emissions, and which has been approved in writing by SWAPCA.~~

~~(3) This rule shall not apply to any person who performs motor vehicle refinishing without compensation, and who performs refinishing on two or fewer on-road motor vehicles, or portions thereof, in any calendar year.~~))

((**~~SWAPCA 493-400-060 Recordkeeping and Reporting Requirements~~**))

(((~~(1) Recordkeeping.~~

~~(a) Manufacturers of motor vehicle refinishing coatings sold in Vancouver AQMA shall maintain records which demonstrate that the VOC content designated under SWAPCA 493-400-040(1) is true and accurate. These records shall be maintained for at least two (2) years after a manufacturer's sale of a product for use in Vancouver AQMA, and may include, but are not limited to, product formulation data and test results using test methods specified in SWAPCA 493-400-060.~~

~~(b) Persons who sell motor vehicle refinishing coatings within the Vancouver AQMA shall maintain records for at least 2 years which are sufficient to allow a determination of compliance with SWAPCA 493-400-040 (3) and (4). These records shall include, but are not limited to, purchase certifications and sales information specifying the coating identification, quantity sold, and date of sale.~~

~~(c) Persons who perform motor vehicle refinishing of on-road motor vehicles within the Vancouver AQMA shall maintain records for at least 2 years which are sufficient to allow determination of compliance with SWAPCA 493-400-050. These records shall include, but are not limited to, manufacturers' instructions for preparation of coatings used and purchase information specifying the coating identification, quantity purchased and date of purchase.~~

~~(2) Reporting. Following request and within a reasonable period of time, records specified in SWAPCA 493-400-060(1) shall be made available to SWAPCA.~~

~~(3) Exemption from disclosure. If a person claims that any Records or Information, as defined in RCW 70.94.205 "Confidentiality of records and information", is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in SWAPCA 493-500-030.~~))

((~~SWAPCA 493-400-070 Inspection and Testing Requirements~~))

(((~~(1) The owner or operator of any facility subject to SWAPCA 493-400 shall, at any reasonable time, make the facility available for inspection by SWAPCA.~~

~~(2) Upon request of SWAPCA, any person subject to SWAPCA 493-400 shall furnish samples of motor vehicle refinishing coatings selected by SWAPCA from available stock for testing by SWAPCA to determine compliance with SWAPCA 493-400-030.~~

~~(3) Testing conducted under this rule shall be in accordance with EPA Method 24 or Method 25 as described in CFR Title 40 Part 60 (July 1, 1994), or by other methods approved by SWAPCA and EPA.~~))

AMENDATORY SECTION (Amending WSR 96-10-026, filed 4/25/96, effective 5/26/96)

((~~SWAPCA~~)) SWCAA 493-500 - AREA SOURCE COMMON PROVISIONS

((~~SWAPCA~~)) SWCAA 493-500-010 Applicability

((~~SWAPCA~~)) SWCAA 493-500 applies to all sections of ((~~SWAPCA~~)) SWCAA 493-100 through ((~~SWAPCA~~)) SWCAA 493-400.

((~~SWAPCA~~)) SWCAA 493-500-020 Compliance Extensions

Any manufacturer((~~, as defined in SWAPCA 493-100-020,~~)) who cannot comply with the requirements specified in ((~~SWAPCA~~)) SWCAA 493-100 to 493-400 by the applicable compliance date because of conditions specified in ((~~SWAPCA~~)) SWCAA 493-500-020(4) may apply in writing to ((~~SWAPCA~~)) SWCAA for a compliance extension of up to 3 years in renewable 1 year increments. Any compliance extension granted by the Oregon Department of Environmental Quality shall be deemed valid by ((~~SWAPCA~~)) SWCAA for the duration of the extension.

(1) A manufacturer shall apply in writing to ((~~SWAPCA~~)) SWCAA for any compliance extension under ((~~SWAPCA~~)) SWCAA 493-500-020. Information claimed by the applicant as confidential or otherwise exempt from disclosure shall be submitted in accordance with

((~~SWAPCA~~)) SWCAA 493-500-030. The application shall include:

(a) An explanation of the specific grounds addressing each subsection under ((~~SWAPCA~~)) SWCAA 493-500-020(4) on which the compliance extension is sought;

(b) The requested terms and conditions;

(c) The specific method(s) by which compliance with the requested terms and conditions will be achieved;

(d) Any interim measures which may be taken during the period of the compliance extension to limit the amount of emissions in excess of the rule limits; and

(e) If applicable, any compliance extension, alternate control requirement or variance order granted by another local, state or federal air pollution control agency.

(2) Within 30 days of receipt of the compliance extension application, ((~~SWAPCA~~)) SWCAA shall determine whether an application is complete.

(3) Within 90 days after an application has been deemed complete, ((~~SWAPCA~~)) SWCAA shall determine whether, under what conditions, and to what extent, a compliance extension shall be approved. The applicant and ((~~SWAPCA~~)) SWCAA may mutually agree to extend the period for making a determination, and additional supporting documentation may be submitted by the applicant before the determination is reached.

(4) In considering whether to approve a compliance extension, ((~~SWAPCA~~)) SWCAA shall consider the following:

(a) Conditions beyond the control of the applicant;

(b) Special circumstances which render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause;

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant, or operation; or

(d) No other alternative facility or method of handling is yet available.

(5) Any compliance extension order shall specify terms and conditions, including a date by which final compliance shall be achieved. The final compliance date shall not exceed 3 years after the applicable compliance date. A compliance extension shall be granted in 1 year increments which may be renewed until the final compliance date upon a showing by the manufacturer that any increments of progress and other terms and conditions in the order have been met.

(6) ((~~SWAPCA~~)) SWCAA shall notify the applicant in writing of the determination under ((~~SWAPCA~~)) SWCAA 493-500-020(3) of this rule and the terms and conditions established under ((~~SWAPCA~~)) SWCAA 493-500-020(5).

(7) Notwithstanding ((~~SWAPCA~~)) SWCAA 493-500-020(4), if, prior to the applicable compliance date, a manufacturer((~~, as defined in SWAPCA 493-100-020,~~)) submits to ((~~SWAPCA~~)) SWCAA a variance order granted by the California Air Resources Board (CARB) which is valid as of February 20, 1995, the manufacturer shall be granted a 1 year extension from the applicable compliance date. Such compliance extensions may be revoked by ((~~SWAPCA~~)) SWCAA if ((~~SWAPCA~~)) SWCAA believes that the manufacturer is not in compliance with the terms and conditions of the CARB variance order.

(8) For any product for which a compliance extension has been approved pursuant to this rule, the manufacturer shall notify ((~~SWAPCA~~)) SWCAA in writing within 30 days if the manufacturer learns that information submitted to ((~~SWAPCA~~)) SWCAA under this rule has changed in a manner which could modify the basis of ((~~SWAPCA's~~)) SWCAA's approval.

(9) If ((~~SWAPCA~~)) SWCAA believes that a product for which a compliance extension has been granted no longer meets the criteria for a compliance extension specified in ((~~SWAPCA~~)) SWCAA 493-500, ((~~SWAPCA~~)) SWCAA may modify or revoke the extension as necessary to ensure that the product will meet these criteria. ((~~SWAPCA~~)) SWCAA shall notify the applicant in writing if a compliance extension is modified or revoked under this section.

((~~SWAPCA~~)) SWCAA 493-500-030 Exemption from Disclosure to the Public

(1) If a person claims that any records or information, as defined in RCW 70.94.205, is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the following procedures:

(a) The records or information shall be clearly marked with a request for exemption from disclosure. For a multipage writing, each page shall be so marked.

(b) For records or information that contains both exempt and non-exempt material, the proposed exempt material shall be clearly distinguishable from the non-exempt material. If possible, the exempt material shall be arranged so that it is placed on separate pages from the non-exempt material.

(2) For records or information to be considered exempt from disclosure as a "trade secret," it shall meet all of the following criteria:

(a) The information shall not be patented;

(b) It shall be known only to a limited number of individuals within a commercial concern who have made efforts to maintain the secrecy of the information;

(c) It shall be information which derives actual or potential economic value from not being disclosed to other persons; and

(d) It shall give its users the chance to obtain a business advantage over competitors not having the information.

((~~SWAPCA 493-500-040 Future Review~~))

((~~Within a reasonable period of time following adoption by the United States Environmental Protection Agency of regulations intended to reduce VOC emissions from one or more products subject to SWAPCA 493-100 through SWAPCA 493-400, SWAPCA shall provide the following information to the SWAPCA Board of Directors:~~

~~(1) A comparison of the federal regulation with SWAPCA 493-100 through 493-400;~~

~~(2) An estimate of the change in emissions which would occur from repeal of provisions in SWAPCA 493-100 through 493-400 applicable to such product or products;~~

~~(3) An assessment of the effect of eliminating or modifying the provisions of SWAPCA 493-100 through 493-400 on the State Implementation Plan adopted for Redesignation/~~

~~Ozone Maintenance Plan, including any need for substitute measures; and~~

~~(4) A recommendation regarding amendment to eliminate such provisions and, if applicable, a schedule for amendment.~~))

WSR 13-21-050
PERMANENT RULES
BOARD FOR VOLUNTEER FIREFIGHTERS AND RESERVE OFFICERS

[Filed October 11, 2013, 2:06 p.m., effective November 11, 2013]

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

Purpose: This rule is necessary to lay out a procedure for filing an appeal of a local board or staff decision denying benefits to a participant.

Statutory Authority for Adoption: RCW 41.24.290(2).

Adopted under notice filed as WSR 13-17-016 on October 10 [August 8], 2013.

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 29, 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 29, Amended 0, Repealed 0.

Date Adopted: October 10, 2013.

Brigette K. Smith
Executive Secretary

Chapter 491-04 WAC

FILING APPEALS

NEW SECTION

WAC 491-04-010 Purpose. This chapter sets forth the steps that are necessary to file an appeal of a local board or state board staff decision.

NEW SECTION

WAC 491-04-020 Who is allowed to file a request for an appeal of a decision? You are allowed to file a request for an appeal if you are;

(1) The benefit recipient directly affected by the decision; or

(2) Legal counsel for the benefit recipient directly affected by the decision.

NEW SECTION

WAC 491-04-030 What is the time limitation for filing a request for an appeal? All requests must be filed with the state board within ninety (90) calendar days of the decision mailing date.

NEW SECTION

WAC 491-04-040 Am I required to have a legal counsel? An attorney may represent you, but one is not required. The appeals process can be complicated and is conducted more like a court trial, so this should be considered when deciding to represent yourself.

NEW SECTION

WAC 491-04-050 Where are requests for an appeal filed? All requests must be made in writing with the state board at its office in Olympia, Washington.

NEW SECTION

WAC 491-04-060 What methods of filing are acceptable? Unless otherwise provided by statute or these rules, any written communication may be filed with the board personally, by mail, by facsimile, or by email before or on the date such filing is due. Any notices of appeal that fail to comply with the board's filing requirements may be rejected by the board. The board must notify the filing party of the rejection.

(1) **Filing personally.** To file written communication personally, the documents must be delivered to an employee of the board at the board's office in Olympia, Washington during regular office hours.

(2) **Filing by mail.** To file written communication by mail, the documentation must be deposited in the United States Mail, properly addressed to the board's offices in Olympia, Washington, and with all postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(3) **Filing by telephone facsimile.**

a. Filing written communication by facsimile is acceptable when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment. All facsimile communications must be filed with the board at its offices in Olympia, Washington.

b. The hours of operation of the board's telephone facsimile equipment are the same as the regular office hours. If a transmission of a written communication commences after these hours of operation, the written communication shall be deemed filed on the next business day.

c. Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, ref-

erencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in such transmission.

d. No written communication sent to the board via facsimile shall exceed fifteen pages in length, exclusive of the cover page required by this rule.

e. The party attempting to file written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

f. The original of any papers filed by facsimile must also be mailed to the board within twenty-four (24) hours of the time the fax was sent.

(4) **Electronic filing.** A request for an appeal may be filed electronically. An electronic request is filed when it is received by the executive secretary during the board's regular office hours. Otherwise, the request is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received.

NEW SECTION

WAC 491-04-070 What should my request for an appeal include? Your appeal must include:

(1) In the case of illness or injury claims, the date and nature of the claim, and the place it occurred;

(2) A statement of what you want the board to do (relief requested) after considering the appeal;

(3) An explanation of why your request has merit;

(4) All facts relating to the request;

(5) The name and address of your attorney, if applicable; and

(6) Your name, address, phone number, facsimile number (if applicable), e-mail address, and signature.

NEW SECTION

WAC 491-04-080 How much information should I provide in my request for an appeal? You bear the burden of convincing the board that you are entitled to the relief requested. You must provide sufficient information to outweigh the information that the staff or local board used in making the decision that is being reviewed.

NEW SECTION

WAC 491-04-090 Who pays for the cost of obtaining additional medical data if my case relates to an injury or illness? If your appeal regards an injury or illness and you need to provide additional medical data to support your request, you must pay any cost involved and it will not be reimbursable by the agency.

NEW SECTION

WAC 491-04-100 What will the agency do after receiving my request for an appeal? (1) Within thirty (30) days from the date that your request is received by the board, staff will review the request and determine if your request is accepted or rejected. If rejected, the staff must notify you of the rejection and why it was rejected.

(2) The executive secretary, or his or her designee, will have thirty (30) days from the date of receipt to review the request and request additional documentation and/or medical exams to help resolve the dispute prior to an administrative hearing.

a. If the staff requests additional medical exams, the agency shall pay for the cost of the examinations and any mileage to and from such examination appointments.

b. If the executive secretary, or his or her designee, is able to resolve the dispute, the request for an appeal will be closed.

c. If the executive secretary, or his or her designee, is unable to resolve the dispute, a notice of hearing will be issued.

NEW SECTION

WAC 491-04-110 What are the requirements for a notice of hearing? (1) All parties shall be served with a notice of hearing not less than thirty (30) days before the date set for the hearing.

(2) The notice shall include the date of the hearing, the time of the hearing, and the place the hearing will be held.

NEW SECTION

WAC 491-04-120 Can cases be consolidated? If there are multiple adjudicative proceedings involving common issues or parties, upon motion of any party or upon his or her own motion, these cases can be combined at the discretion of the Board Chair.

NEW SECTION

WAC 491-04-130 What methods of serving papers is acceptable? (1) All notices, pleadings, and other papers filed with the board shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, by e-mail; by first-class, registered, or certified mail; by facsimile and same-day mailing of copies; or by commercial parcel delivery company.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by facsimile shall be regarded as completed upon production by the facsimile machine upon confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

NEW SECTION

WAC 491-04-140 What is adequate proof of service? Where proof of service is required by statute or rule, filing the papers with the board, together with one of the following, shall constitute proof of service:

(1) an acknowledgement of service

(2) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(3) A certificate that the person signing the certificate served the papers upon all parties of the proceeding by:

a. Mailing a copy thereof, properly addressed with the postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

b. Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

c. Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

NEW SECTION

WAC 491-04-150 Can I bring someone with me to the hearing? You can bring an attorney to represent you, or a family member, friend, or anyone else to help you, provided however, that in all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the board or the secretary thereof determines that representation in such hearing requires a high degree of legal training, experience, and skill, the board or the secretary thereof may limit those who may appear in a representative capacity to attorneys-at-law.

NEW SECTION

WAC 491-04-160 Can witnesses be subpoenaed? The board may compel the taking of testimony from witnesses under oath before the state board, or the secretary thereof, or the local board of trustees or any member thereof, for the purpose of obtaining evidence, at any time.

(1) The board shall have the same power of subpoena as prescribed in RCW 51.52.100.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the board and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(3) A subpoena may be served by any suitable person over eighteen (18) years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(4) The board chair may, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may

a. Quash or modify the subpoena if it is unreasonable and oppressive, or

b. Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) Failure of any claimant to appear and give any testimony shall suspend any rights or eligibility to receive payments for the period of such failure to appear and testify.

NEW SECTION

WAC 491-04-170 Can I submit medical reports instead of having to pay a doctor to testify? You must present the testimony of your witness. Witnesses may appear telephonically (see WAC 491-04-220). Reports or letters are considered hearsay. Hearsay statements are not usually admissible because the opposing party cannot cross-examine the person making the statement to test the statement's accuracy.

NEW SECTION

WAC 491-04-180 Can new evidence be submitted for the hearing? The board must base its decision on the information in the agency file as it existed on the date of the agency decision. New medical or vocational information offered by either party cannot be considered. If the appealing party feels it has new evidence that may change a local board or staff decision, it should withdrawal its request for a hearing and ask the local board or staff to reconsider its decision with the new evidence.

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

NEW SECTION

WAC 491-04-190 What are the timing requirements for the filing of pre-hearing briefs and supporting evidence? You must file your pre-hearing brief, along with any evidence that you believe supports your position in accordance with the filing requirements set forth in WAC 491-04-060.

(1) A pre-hearing brief should be a summary of the points that you want to make regarding your case. Specific exhibits should be referenced to make it easier for the board to follow your case.

(2) Include all evidence you want the board to consider. This could include, but is not limited to, medical reports or accident reports for injury claims, or training records or response records for service credit claims. All evidence must meet the requirements in WAC 491-04-180.

(3) Your pre-hearing brief and all evidence must be filed to the board and all parties to the action, no less than fourteen (14) days prior to the scheduled hearing date.

(4) All parties may, upon review of all evidence, file a response to a party's pre-hearing brief to the board and all parties involved no later than seven (7) days prior to the scheduled hearing date.

NEW SECTION

WAC 491-04-200 How is evidence presented? All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452

(1) Documentary evidence not submitted in advance as required in WAC 491-04-190 shall not be allowed into evidence unless there is a clear showing that the offering part had good cause for his or her failure to produce the evidence sooner.

(2) Any objections to evidence must be filed in writing prior to the hearing or the evidence will be deemed as admitted, unless such evidence is properly first presented at hearing under subsection (1) hereof. The board chair may permit a party to object to evidence at a later time upon a clear showing of good cause for failure to have filed such written objection.

(3) When only portions of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(4) No former employee of the board shall appear, except with the permission of the board, as an expert witness on behalf of other parties in a proceeding in which he or she previously took an active part in the investigation as a representative of the board.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the board chair, be grounds for striking all testimony previously given by such witness on related matter.

(6) Any party bound by a stipulation or admission of record may, at any time prior to closure of the hearing, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the presiding office that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the right of other parties to the proceeding.

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

NEW SECTION

WAC 491-04-210 How does the board handle testimony under oath? (1) Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the board chair may require the witness to agree to be bound by the laws of the state of Washington for the purposes of the oath.

(2) Phone numbers for any person testifying by phone must be provided to the executive secretary no less than five (5) days before a scheduled hearing or deposition.

NEW SECTION

WAC 491-04-220 Can witnesses appear by phone? The board chair may conduct all or part of the hearing by telephone, television, or other electronic means, if the rights of the parties will not be prejudiced and if each participant in the hearing has an opportunity to participate in, to hear, and, if technically and economically feasible, in the judgment of the board chair, to see the entire proceeding while it is taking place. However, the board chair shall grant the motion of any party showing good cause for having the hearing conducted in person at a rescheduled time.

NEW SECTION

WAC 491-04-230 Will the hearing be recorded? All hearings shall be recorded through the use of a court reporter that will be retained and paid for by the state board in accordance with RCW 41.24.035.

NEW SECTION

WAC 491-04-240 What is the role of the state board in an appeal? (1) The board chair, or his or her designee, shall have the authority to:

a. Determine the order of presentation of evidence;

b. Administer oaths and affirmations;

c. Issue subpoenas pursuant to RCW 51.52.100;

d. Rule on procedural matters, objections, and motions;

e. Rule on motions for summary judgment;

f. Rule on offers of proof and receive relevant evidence;

g. Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing; and

h. Permit or require oral argument or briefs and determine the time limits for submission.

(2) All board members shall have the authority to:

a. Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter; and

b. Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties.

NEW SECTION

WAC 491-04-250 Do I have to file any paperwork after the hearing? After the hearing, all parties may file a post-hearing brief. A post-hearing brief restates your position, what you believe the board's decision should be, and what evidence presented supports that decision.

(1) Post-hearing briefs shall be served to the board and all involved parties no later than thirty (30) days after the hearing.

(2) If any party wants to prepare a response to the post-hearing briefs, he/she may serve such a response to the board and all involved parties within thirty days (30) of the post-hearing brief due date. Responses are not required.

NEW SECTION

WAC 491-04-260 After the hearing, how long will it be before a decision is made and issued? It takes a court reporter approximately four weeks to transcribe a deposition or hearing. It is the board's goal to issue decisions as soon as possible after all transcripts are received. This generally takes between sixty (60) and ninety (90) days. At times, due to the complexity of the appeal, it may take longer.

NEW SECTION

WAC 491-04-270 How am I informed of the final decision? Every decision and order, whether initial or final, shall be written, signed by all members present, be provided to all parties, and shall:

(1) Be correctly captioned as to the name of the agency and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Contain appropriate numbered findings of fact

(4) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(5) Contain an initial or final order disposing of all contested issues; and

(6) Contain a statement describing the available post-hearing remedies.

NEW SECTION

WAC 491-04-280 What happens once the decision is issued? (1) Petition for review and replies:

a. Any party to a hearing may file a petition for the board's reconsideration of its order.

b. The petition for reconsideration shall be filed with the agency's executive secretary within thirty (30) days of the date of service of the order unless a different place and time limit for filing the petition are specified in the order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

c. The petition for review shall specify the portions of the order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.

d. Any party may file a reply to a petition for reconsideration. The reply shall be filed with the office where the petition for review was filed within thirty (30) days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

(2) A petition for reconsideration of an order shall be filed with the board.

(3) Official transcript:

a. Copies of official transcripts will not be made available by the board. A party may request a copy of the official transcript but shall bear the cost of such transcript.

b. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. If the parties agree and the board chair approves, transcript corrections may be incorporated into the record at any time during the hearing or after the close of evidence. All corrections must be made within ten (10) calendar days after receipt of the transcript unless the board chair allows a different period.

NEW SECTION

WAC 491-04-290 Are the parties allowed to reach an settlement? Settlements may be worked out with the agreement of both parties. The following procedures are available for dispute resolution that may make more elaborate proceedings unnecessary:

(1) a. The state encourages all agencies and persons to explore early, resolution to disputes whenever possible. Any person whose interest in a matter before the board may be resolved by settlement shall communicate his or her request or complaint to the agency, setting forth all pertinent facts and particulars and the desired remedy. If the board or staff requires additional information to resolve the matter, it shall promptly provide to the person who is seeking relief an opportunity to supply such information. Settlement negotiations shall be without prejudice to rights of a participant in the negotiations. Provided, however, that any time limit applicable to filing a application for a hearing shall not be extended because settlement attempts are pending.

b. In the event an early resolution is reached, the agency is responsible for providing a written description of the resolution to the person(s) involved.

(2) a. If settlement of an adjudicative proceeding may be accomplished by negotiation with the agency or other parties involved, negotiations shall be commenced at the earliest possible stage of the proceeding.

Settlement shall be concluded by:

(i) Stipulation of parties;

(ii) Withdrawal by the applicant of his or her application for a hearing; or

(iii) Withdrawal of any local board, state board, or staff action which is the subject matter of the hearing.

b. A stipulation shall be in writing and signed by each party to the stipulation or his or her representative or shall be recited on the record at the hearing. When an adjudicative proceeding has been settled by stipulation, the agency head, the agency head's designee, or the board chair shall enter an order in conformity with the terms of the stipulation.

c. When a hearing has been wholly or partially settled by withdrawal, the board chair, or his or her designee, shall enter an order dismissing the hearing or an order dismissing the affected party's interest in the proceeding if other parties have not withdrawn.

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

WSR 13-22-001

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed October 23, 2013, 1:39 p.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Purpose: To transfer "knowledge of the Public Accountancy Act and board rules" from the experience competencies currently contained in WAC 4-30-070 to 4-30-080. The proposal will amend WAC 4-30-080 to require applicants for an initial individual certified public accountant (CPA) license to complete a course covering the Washington Public Accountancy Act, related board rules, and board policies. Under the rule proposal, applicants for an initial Washington state CPA

license will be required to complete a self-study course, the related test, and score at least ninety percent.

Citation of Existing Rules Affected by this Order: Amending WAC 4-30-070 and 4-30-080.

Statutory Authority for Adoption: RCW 18.04.055 (7), (14), 18.04.215(5).

Adopted under notice filed as WSR 13-17-059 on August 15, 2013.

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: October 17, 2013.

Richard C. Sweeney, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-070 What are the experience requirements in order to obtain a CPA license? (1) Qualifying experience may be obtained through the practice of public accounting and/or employment in industry or government. In certain situations, employment in academia may also provide experience to obtain some or all of the competency requirements. Qualifying experience may be obtained through one or more employers, with or without compensation, and may consist of a combination of full-time and part-time employment.

(2) Employment experience should demonstrate that it occurred in a work environment and included tasks sufficient to have provided an opportunity to obtain the competencies defined by subsection (3) of this section and:

(a) Covered a minimum twelve-month period (this time period does not need to be consecutive);

(b) Consisted of a minimum of two thousand hours;

(c) Provided the opportunity to utilize the skills generally used in business and accounting and auditing including, but not limited to, accounting for transactions, budgeting, data analysis, internal auditing, preparation of reports to taxing authorities, controllership functions, financial analysis, performance auditing and similar skills;

(d) Be verified by a licensed CPA as meeting the requirements identified in subsection (5) of this section; and

(e) Be obtained no more than eight years prior to the date the board receives your complete license application.

(3) **Competencies:** The experience should demonstrate that the work environment and tasks performed provided the applicant an opportunity to obtain the following competencies:

(a) ((~~Knowledge of the Public Accountancy Act and related board rules applicable to licensed persons in the state of Washington;~~

~~(b)~~)) Assess the achievement of an entity's objectives;

(((~~(c)~~))) (b) Develop documentation and sufficient data to support analysis and conclusions;

(((~~(d)~~))) (c) Understand transaction streams and information systems;

(((~~(e)~~))) (d) Assess risk and design appropriate procedures;

(((~~(f)~~))) (e) Make decisions, solve problems, and think critically in the context of analysis; and

(((~~(g)~~))) (f) Communicate scope of work, findings and conclusions effectively.

(4) **The applicant's responsibilities:** The applicant for a license requesting verification is responsible for:

(a) Providing information and evidence to support the applicant's assertion that their job experience could have reasonably provided the opportunity to obtain the specific competencies, included on the applicant's Experience Affidavit form presented for the verifying CPA's evaluation;

(b) Producing that documentation and the completed Experience Affidavit form to a qualified verifying CPA of their choice;

(c) Determining that the verifying CPA meets the requirements of subsection (5) of this section; and

(d) Maintaining this documentation for a minimum of three years.

(5) **Qualification of a verifying CPA:** A verifying CPA must have held a valid CPA license to practice public accounting in the state of Washington or be qualified for practice privileges as defined in RCW 18.04.350(2) for a minimum of five years prior to verifying the candidate's experience, including the date that the applicant's experience is verified. The five years do not need to be consecutive.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-080 How do I apply for an initial individual CPA license? (1) To qualify to apply for an initial license you must meet the following criteria and requirements:

(a) Good character requirements of RCW 18.04.105 (1)(a);

(b) Education requirements of WAC 4-30-060;

(c) Examination requirements of WAC 4-30-062;

(d) ((~~Ethics course requirements by achieving and documenting~~)) Experience requirements of WAC 4-30-070;

(e) Achieve and document a passing grade of ninety percent or better on a course covering the complete content of the AICPA Code of Professional Conduct;

(((~~(e) Experience requirements of WAC 4-30-070; and~~)))

(f) Achieve and document a passing grade of ninety percent or better on a board-approved initial course covering the Washington State Public Accountancy Act, related board rules, and board policies.

(2) If more than four years have lapsed since you passed the examination, you must meet the CPE requirements of WAC 4-30-134 (((~~(1)~~))) (2)(a) within the thirty-six month

period immediately preceding submission of your license application. That CPE must include CPE hours in ethics and regulation ((~~applicable to the practice of public accounting in Washington state~~)) meeting the requirements of WAC 4-30-134(((~~(3)~~))) (6). ((~~The~~)) This regulatory ethics portion of the combined one hundred twenty-hour CPE requirement must be completed within the six month period immediately preceding submission of your license application.

(((~~(2)~~))) (3) You must provide the required information, documents, and fees to the board either by making application through the board's online application system or on a form provided upon request. You must provide all requested information, documents and fees to the board before the application will be evaluated.

(((~~(3)~~))) (4) Upon assessment of your qualifications and approval of your application, your licensed status will be posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

(((~~(4)~~))) (5) Your initial license will expire on June 30 of the third calendar year following initial licensure.

(((~~(5)~~))) (6) You may not use the title CPA until the date the approval of your license is posted in the board's licensee data base and, therefore, made publicly available for confirmation.

WSR 13-22-019
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Admin. 2013-01—Filed October 28, 2013, 4:31 p.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Purpose: Amends existing rules and adds a new rule in Title 182 WAC specific to the public employees benefits board (PEBB) program with the following effect:

1. Implements PEBB policy resolutions:

- Allowing nonmedicare retirees to defer enrollment in PEBB retiree insurance if enrolled in coverage through any health benefit exchange established under the Affordable Care Act. Nonmedicare retirees who defer enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll in a PEBB health plan;
- Providing that if an employing agency fails to enroll an employee in benefits, retroactive medical and dental enrollment will not exceed three months, unless the health care authority (HCA) determines additional recourse is warranted. Recourse will be provided in accordance with each situation;
- Clarifying that blind vendors are not eligible for PEBB retiree insurance;
- Allowing employees awarded a retroactive disability retirement under a higher education retirement plan by the appropriate authority to enroll retroactive to the date of retirement or prospective from the date on the award notice; and
- Clarifying that a stepchild's relationship to a subscriber (and eligibility as a PEBB dependent) ends on the same date the subscriber's legal relationship with the spouse or domestic partner ends.

2. Makes technical amendments to the definition of child to align with state statutes.

3. Amends the employer group application process to support implementation of ESSB 5940 under which a school district may be required to purchase employee health care through PEBB if the district fails to comply with OIC data reporting requirements during two reporting periods.

4. Amends the employer group application process to clarify that member level census data must include data for retired employees participating under a group's current health plan.

5. Amends special open enrollment rules to make technical corrections to comply with HIPAA special open enrollment requirements and to allow a coverage effective date of the first day of the month under certain circumstances.

6. In addition to these specific changes, HCA conducted a full review of these chapters and made some changes for readability.

Citation of Existing Rules Affected by this Order: Amending chapters 182-08, 182-12, and 182-16 WAC.

Statutory Authority for Adoption: RCW 41.05.160.

Other Authority: Chapter 3, Laws of 2012 (ESSB 5940).

Adopted under notice filed as WSR 13-18-051 on August 30, 2013.

Changes Other than Editing from Proposed to Adopted Version: WAC 182-12-171(1), 182-12-200, and 182-12-265 all changes were withdrawn. The proposed changes require additional coordination with stakeholders.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 21, 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 30, Repealed 0.

Date Adopted: October 28, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by

the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in or waive enrollment in a medical plan, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer-sponsored medical" includes insurance coverage continued by the employee or ((~~their~~)) his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree plan" means the Federal Employees' Health Benefits Program (FEHB) and Tricare.

"Health plan" or "plan" means a plan offering medical coverage or dental ((~~plan~~)) coverage, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

((~~"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a dependent may be removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the director, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.~~))

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in or waive enrollment in a medical plan, and employees may enroll or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group medical coverage as required under WAC 182-12-128, or is on approved educational leave and obtains comprehensive group health plan coverage as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-120 Employer contribution. The ((~~employers'~~)) employer contribution must be used to provide insurance coverage for the basic life insurance benefit, the basic long-term disability insurance benefit, medical, and dental, and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage for employees employed by state agencies.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-180 Premium payments and premium refunds. Premiums are due as described in this section, except when an employing agency is correcting its enrollment error as described in WAC 182-08-187 (2) or (3).

(1) **Premium payments.** Public employees benefits board (PEBB) insurance coverage premiums ((~~begin to accrue~~)) become due the first of the month in which ((~~PEBB~~)) insurance coverage is effective.

Premium is due from the subscriber for the entire month of insurance coverage and will not be prorated during any month.

(((~~(1) A newly eligible employee must complete the appropriate enrollment forms to enroll or waive coverage within thirty-one days after becoming eligible as described in WAC 182-08-197.~~

~~(a) If an employing agency does not notify an employee of his or her eligibility for benefits, as required in WAC 182-12-113, until after the thirty-one-day period has expired, the employing agency must:~~

~~(i) Notify the employee of his or her eligibility for PEBB benefits as described in WAC 182-08-197(3); and~~

~~(ii) Remit both the employer contribution and the employee contribution for medical premiums from the date benefits begin as described in WAC 182-12-114 to the health care authority (HCA). A state agency may not collect from the employee any portion of the medical premium for months prior to the state agency's notification to the employee.~~

~~(b) If an employing agency fails to enroll an employee as required in WAC 182-08-197, the employing agency must:~~

~~(i) Correct the enrollment error; and~~

~~(ii) Remit both the employer contribution and the employee contribution for medical premiums due for insurance coverage from the date PEBB benefits begin as described in WAC 182-12-114 to the HCA. A state agency may only collect the employee contribution for medical premiums for the three months prior to the month the state agency corrects the error.~~

~~(c)~~)) (a) If an employee elects optional coverage as described in WAC 182-08-197 (((~~(2)~~)) (1)(a) or (((~~(b)~~)) (3)(a),

the employee is responsible for payment of premiums from the month that the optional coverage begins.

(b) Unpaid or underpaid accounts must be paid, and are due from the employing agency, subscriber or beneficiary to the HCA. If payment in a lump sum is a hardship, the HCA may develop a reasonable repayment plan with the subscriber or beneficiary upon request.

(2) **Premium refunds.** PEBB premiums will be refunded using the following method:

(((~~(2)~~))) (a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the employing agency any excess premium paid during the three month adjustment period, except as indicated in WAC 182-12-148(4).

(((~~(3)~~))) (b) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-025, showing proof of extraordinary circumstances beyond his or her control such that it was effectively impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium occurred, the PEBB ((~~assistant~~)) deputy director or the PEBB appeals committee may approve a refund which does not exceed twelve months of premium. ((~~The written appeal must provide proof of the following:~~

~~Extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.~~

~~(4)~~))) (c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example medicare) the subscriber or beneficiary may be eligible for a refund of all premiums paid during the time he or she was enrolled under the federal program if approved by the PEBB ((~~assistant~~)) deputy director or designee.

(((~~(5) Accounts reflecting an underpayment to HCA must be paid, and are due from the employing agency, subscriber or beneficiary to the HCA. Upon request, the HCA may develop a repayment plan designed to reduce hardship.~~

~~(6)~~))) (d) HCA errors will be corrected by returning all excess premiums paid by the employing agency, subscriber, or beneficiary.

(((~~(7)~~))) (e) Employing agency errors will be corrected by returning all excess premiums paid by the employee or beneficiary.

NEW SECTION

WAC 182-08-187 How do employing agencies correct enrollment errors and is there a limit on retroactive enrollment? If an employing agency fails to notify an employee of his or her eligibility for public employees benefits board (PEBB) benefits and the employer contribution as required in WAC 182-12-113 or the employer group contract, or fails to accurately enroll insurance coverage, the agency is authorized and required to correct the error as described in this section.

The employing agency or PEBB designee must enroll the employee in PEBB benefits as described in subsection (1) of this section, reconcile premium payments as described in subsection (2) of this section, and provide recourse as described in subsection (3) of this section.

Note: If the employing agency failed to provide the notice required in WAC 182-12-113 or the employer group contract before the end of the employee's thirty-one day enrollment period described in WAC 182-08-197 (1)(a), it must provide the employee a written notice of eligibility for PEBB benefits and offer a new enrollment period. Employees who do not return enrollment forms default to enrollment according to WAC 182-08-197 (1)(b).

(1) **Enrollment.**

(a) Medical and dental enrollment is limited to three months prior to the date enrollment is processed unless the authority determines additional recourse is warranted, as described in subsection (3) of this section;

(b) Basic life and basic LTD insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life and basic LTD insurance coverage begins on that date;

(c) Optional life and optional LTD insurance is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date of the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Optional insurance coverage is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue optional LTD insurance coverage during the period of leave, optional LTD insurance coverage is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue optional insurance coverage under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending account (FSA) or dependent care assistance program (DCAP), enrollment is limited to three months prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in FSA or DCAP as elected, the employee may adjust his or her election. The employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect.

(2) **Premium payments.**

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for

health plan premiums, basic life, and basic LTD from the date insurance coverage begins as described in subsection (1) of this section. If a state agency failed to notify a newly eligible employee of his or her eligibility for PEBB benefits, the state agency may only collect the employee contribution for coverage for months following notification of a new enrollment period.

(b) When an employing agency fails to correctly enroll the amount of optional life or optional LTD insurance coverage elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When premium refunds are due to the employee, the optional coverage vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premium refunds.

(3) **Recourse.**

(a) Eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. When retroactive enrollment is limited as described in subsection (1) of this section, the employing agency must work with the employee, and the authority, to implement retroactive insurance coverage within the following parameters:

(i) Retroactive enrollment in a PEBB health plan;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid for medical and dental premiums; or

(iv) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-08-190 The employer contribution is set by the HCA and paid to the HCA for all eligible employees. State agencies and employer groups that participate in the PEBB program under contract with the HCA must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions for state agencies set by the HCA are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each employee of a state agency eligible under WAC 182-12-131 or each eligible employee of a state agency on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution as described in WAC 182-12-138. The entire employer contribution is due and payable to HCA even if medical is waived.

(4) Employees of employer groups eligible under criteria stipulated under contract with the HCA are eligible for the employer contribution. The entire employer contribution is due and payable to the HCA even if medical is waived.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB benefits as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined in WAC 182-12-114 or 182-12-131.

(6) The terms of payment to HCA for employer groups shall be stipulated under contract with the HCA.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-197 When must newly eligible employees, or employees who regain eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete enrollment forms? Employees who are newly eligible or who regain eligibility for the employer contribution toward PEBB benefits enroll as described in this section.

(1) When an employee((~~s who are~~)) is newly eligible for PEBB benefits:

(a) The employee must complete the ((~~appropriate~~)) required forms indicating enrollment elections and ((~~their health plan choice, or their decision to waive medical under WAC 182-12-128. Employees must~~)) return the forms to ((~~their~~)) his or her employing agency no later than thirty-one days (sixty days for life insurance) after ((~~they~~)) the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) The employee may enroll in optional life and optional LTD insurance up to the guaranteed issue without evidence of insurability if enrollment forms are returned to the employee's employing agency as required.

Note: An employee may apply for optional life and optional long-term disability insurance after the period of time described in this subsection by providing evidence of insurability and receiving approval from the contracted vendor.

(ii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee will automatically enroll in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to his or her state agency no later than thirty-one days after becoming eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required enrollment form to his or her state agency

or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(b) If a newly eligible employee((s who do)) does not return enrollment forms to ((their)) his or her employing agency indicating ((their)) medical, dental and LTD choice within thirty-one days and life insurance choice within sixty days his or her coverage will be enrolled as follows:

(((a))) (i) Medical enrollment will be Uniform Medical Plan Classic;

(((b))) (ii) Dental enrollment (((if the employer group participates in PEBB dental))) will be Uniform Dental Plan;

(((c))) (iii) Basic life insurance (((unless the employing agency does not participate in this PEBB insurance coverage)));

(((d))) (iv) Basic long-term disability insurance (((unless the employing agency does not participate in this PEBB insurance coverage))); and

(((e))) (v) Dependents will not be enrolled.

(2) ((Employees who are newly eligible may enroll in optional insurance coverage (except for employees of employer groups that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their employing agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their employing agency no later than thirty-one days after becoming eligible for PEBB benefits.

(c) Employees may apply for optional life and optional long-term disability insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) If an employing agency does not notify a newly eligible employee of his or her eligibility for PEBB benefits, as required in WAC 182-12-113, until after the thirty-one-day period described in subsection (1) of this section has expired, then the following must occur:

(a) The employing agency must notify the employee of his or her eligibility for PEBB benefits and his or her requirement to complete and return enrollment forms.

(b) The employee must complete and return the appropriate forms as follows:

(i) An enrollment form indicating enrollment and health plan choice (if applicable indicating a decision to waive medical) no later than thirty-one days from the date of the employing agency's notice to the employee;

(ii) To enroll in optional coverage, a life insurance enrollment form no later than sixty days from the date of the employing agency's notice to the employee and a long-term disability insurance enrollment form no later than thirty-one days from the date of the employing agency's notice to the employee.

(c) Employees who do not return the appropriate forms to their employing agency indicating their medical and dental choice will be enrolled in a health plan according to subsection (1)(a), (b), and (c) of this section.

(d) Employees who do not return the appropriate forms to their employing agency indicating optional coverage elections, are not eligible to enroll in optional coverage, except as described in subsection (2)(c) of this section.

(4) Employees who are eligible to participate in the state's salary reduction plan (see WAC 182-12-116) will automatically enroll in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, new employees must complete the appropriate form and return it to their state agency no later than thirty-one days after they become eligible for PEBB benefits.

(5) Employees who are eligible to participate in the state's salary reduction plan may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both. To enroll in these optional PEBB benefits, employees must return the appropriate enrollment forms to their state agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(6))) The employer contribution toward insurance coverage ends according to WAC 182-12-131. When an employee's employment ends, participation in the state's salary reduction plan ends.

(3) When an employee((s who become newly eligible)) loses and later regains eligibility for the employer contribution ((enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same)) toward insurance coverage following a period of leave described in WAC 182-12-133(1) and 182-12-142 (1) and (2):

(a) The employee must complete and return the required forms indicating enrollment elections to his or her employing agency no later than thirty-one days after regaining eligibility, except as described in subsection (3)(b) of this section:

(i) An employee who self-paid for optional life insurance coverage after losing eligibility will have that level of coverage reinstated without evidence of insurability;

(ii) An employee who was eligible to continue optional life under continuation coverage but discontinued that insurance coverage must submit evidence of insurability;

(iii) An employee who was eligible to continue optional LTD under continuation coverage but discontinued that insurance coverage must submit evidence of insurability for optional LTD insurance when he or she regains eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return an optional LTD insurance election form. His or her optional LTD insurance will be automatically reinstated:

(i) The employee continued to self-pay for his or her optional LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue optional LTD insurance after losing eligibility for the employer contribution.

Exception: An employee's insurance coverage elections remain the same when an employee transfers from one employing agency to another employing agency without a break in ((~~state service~~)) PEBB coverage. This includes movement of employees between any entities described in WAC 182-12-111 and participating in PEBB benefits. (((~~b~~))) Insurance coverage elections also remain the same when employees have a break in ((~~state service~~)) employment that does not interrupt ((~~their~~)) his or her employer contribution toward PEBB insurance coverage.

(c) ((~~When employees continue insurance coverage by self-paying the full premium under WAC 182-12-133(1) or 182-12-142 and regain eligibility for the employer contribution before the end of the maximum number of months allowed for continuing PEBB health plan enrollment under those rules. Employees who are eligible to continue optional life or optional long-term disability under continuation coverage but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to work or regain eligibility for the employer contribution.~~

~~(7) When an employee's employment ends, participation in the state's salary reduction plan ends.~~)) If an employee does not return the required forms to his or her employing agency within thirty-one days of regaining eligibility, medical, dental, life, and LTD enrollment will be as described in subsection (1)(b) of this section, except as described in (b) of this subsection.

(d) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required enrollment form to his or her state agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(4) If ((~~the~~)) an employee who is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days and the employee notifies the new state agency and the DCAP or FSA administrator of his or her employment transfer within the current plan year.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-198 When may a subscriber change health plans? Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the annual open enrollment. The subscriber must submit the ((~~appropriate~~)) required enrollment forms to change his or her health plan no later than the end of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for ((~~either~~)) the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the ((~~appropriate~~)) required enrollment forms (and a completed disenrollment form, if required) no later than sixty days after the event occurs. Employees submit the enrollment forms to their employing agency. All other subscribers submit the enrollment forms to the public employees benefits board (PEBB) program. ((~~Insurance coverage in the~~)) Subscribers must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, ((~~insurance~~)) health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for ((~~the~~)) their employer contribution toward group health coverage;

(d) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan. If the subscriber does not select a new health plan, the PEBB program may change the subscriber's health plan as described in WAC 182-08-196(2);

(e) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(f) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(g) Subscriber or a subscriber's dependent becomes eligible for state premium assistance ((~~through~~)) subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP)((~~, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP~~));

(((~~g~~))) (h) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or ((~~disenrolls from~~)) cancels enrollment in a medicare Part D plan. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-08-196(1);

(((~~h~~))) (i) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(((~~i~~))) (j) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or the subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

(ii) Transplant within the last twelve months; or

(iii) Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

(iv) Recent major surgery still within the postoperative period of up to eight weeks; or

(v) Third trimester of pregnancy.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-199 When may an employee enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)? An ((~~eligible~~)) employee (((~~,~~))) who is eligible to participate in the state's salary reduction plan as described in WAC 182-12-116((~~,~~))) may enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When ((~~they are~~)) newly eligible under WAC 182-12-114, as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee (((~~as described in WAC 182-12-116~~))) may enroll in or change ((~~their~~)) his or her election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. The employee((~~s~~)) must submit, in paper or online, the ((~~appropriate~~)) required enrollment form to enroll or reenroll no later than the last day of the annual open enrollment. The enrollment or new election will be effective January 1st of the following year.

(3) **During a special open enrollment:** An employee((~~s~~)) may enroll or change ((~~their~~)) his or her election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the ((~~appropriate~~)) required enrollment forms as instructed on the forms no later than sixty days after the event occurs. The employee must provide evidence of the event that created the special open enrollment.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC Section 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC Section 152.

(a) **Premium payment plan.** An employee may enroll or change his or her election under the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, enrollment will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership when the dependent is a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability;

(ii) Employee's dependent no longer meets public employees benefits board (PEBB) eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a domestic partner who is a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for ((~~the~~)) their employer contribution toward group health coverage;

(v) Employee or an employee's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Employee or an employee's dependent has a change in residence that affects health plan availability;

(vii) Employee's dependent has a change in residence from outside of the United States to within the United States;

(viii) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(ix) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(x) Employee or an employee's dependent becomes eligible for state premium assistance ((~~through~~)) subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP)((~~, or the employee or employee's dependent loses eligibility for coverage under medicaid or CHIP~~));

((~~(x)~~)) (xi) Employee or an employee's dependent ((~~gains or loses eligibility for~~)) becomes entitled to coverage under medicare, or the employee or an employee's dependent loses eligibility for coverage under medicare, or enrolls in or cancels enrollment in a medicare Part D plan;

((~~(xi)~~)) (xii) Employee or an employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the employee or employee's dependent is no longer eligible for an HSA;

((~~(xii)~~)) (xiii) Employee or an employee's dependent experiences a disruption of care that could function as a reduction in benefits for the employee or the employee's dependent for a specific condition or ongoing course of treatment. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

((~~(A)~~)) • Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

((~~(B)~~)) • Transplant within the last twelve months; or

((~~(C)~~)) • Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

((~~(D)~~)) • Recent major surgery still within the postoperative period of up to eight weeks; or

((~~(E)~~)) • Third trimester of pregnancy.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Flexible spending account (FSA).** An employee may enroll or change his or her election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following approval by the FSA administrator.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a domestic partner who qualifies as a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the FSA;

((~~(iv)~~)) (v) A court order or national medical support notice requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

((~~(v)~~)) (vi) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or ((~~a state children's health insurance program (~~))CHIP((~~)~~));

((~~(vi)~~)) (vii) Employee or an employee's dependent ((~~gains or loses eligibility for~~)) becomes entitled to coverage under medicare.

(c) **Dependent care assistance program (DCAP).** An employee may enroll or change his or her election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following approval by the DCAP administrator.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(iv) Employee changes dependent care provider; the change to DCAP can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 ((~~(a)(1) through (8)~~)) (d)(1) through (5), incorporating the rules of Section 152 (b)(1) ((~~and (2)~~)) through (3) of the IRC.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-235 Employer group application process. This section applies to employer groups as defined in WAC 182-08-015. An employer group may apply to obtain insurance coverage through a contract with the health care authority (HCA). With the exception of K-12 school districts and educational service districts, the authority will approve or deny the application through the evaluation criteria described in WAC 182-08-240. To apply, the employer group must submit the documents and information described in this rule to the public employees benefits board (PEBB) program at least sixty days before the requested coverage effective date. K-12 school districts and educational service districts are only required to provide the documents described in subsections (1), (2), and (3) of this section. If a K-12 school district is required by the superintendent of public instruction to purchase insurance coverage provided by the authority, the school district is required to submit documents and information described in subsections (1)(c), (2), and (3) of this section.

(1) A letter of application that includes the information described in (a) through (d) of this subsection:

(a) A reference to the employer group's authorizing statute;

(b) A description of the organizational structure of the employer group and a description of the employee bargaining unit(s) or group of nonrepresented employees for which the employer group is applying;

(c) Employer tax ID number (TIN); and

(d) A statement of whether the employer group is requesting only medical ((~~insurance~~)) or medical, dental, life and LTD insurance. K-12 school districts and educational service districts must purchase medical, dental, life, and LTD insurance.

(2) A resolution from the employer group's governing body authorizing the purchase of PEBB ((~~benefits~~)) insurance coverage.

(3) A signed governmental function attestation document that attests to the fact that employees for whom the employer group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(4) A member level census file for all of the employees for whom the employer group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or state registered domestic partner, or child:

(a) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(b) Age;

(c) Gender;

(d) First three digits of the member's zip code based on residence;

(e) Indicator of whether the employee is active or retired, if the employer group is requesting to include retirees; and

(f) Indicator of whether the member is enrolled in coverage.

(5) If the application is for a subset of the employer group's employees (e.g., bargaining unit), the employer group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in subsection (4) of this section. This includes retired employees participating under the employer group's current health plan. The file must include the same demographic data by member.

(6) In addition to the requirements of subsections (1) through (5) of this section, additional information is required based upon the total number of employees that the employer group employs who are eligible under their current health plan:

(a) Employer groups with fewer than eleven eligible employees must provide proof of current coverage or proof of prior coverage within the last twelve months.

(b) Employer groups with ((~~greater than~~)) three hundred ((~~but less than twenty-five~~)) one to two thousand five hundred eligible employees must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months; and

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history.

(c) Employer groups with greater than ((~~twenty-five~~)) two thousand five hundred eligible employees must submit to an actuarial evaluation of the group. The employer group must pay for the cost of the evaluation. This cost is nonrefundable. An employer group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;

(iv) Summary of benefits and certificate of coverage; and

(v) Summary of historical plan costs.

(d) The following definitions apply for purposes of this section:

(i) "Large claim" is defined as a member that received more than twenty-five thousand dollars in allowed cost for services in a quarter; and

(ii) An "ongoing large claim" is a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than twenty-five thousand dollars in the quarter.

(e) If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant and if the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-240 How will the health care authority (HCA) decide to approve or deny an employer group application? Employer group applications for participation in insurance coverage provided through the public employees benefits board (PEBB) program are approved or denied by the health care authority (HCA) based upon the information and documents submitted by the employer group and the employer group evaluation (EGE) criteria described in this rule. The authority may automatically deny an employer group application if the employer group fails to provide the required information and documents described in WAC 182-08-235.

(1) Employer groups are evaluated as a single unit. To support this requirement the employer group must provide census data for all employees eligible to participate under the employer group's current health plan. This includes retired employees participating under the employer group's current health plan.

(2) An employer group must pass the EGE criteria or the actuarial evaluation required in subsection (3) of this section as a single unit before the ((~~group~~)) application can be approved ((~~for participation~~)). For purposes of this section a single unit includes all employees eligible under the employer group's current health plan. If the application is only for a bargaining unit, then ((~~each~~)) the bargaining unit ((~~of the employer group~~)) must be evaluated using the EGE criteria in addition to all eligible employees of employer group as a single unit. If the employer group passes the EGE criteria as a single unit, but an individual bargaining unit does not, the employer group may only participate if all eligible employees of the entity participate.

(3) The authority will determine which of the criteria in (a) though (d) of this subsection is used to evaluate the employer group based upon the total number of eligible employees in the single unit.

(a) **Micro groups** (a single unit of one to ten employees) must meet the following criteria in order to pass the EGE evaluation:

(i) Provide proof of current coverage or proof of prior coverage within the last twelve months; and

(ii) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor for the nonmedicare PEBB risk pool as determined by the authority.

(b) **Small and medium groups** (a single unit of eleven to three hundred employees) must meet the following criterion in order to pass the EGE evaluation: The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor for the nonmedicare PEBB risk pool as determined by the authority.

(c) **Large groups** (a single unit of three hundred one to two thousand five hundred employees) must meet the following criteria in order to pass the EGE evaluation:

(i) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor for the nonmedicare PEBB risk pool as determined by the authority;

(ii) One of the following two conditions must be met:

• The frequency of large claims must be less than or equal to the historical benchmark frequency for the PEBB nonmedicare population; and

• The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB nonmedicare population.

(d) **Jumbo groups** (a single unit of two thousand five hundred one or more employees) must meet the following criteria in order to pass the actuarial evaluation:

(i) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor for the nonmedicare PEBB risk pool as determined by the authority;

(ii) One of the following two conditions must be met:

• The frequency of large claims must be less than or equal to the PEBB historical benchmark frequency for the PEBB nonmedicare population;

• The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB nonmedicare population;

(iii) Provide an executive summary of benefits;

(iv) Provide a summary of benefits and certificate of coverage;

(v) Provide a summary of historical plan costs; and

(vi) The evaluation of criteria in (d)(iii), (iv) and (v) of this subsection must indicate that the historical cost of benefits for the employer group is equal to or less than the historical cost of the PEBB nonmedicare population for a comparable plan design.

(4) The group evaluation for a jumbo group is valid for two years after approval by the authority. If an employer group applies to add additional bargaining units after two years the group must be reevaluated.

(5) An entity whose employer group application is denied may appeal the authority's decision to the PEBB appeals committee through the process described in WAC 182-16-038.

(6) An entity whose employer group application is approved may purchase insurance for its employees under the participation requirements described in WAC 182-08-245.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-245 Employer group participation requirements. This section applies to an employer group as defined in WAC 182-08-015 that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group must:

(a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;

(b) Sign a contract with the authority;

(c) Determine employee and dependent eligibility and terms of enrollment for ((~~PEBB~~)) insurance coverage in accordance with the criteria outlined in the employer group's contract with the authority;

(d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means that only employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions may be considered eligible by the employer group; and

(e) Ensure PEBB health plans are the only employer-sponsored health plans available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums in accordance with its contract with the authority based on the following premium structure:

(a) The premium rate structure for K-12 school districts and educational service districts will be a composite rate equal to the rate charged to state agencies plus an amount equal to the employee premium based on health plan choice and family enrollment.

Exception: The authority will allow districts that enrolled prior to September 1, 2002, to continue participation based on a tiered rate structure. The authority may require the district to change to a composite rate structure with ninety days advance written notice.

(b) The premium rate structure for employer groups other than districts described in (a) of this subsection will be a tiered rate based on health plan choice and family enrollment.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) If an employer group wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(4) The employer group must maintain participation in PEBB insurance coverage for at least one full year. An employer group may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group must provide written notice to the PEBB program at least sixty days before the requested termination date.

(5) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of employees and dependents that are enrolled in COBRA benefits and the remaining number of months available to them based on their qualifying event. These employees and dependents may enroll in PEBB medical and dental as COBRA enrollees for the remainder of the months available to them based on their qualifying event.

(6) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group, other than a school district or educational service district, ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if the employee continues to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance cease to be eligible under WAC 182-12-171, but may continue health plan enrollment under COBRA (see WAC 182-12-146).

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by

the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll or waive enrollment in a medical plan, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer-sponsored medical" includes insurance coverage continued by the employee or ((~~their~~)) his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal Retiree Plan" means the Federal Employees Health Benefits program (FEHB) and Tricare.

"Health plan" or "plan" means a plan offering medical coverage or dental ((~~plan~~)) coverage, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

((~~"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.~~))

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

((~~"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a dependent may be removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the director, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they~~

~~relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.~~))

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll or waive enrollment in a medical plan, or employees may enroll or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group medical coverage as required under WAC 182-12-128, or is on approved educational leave and obtains comprehensive group health plan coverage as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-111 Eligible entities and individuals. The following entities and individuals shall be eligible for public employees benefits board (PEBB) ((~~insurance coverage~~)) benefits subject to the terms and conditions set forth below:

(1) State agencies. State agencies, as defined in WAC 182-12-109, are required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) Employer groups. Employer groups may apply to participate in ((~~PEBB~~)) insurance coverage for groups of employees described in subsection (a) of this section at the option of each employer group:

(a) All eligible employees of the entity must transfer as a unit with the following exceptions:

• Bargaining units may elect to participate separately from the whole group;

• Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group; and

• Members of the employer group's governing authority may participate as ((~~defined~~)) described in the employer group's governing statutes and RCW 41.04.205.

(b) The employer group must apply through the process described in WAC 182-08-235. K-12 school district and educational service district applications ((~~do not have to include the census~~)) are required to provide the documents described in WAC 182-08-235 (1), (2), and (3). If a K-12 school district or educational service district is required by the superintendent of public instruction to purchase insurance coverage provided by the authority, the school district or educational service district is required to submit documents and information ((~~required~~)) described in WAC 182-08-235 (((~~(4) or (5)~~)) (1)(c), (2), and (3). Employer group applications are subject to review and approval by the health care authority (HCA). With the exception of K-12 school districts and educational service districts, the authority will approve or deny an employer group's application based on the employer group eligibility criteria described in WAC 182-08-240.

(c) Employer groups participate through a contract with the authority as described in WAC 182-08-245.

(3) School districts and educational service districts. In addition to subsection (2) of this section, the following applies to school districts and educational service districts:

(a) The HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size as

would be charged to state employees for each participating school district or educational service district.

(b) The HCA may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.

(4) The Washington health benefit exchange. In addition to subsection (2) of this section, the following provisions apply:

(a) The Washington health benefit exchange is subject to the same rules as an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(b) An employee of the Washington health benefit exchange is subject to the same rules as an employee of an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(5) Eligible nonemployees.

(a) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB ((~~insurance coverage~~)) medical.

(i) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(ii) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB ((~~insurance coverage~~)) medical.

(iii) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees in WAC 182-12-260.

(iv) An individual licensee or vendor who ceases to actively operate a facility becomes ineligible to participate in PEBB medical as described in (a) of this subsection. Individuals losing coverage may continue enrollment in PEBB medical on a self-pay basis under COBRA as described in WAC 182-12-146(5).

(v) An individual licensee or vendor is not eligible for PEBB retiree insurance coverage.

(b) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans while enrolled in that program.

(c) School board members or students eligible to participate under RCW 28A.400.350 may participate in ((~~PEBB~~)) insurance coverage as long as they remain eligible under that section.

(6) Individuals and entities that are not eligible include:

(a) Adult family home providers as defined in RCW 70.128.010;

(b) Unpaid volunteers;

(c) Patients of state hospitals;

(d) Inmates;

(e) Employees of the Washington state convention and trade center as provided in RCW 41.05.110;

(f) Students of institutions of higher education as determined by their institutions; and

(g) Any others not expressly defined as employees under RCW 41.05.011.

AMENDATORY SECTION (Amending WSR 10-20-147, filed 10/6/10, effective 1/1/11)

WAC 182-12-114 How do employees establish eligibility for PEBB benefits? Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Employing agencies must request the PEBB program's approval to include temporary training or emergency hours in determining eligibility.

For how the employer contribution toward insurance coverage is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as provided in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situation in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position to hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward insurance coverage under WAC 182-12-131(1).

(d) **When PEBB ((~~benefits~~)) insurance coverage begins.** Medical and dental insurance coverage ((~~and~~)), basic

life, and basic long-term disability insurance coverage begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

(2) **Seasonal employees,** as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month of the season. A season is any recurring, cyclical period of work at a specific time of year that lasts three to eleven months.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that he or she will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least eighty hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job to hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward insurance coverage under WAC 182-12-131(1).

(d) **When PEBB ((~~benefits~~)) insurance coverage begins.** Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria of (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward insurance coverage by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility under WAC 182-12-131(3). When a faculty works for more than one institution of higher education, the faculty must notify his or her employing agencies that he or she works at more than one institution and may be eligible through stacking.

(c) **When PEBB ((~~benefits~~)) insurance coverage begins.**

(i) Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, ((~~these PEBB benefits~~)) then insurance coverage begins at the beginning of the second consecutive quarter/semester.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB ((~~benefits~~)) insurance coverage begins.** Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage for an eligible employee begin on the first day of the month following the day he or she becomes eligible. If the employee becomes

eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB ((~~benefits~~)) insurance coverage begins.** Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage for an eligible employee begin on the first day of the month following the day he or she becomes eligible. If the employee becomes eligible on the first working day of a month, ((~~these PEBB benefits~~)) then insurance coverage begins on that date.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-12-116 Who is eligible to participate in the state's salary reduction plan? (1) Employees of state agencies are eligible to participate in the state's salary reduction plan provided they are eligible for PEBB benefits as ((~~defined~~)) described in WAC 182-12-114 and they elect to participate within the time frames described in WAC 182-08-197, 182-08-187, or 182-08-199.

(2) Employees of employer groups, as defined in WAC 182-12-109, are not eligible to participate in the state's salary reduction plan.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-123 Dual enrollment is prohibited. Public employees benefits board (PEBB) health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, individuals who have more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") are limited to one enrollment.

(2) An eligible employee may waive medical and enroll as a dependent on the coverage of his or her eligible spouse, eligible state registered domestic partner, or eligible parent as stated in WAC 182-12-128.

(3) Children eligible for medical and dental under two subscribers may be enrolled as a dependent under the health plan of only one subscriber.

(4) An employee who is eligible for the employer contribution ((~~to PEBB benefits~~)) towards insurance coverage due to employment in more than one PEBB-participating employing agency must choose to enroll under only one employing agency.

Exception: Faculty who stack to establish or maintain eligibility under WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-128 When may an employee waive ((~~health~~)) or enroll in medical plans ((~~enrollment~~))? Employees must enroll in dental, basic life and basic long-term disability insurance (unless the employing agency does not participate in these public employees benefits board (PEBB) insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage.

(1) Employees may waive enrollment in PEBB medical by submitting the ((~~appropriate~~)) required enrollment form to their employing agency during the following times:

(a) **When the employee becomes eligible:** Employees may waive medical when they become eligible for PEBB benefits. Employees must indicate they are waiving medical on the ((~~appropriate~~)) required enrollment form they submit to their employing agency no later than thirty-one days after the date they become eligible (see WAC 182-08-197). Medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** Employees may waive medical during the annual open enrollment if they submit the ((~~appropriate~~)) required enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(2) If an employee waives medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) During the annual open enrollment;

(b) During a special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the ((~~appropriate~~)) required forms, the PEBB program ((~~may~~)) will require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment.

(4) **Special open enrollment:** Employees may waive enrollment in medical or enroll in medical if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for ((~~either~~)) the employee, the employee's dependent, or both. Employees must provide evidence of the event that created the special open enrollment. Any one of the following events may create a special open enrollment:

(a) Employee acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Employee or ((~~a~~)) an employee's dependent loses other coverage under a group health plan or through health

insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee or an employee's dependent has a change in employment status that affects the employee's or employee's dependent's eligibility for ((~~the~~)) their employer contribution toward group health coverage;

(d) Employee or an employee's dependent has a change in enrollment under another employer group plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Employee's dependent has a change in residence from outside of the United States to within the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Employee or an employee's dependent becomes eligible for state premium assistance ((~~through~~)) subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP)((~~, or the employee or dependent loses eligibility for coverage under medicaid or CHIP~~)).

To waive or enroll during a special open enrollment, the employee must submit the ((~~appropriate~~)) required forms to ((~~their~~)) his or her employing agency no later than sixty days after the event that creates the special open enrollment.

Medical will be waived the end of the month following the later of the event date or the date the form is received. If the later day is the first of the month, medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, medical will be waived the first of the month in which the event occurs.

Enrollment in medical will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, enrollment in medical will begin the first of the month in which the event occurs.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-12-129 What happens when an employee moves from an eligible to an otherwise ineligible position or job due to a layoff? This section applies to employees employed by state agencies (as defined in this chapter), including benefits-eligible seasonal employees, and is intended to address situations where an employee moves from one position or job to another due to a layoff, as ((~~defined~~)) described in WAC 182-12-109. This section does not apply to employees with an anticipated end date.

If an employee moves from an eligible to an otherwise ineligible position due to layoff, the employee may retain his or her eligibility for the employer contribution toward insurance coverage for each month that the employee is in pay status for at least eight hours. To maintain eligibility using this section the employee must:

• Be hired into a position with a state agency within twenty-four months of the original eligible position ending; and

• Upon hire, notify the employing state agency that he or she is potentially eligible to use this section.

This section ceases to apply if the employee is employed in a position eligible for public employees benefits board (PEBB) benefits under WAC 182-12-114 within twenty-four months of leaving the original position.

After the twenty-fourth month, the employee must reestablish eligibility under WAC 182-12-114.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-131 How do eligible employees maintain the employer contribution toward insurance coverage? The employer contribution toward insurance coverage begins on the day that public employees benefits board (PEBB) benefits begin under WAC 182-12-114. This section describes under what circumstances an employee maintains eligibility for the employer contribution toward ((~~PEBB benefits~~)) insurance coverage.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, an employee who has established eligibility for benefits under WAC 182-12-114 is eligible for the employer contribution each month in which he or she is in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - Benefits-eligible seasonal employees.**

(a) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of less than nine months is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. The employer contribution toward ((~~PEBB benefits~~)) insurance coverage for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of nine months or more is eligible for the employer contribution:

(i) In any month of his or her season in which he or she is in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked.

(3) **Maintaining the employer contribution - Eligible faculty.**

(a) Benefits-eligible faculty anticipated to work the entire instructional year or equivalent nine-month period (eligible under WAC 182-12-114 (3)(a)(i)) are eligible for the

employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible under WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which the employee works half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester insurance coverage.

Exception: Eligibility for the employer contribution toward summer or off-quarter/semester insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment. If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(d) Two-year averaging: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution to ((~~PEBB benefits~~)) insurance coverage. "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

(i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and

(ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty who lose eligibility for the employer contribution: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) **Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.**

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

(i) Employees on authorized leave without pay;

(ii) Employees on approved educational leave;

(iii) Employees receiving time-loss benefits under workers' compensation;

(iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(v) Employees applying for disability retirement.

(5) **Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff** maintain the employer contribution toward insurance coverage under the criteria in WAC 182-12-129.

(6) **Employees who are in pay status less than eight hours in a month.** Unless otherwise indicated in this section, when there is a month in which an employee is not in pay status for at least eight hours, the employee:

(a) Loses eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits under WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) **The employer contribution ((~~to PEBB~~)) toward insurance coverage ends** in any one of these circumstances for all employees:

(a) When the employee fails to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:

(i) On the date specified in an employee's letter of resignation; or

(ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When the employee moves to a position that is not anticipated to be eligible for benefits under WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB medical, dental and life insurance for an employee, spouse, state registered domestic partner, or child ceases at 12:00 midnight, the last day of the month in which the employee is eligible for the employer contribution under this section.

Exception: If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(8) **Options for continuation coverage by self-paying.** During temporary or permanent loss of the employer contribution toward insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the health care authority (HCA). These options are available according to WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-133 What options for continuation coverage are available to employees on certain types of leave or whose work ends due to a layoff? Employees who have established eligibility for public employees benefits board (PEBB) benefits under WAC 182-12-114 have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the health care authority (HCA) during temporary or permanent loss of the employer contribution toward insurance coverage.

(1) When an employee is no longer eligible for the employer contribution toward ((~~PEBB benefits~~)) insurance coverage due to an event described in (a) through (f) of this subsection, insurance coverage may be continued by self-paying the full premium set by the HCA, with no contribution from the employer. Employees may self-pay for a maximum of twenty-nine months. The employee must pay the premium amounts for insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid. Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave or called in to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may continue either basic or both basic and optional long-term disability insurance. Employees in the following circumstances qualify to continue coverage under this subsection:

(a) The employee is on authorized leave without pay;

(b) The employee is on approved educational leave;

(c) The employee is receiving time-loss benefits under workers' compensation;

(d) The employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA);

(e) The employee's employment ends due to a layoff as defined in WAC 182-12-109; or

(f) The employee is applying for disability retirement.

(2) The number of months that an employee self-pays the premium while eligible under subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). An employee who is no longer eligible for continuation coverage as described in subsection (1) of this section but who has not used the maximum number of months allowed under COBRA may continue medical and dental for the remaining difference in months by self-paying the premium under COBRA as described in WAC 182-12-146.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-146 What options for continuation coverage are available to subscribers and dependents who become eligible under COBRA? An enrollee can continue health plan coverage by self-paying the full premium set by the health care authority (HCA) in accordance with Consolidated Omnibus Budget Reconciliation Act (COBRA) regulations in the following circumstances:

(1) An employee or an employee's dependent who loses eligibility for the employer contribution toward ((~~public employees benefits board (PEBB)~~)) insurance coverage and who qualifies for continuation coverage under COBRA may continue medical, dental, or both.

(2) An employee or an employee's dependent who loses eligibility for continuation coverage in WAC 182-12-133, 182-12-138, 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue medical, dental, or both for the remaining difference in months.

(3) A retired or disabled employee who loses eligibility for PEBB retiree insurance because an employer group, with the exception of school districts and educational service districts, ceases participation in ((~~PEBB~~)) insurance coverage may continue medical, dental, or both.

(4) A retired or disabled employee, or a dependent of a retired or disabled employee, who is no longer eligible to continue coverage under WAC 182-12-171 may continue medical, dental, or both.

(5) An individual licensee or vendor who ceases to actively operate a facility as described in WAC 182-12-111 (5)(a) may continue enrollment in public employees benefits board (PEBB) medical for the maximum number of months allowed under COBRA as described in this section.

An individual licensee or vendor is not eligible for PEBB retiree insurance coverage.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-171 When are retiring employees eligible to enroll in retiree insurance? (1) **Procedural requirements.** Retiring employees must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) The employee must submit the appropriate forms to enroll or defer insurance coverage within sixty days after the employee's employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first day of the month following the loss of other coverage.

Exception: The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or after retirement are identified in WAC 182-12-200 and 182-12-205.

Employees who do not enroll in a public employees benefits board (PEBB) health plan at retirement are only eligible

to enroll at a later date if they have deferred enrollment as identified in WAC 182-12-200 or 182-12-205 and maintained comprehensive employer-sponsored medical as defined in WAC 182-12-109.

(b) The employee and enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance, he or she must enroll and maintain enrollment in medicare.

Note: If an enrollee who is entitled to medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in PEBB retiree insurance. The enrollee may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(2) **Eligibility requirements.** Eligible employees (as ((~~defined~~)) described in WAC 182-12-114 and 182-12-131) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this section) are eligible to continue ((~~PEBB~~)) insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue ((~~PEBB~~)) insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirement when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the PEBB appeals committee to determine eligibility (see WAC 182-16-032). Employees must meet retiree insurance election procedural requirements.

Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below((~~:~~)):

• Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan((~~:~~));

• Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(20)), are eligible if they meet their Plan 3 retirement plan's eligibility criteria when PEBB employee insurance or COBRA coverage ends. They do not have to receive a retirement plan payment((~~:~~));

• Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's retirement eligibility criteria, or are at least age fifty-five with ten years of state service((~~:~~));

• Employees not retiring under a Washington state-sponsored retirement plan must meet the same age and years of service as if the person had been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment((~~:~~)); or

• Employees who retire from a local government or tribal government that participates in ((~~PEBB~~)) insurance coverage for their employees are eligible to continue PEBB insurance coverage as retirees if the employees meet the procedural and eligibility requirements under this section.

(a) **Local government employees.** If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) **Tribal government employees.** If a tribal government ends participation in PEBB insurance coverage, its employees are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(c) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB ((~~benefits~~)) insurance coverage.** Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan or the employee enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(20)), are eligible if they meet their Plan 3 retirement plan's eligibility criteria when employer paid or COBRA coverage ends.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) **Elected and full-time appointed officials of the legislative and executive branches.** Employees who are elected and full-time appointed state officials (as defined under WAC 182-12-114(4)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural ((~~and eligibility~~)) requirements((~~. They do not have to receive a retirement plan payment from a state-sponsored retirement system~~)) of subsection (1) of this section.

(4) **Washington state-sponsored retirement systems include:**

• Higher education retirement plans;

• Law enforcement officers' and firefighters' retirement system;

• Public employees' retirement system;

• Public safety employees' retirement system;

- School employees' retirement system;
- State judges/judicial retirement system;
- Teachers' retirement system; and
- State patrol retirement system.

The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered a Washington state-sponsored retirement system for Washington State University Extension employees covered under the PEBB insurance coverage at the time of retirement or disability.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-205 May a retiree defer enrollment in a public employees benefits board (PEBB) health plan at or after retirement? Except as stated in subsection (1)(c) of this section, if a retiree((~~s~~)) defers enrollment in a public employees benefits board (PEBB) health plan, they also defer enrollment for all eligible dependents. ((~~Retirees may not defer their retiree term life insurance, even if they have other life insurance, except as allowed in WAC 182-12-209(3).~~))

(1) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other ((~~comprehensive employer-sponsored medical~~)) coverage as ((~~identified below~~)) described in this subsection:

(a) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in comprehensive employer-sponsored medical as an employee or the dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment if they are enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as ((~~defined~~)) described in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, retirees who are not eligible for Parts A and B of medicare may defer enrollment if they are enrolled in exchange coverage.

(2) To defer health plan enrollment, the retiree must submit the ((~~appropriate~~)) required forms to the PEBB program requesting to defer. The PEBB program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.

(3) Retirees who defer may later enroll themselves and their dependents in ((~~a~~)) PEBB ((~~health plan~~)) retiree medical, or medical and dental, as follows:

(a) Retirees who defer while enrolled in comprehensive employer-sponsored medical may enroll in a PEBB health plan by submitting the ((~~appropriate~~)) required forms and evidence of continuous enrollment in comprehensive employer-sponsored medical to the PEBB program:

(i) During annual open enrollment. PEBB health plan coverage begins January 1st of the following year; or

(ii) No later than sixty days after their comprehensive employer-sponsored medical ends. PEBB health plan coverage begins the first day of the month after the comprehensive employer-sponsored medical ends.

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the ((~~appropriate~~)) required forms and evidence of continuous enrollment in a federal retiree medical plan to the PEBB program:

(i) During annual open enrollment. PEBB health plan coverage begins January 1st of the following year; or

(ii) No later than sixty days after the federal retiree medical ends. PEBB health plan coverage begins the first day of the month after the federal retiree medical ends.

(c) Retirees who defer enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as ((~~defined~~)) described in this chapter may enroll in a PEBB health plan by submitting the ((~~appropriate~~)) required forms and evidence of continuous enrollment in creditable coverage to the PEBB program:

(i) During annual open enrollment. PEBB health plan coverage begins January 1st of the following year; or

(ii) No later than sixty days after their medicaid coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends.

(d) Retirees who defer enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in exchange coverage to the PEBB program:

(i) During annual open enrollment. PEBB health plan coverage begins January 1st of the following year; or

(ii) No later than sixty days after exchange coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

(e) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the ((~~department of social and health services~~)) authority has determined it is more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

AMENDATORY SECTION (Amending WSR 11-22-036, filed 10/26/11, effective 1/1/12)

WAC 182-12-208 What are the requirements regarding enrollment in retiree dental? (1) ((~~If~~)) A subscriber ((~~is~~)) or dependent enrolled in retiree insurance coverage, ((~~he or she~~)) may not enroll in dental unless he or she is also enrolled in medical.

(2) A subscriber enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

AMENDATORY SECTION (Amending WSR 11-22-036, filed 10/26/11, effective 1/1/12)

WAC 182-12-209 Who is eligible for retiree life insurance? Eligible employees who participate in public employees benefits board (PEBB) life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit the ((~~appropriate~~)) required forms to the PEBB program no later than sixty days after the date their PEBB employee life insurance ends.

(1) Employees whose life insurance premiums are being waived under the terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends.

(2) Retirees may not defer enrollment in retiree term life insurance, except as allowed in subsection (3)(b) of this section.

(3) If a retiree returns to active employment status and becomes eligible for the employer contribution toward PEBB employee life insurance, he or she may choose:

(a) To continue to self-pay premiums and keep retiree life insurance in place during the period he or she is eligible for employee life insurance; or

(b) To stop self-paying premiums during the period he or she is eligible for employee life insurance and resume self-paying premiums for retiree life insurance when he or she is no longer eligible for the employer contribution toward PEBB employee life insurance.

AMENDATORY SECTION (Amending WSR 11-22-036, filed 10/26/11, effective 1/1/12)

WAC 182-12-211 If department of retirement systems or the appropriate higher education authority makes a formal determination of retroactive eligibility, may the retiree enroll in public employees benefits board (PEBB) retiree insurance coverage? (1) When the Washington state department of retirement systems (DRS), or the appropriate higher education authority, makes a formal determination that a person is retroactively eligible for a pension benefit((~~s~~)) or a supplemental retirement plan benefit under the higher education HERP plan, that person may apply for enrollment in a public employees benefits board (PEBB) health plan only if the application is made within sixty days after the date of written notice from DRS or from the appropriate higher education authority. Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described in WAC 182-12-171(2).

(2) All premiums are due from the date of retirement eligibility ((~~established by DRS~~)) as stated in the written notice or the date of the ((~~DRS decision letter~~)) written notice described in subsection (1) of this section, at the option of the retiree, must be sent with the application to the PEBB program.

(3) The director may make an exception to the date PEBB retiree insurance coverage commences or payment of premiums; however, such requests must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in health plans administered by the public employees benefits board (PEBB) program within health care authority (HCA).

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner; ((~~and~~))

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26.101.

(4) Surviving spouses, state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on ((~~their~~)) his or her behalf) must submit the ((~~appropriate~~)) required forms ((~~(~~)) to the PEBB program to either enroll or defer enrollment in a PEBB health plan((~~) to PEBB program~~)) as described in subsection (7) of this section no later than one hundred eighty days after the later of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consoli-

dated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in a PEBB health plan may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose ((~~appropriate~~)) required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the ((~~appropriate~~)) required forms (for example, if the PEBB program receives the ((~~appropriate~~)) required forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB program receives the ((~~appropriate~~)) required forms.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if continuously enrolled in ((~~comprehensive employer-sponsored medical~~)) other coverage as described in WAC 182-12-205(1).

(ii) Survivors may enroll in a PEBB health plan when they lose comprehensive employer-sponsored medical. Survivors will need to provide evidence that they were continuously enrolled in comprehensive employer-sponsored medical when applying for a PEBB health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in a PEBB health plan if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in ((~~comprehensive employer-sponsored medical through an employer~~)) coverage during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-260 Who are eligible dependents? To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The public employees benefits board (PEBB) program verifies the eligibility of all dependents and reserves the right to request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility. The PEBB program will not enroll or reenroll dependents into a health plan if the PEBB program is unable to verify a dependent's eligibility.

The subscriber must notify the PEBB program, in writing, no later than sixty days after the date his or her dependent is no longer eligible under this section. See WAC 182-12-262 (2)(a) for the consequences of not removing an ineligible dependent from coverage.

The following are eligible as dependents:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) Domestic partner.

(a) Effective January 1, 2010, a state registered domestic partner, as defined in RCW 26.60.020(1).

(b) A domestic partner who was qualified under PEBB eligibility criteria as a domestic partner before January 1, 2010, and was continuously enrolled under the subscriber in a PEBB health plan or life insurance.

(c) Former state registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.

(3) Children. Children are eligible up to age twenty-six except as described in (i) of this subsection. Children are defined as the subscriber's ((~~biological~~));

(a) Children as defined in RCW 26.26.101 establishment of parent-child relationship;

(b) Biological children, where parental rights have not been terminated;

(c) Stepchildren((~~,~~)). The stepchild's relationship to a subscriber (and eligibility as a PEBB dependent) ends, for purposes of this rule, on the same date the subscriber's legal relationship with the spouse or domestic partner ends through divorce, annulment, dissolution, termination, or death;

(d) Legally adopted children((~~,~~));

(e) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child((~~,~~));

(f) Children of the subscriber's state registered domestic partner((~~, or~~));

(g) Children specified in a court order or divorce decree((~~. In addition, children include~~));

(h) Extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's state registered domestic partner. The legal responsibility is demonstrated by a valid court order and the

child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program((~~.~~

~~Eligible children include:~~

~~(a) Children up to age twenty-six.~~

~~(b) Effective January 1, 2011, children of any age with a disability, mental illness, or intellectual or other developmental disability who are incapable of self-support, provided such condition occurs before age twenty-six.~~)); and

(i) Children of any age with a developmental disability or physical handicap that renders the child incapable of self-sustaining employment and chiefly dependent upon the employee for support and maintenance provided such condition occurs before the age twenty-six:

(i) The subscriber must provide evidence of the disability and evidence that the condition occurred before age twenty-six((~~:~~));

(ii) The subscriber must notify the PEBB program, in writing, no later than sixty days after the date that a child age twenty-six or older no longer qualifies under this subsection((~~.~~

~~For example, children~~));

(iii) A child with a developmental disability or physical handicap who becomes self-supporting ((~~are~~)) is not eligible under this subsection as of the last day of the month in which ((~~they~~)) he or she becomes capable of self-support((~~.~~

~~(iii) Children~~));

(iv) A child with a developmental disability or physical handicap age twenty-six and older who becomes capable of self-support ((~~do~~)) does not regain eligibility under ((~~(b)~~)) (i) of this subsection if ((~~they~~)) he or she later becomes incapable of self-support((~~.~~

~~(iv)~~));

(v) The PEBB program will periodically certify the eligibility of ((~~children~~)) a dependent child with ((~~disabilities periodically~~)) a disability beginning at age twenty-six, but no more frequently than annually after the two-year period following the child's twenty-sixth birthday.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in ((~~PEBB~~)) insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in health plan coverage.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-12-205 (1)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) insurance coverage. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section. The subscriber must satisfy the enrollment requirements as described in subsection (4) of this section.

(2) **Removing dependents from a subscriber's health plan coverage.**

(a) **A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent** meets the eligibility criteria in WAC 182-12-250 or 182-12-260. Employees must notify their employing agency. All other subscribers must notify the PEBB program. Consequences for not submitting notice within sixty days of any dependent ceasing to be eligible may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section.

(c) **Retirees, survivors, and enrollees with PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents** from their coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's coverage prospectively.

(3) **Special open enrollment.** Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must correspond to and be consistent with the event that creates the special open enrollment for ((~~either~~)) the subscriber, the subscriber's dependents, or both.

• Health plan coverage will begin the first of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day.

• Enrollment of extended dependents or dependents with a disability will be the first day of the month following eligibility certification.

• Dependents will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

• If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end the month in which the event occurs.

Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for ((~~the~~)) their employer contribution toward group health coverage;

(d) Subscriber or a subscriber's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Subscriber's dependent has a change in residence from outside of the United States to within the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance ((~~through~~)) subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP)((~~, or the subscriber or dependent loses eligibility for coverage under medicaid or CHIP.~~))

(4) **Enrollment requirements. Subscribers must submit the ((~~appropriate~~)) required enrollment forms within the time frames described in this subsection.** Employees submit the ((~~appropriate~~)) required forms to their employing agency. All other subscribers submit the ((~~appropriate~~)) required forms to the PEBB program. In addition to the ((~~appropriate~~)) required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll ((~~their~~)) his or her eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the ((~~appropriate~~)) required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must submit the ((~~appropriate~~)) required forms no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the ((~~appropriate~~)) required enrollment forms no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting an enrollment form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the subscriber must submit the ((~~appropriate~~)) required enrollment form no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the subscriber must submit the ((~~appropriate~~)) required form(s) no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f).

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the ((~~appropriate~~)) required forms no later than sixty days after the event that creates the special open enrollment.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-263 National Medical Support Notice (NMSN) or court order. When a National Medical Support Notice (NMSN) or court order requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(1) The subscriber may enroll ((~~the~~)) his or her dependent child and request changes to his or her health plan coverage as described under subsection (3) of this section. Employees submit the ((~~appropriate~~)) required forms to their employing agency. All other subscribers submit the ((~~appropriate~~)) required forms to the PEBB program.

(2) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN or court order, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to subsection (3) of this section upon request of:

(a) The child's other parent; or

(b) Child support enforcement program.

(3) Changes to health plan coverage or enrollment are allowed as directed by the NMSN or court order:

(a) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN or court order;

(b) An employee who has waived medical under WAC 182-12-128 will be enrolled in medical coverage as directed by the NMSN or court order, in order to enroll the dependent;

(c) The subscriber's selected health plan will be changed if directed by the NMSN or court order;

(d) If the dependent is already enrolled under another PEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN or court order.

(4) Health plan enrollment will begin the first day of the month following receipt of the NMSN or court order. If the NMSN or court order requires a change from the subscriber's selected health plan, the change will begin the first day of the month following receipt of the NMSN or court order.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-020 Definitions. As used in this chapter the term:

"Authority" or "HCA" means the health care authority.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a plan offering medical coverage or dental ((~~plan~~)) coverage, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

WSR 13-22-037
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed October 31, 2013, 9:24 a.m., effective December 1, 2013]

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

Purpose: The department is amending WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? and 388-478-0057 Year-end adjustment to the SSI state supplement, to:

Maintain the yearly total amount of SSP expenditures at the same level each calendar year by decreasing the amount of monthly SSP payment from $46.00 to $40.00 to SSI recipients who have an ineligible spouse, are age sixty-five or older, or are blind.

Allow the state to maintain the total SSP expenditures at the same level each year, without increase or decrease in total spending for the program.

Citation of Existing Rules Affected by this Order: Amending 388-478-0055 and 388-478-0057.

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

Adopted under notice filed as WSR 13-19-064 on September 17, 2013.

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 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: October 30, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-067, filed 7/31/08, effective 9/1/08)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state ((~~for~~)) to certain SSI eligible people (see WAC 388-474-0012).

(2) If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

((~~(2)~~)) (3) The monthly SSP ((~~rates~~)) rate standards for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	((~~Monthly SSP Rate~~)) Standard
Individual (aged 65 and older)	$((~~46.00~~)) 40.00
Individual (blind as determined by SSA)	$((~~46.00~~)) 40.00
Individual with an ineligible spouse	$((~~46.00~~)) 40.00
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between $0.54 and $199.77.

Medical institution	Monthly SSP Rate
Individual	$27.28

(4) We may adjust the SSP rate standards at the end of the calendar year to comply with WAC 388-478-0057.

AMENDATORY SECTION (Amending WSR 01-22-088, filed 11/5/01, effective 12/6/01)

WAC 388-478-0057 ((~~Year-end adjustments~~)) Adjustments to the SSI state supplement payments (SSP). For the purposes of this rule, "we" refers to the department of social and health services. We are required by federal law to maintain the total SSI state supplement payments (SSP) at the same level each year, without an increase or decrease in total spending. ((~~This~~)) We may ((~~result in adjustment to~~)) adjust your SSI state supplement ((~~benefits~~)) payment ((~~at the end of the year~~)) amount as necessary to comply with federal law.

(1) ((~~If~~)) When there are unexpended funds, you will receive a one-time ((~~bonus~~)) additional payment, usually at the end of the calendar year.

(2) When there is a shortage in available funds, we will decrease your ((~~state supplement~~)) SSP benefits ((~~will be decreased~~)) to maintain the total SSP payment spending at the same level each year((~~. The decrease will usually be spread out over multiple months to reduce the negative impact on you~~)).

WSR 13-22-040
PERMANENT RULES
DEPARTMENT OF EARLY LEARNING

[Filed October 31, 2013, 10:37 a.m., effective December 1, 2013]

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

Purpose: To amend WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care, to comply with section 3 (2)(c) of recently enacted 2SSB 5595, enrolled as chapter 337, Laws of 2013, effective date July 28, 2013, such that, effective December 1, 2013, parents who receive working connections child care benefits and participate in one hundred ten hours or more of approved work or related activities are eligible for full-time child care services.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0190.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-19-089 on September 18, 2013.

Changes Other than Editing from Proposed to Adopted Version: Added subsections stating that two hundred thirty child care hours will be authorized for in-home/relative providers when the consumer participates in one hundred ten or more hours of approved activities per month, and that otherwise the provider will be paid hourly. Instead of integrating the one hundred ten hour rule into the two existing subsections regarding half and full days, added a third subsection to describe full day authorizations when the consumer participates in one hundred ten hours or more of approved activities per month. Inserted language into the subsection detailing half day eligibility to clarify that it applies to consumers who do not participate in one hundred ten hours or more of approved activities per month. Replaced "approved work or related activities" with "approved activities." Specified that authorizing child care units when the consumer participate[s] in one hundred ten hours or more of approved activities per month is based on the consumer's approved activity schedule and the child's activity schedule.

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

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

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

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

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

Date Adopted: October 31, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. (1) DSHS may authorize and pay for the following child care hours:

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day;

(b) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule and the child's activity schedule;

(c) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day and the consumer does not participate in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule and the child's activity schedule;

(((~~(c)~~))) (d) Hourly child care for in-home/relative child care((~~;~~

~~(d)~~))) as follows:

(i) Two hundred thirty hours for in-home/relative child care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule and the child's activity schedule;

(ii) Hourly child care when the consumer does not participate in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule and the child's activity schedule;

(e) A registration fee (under WAC 170-290-0245);

(((~~(e)~~))) (f) A field trip fee (under WAC 170-290-0247);

(((~~(f)~~))) (g) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(((~~(g)~~))) (h) A nonstandard hours bonus under WAC 170-290-0249.

(2) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the home or work (activity) site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

(3) DSHS authorizes an additional amount of care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.

WSR 13-22-044
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed October 31, 2013, 4:14 p.m., effective December 1, 2013]

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

Purpose: WAC 458-20-19401 - 458-20-19404 are amended to reflect the adoption of WAC 458-20-19405. WAC 458-20-19405 is adopted because RCW 82.04.067 requires the department of revenue every December to review the change in the consumer price index and to adjust the thresholds whenever the cumulative change exceeds five percent.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-19401 Minimum nexus thresholds for apportionable activities, 458-20-19402 Single factor receipts apportionment—Generally, 458-20-19403 Apportionable royalty receipts attribution, 458-20-19404 Financial institutions—Income apportionment, and 458-20-19405 CPI-U adjustments to minimum nexus thresholds for apportionable activities.

Statutory Authority for Adoption: RCW 82.04.067, 82.32.300, and 82.01.060(2).

Adopted under notice filed as WSR 13-17-124 on August 21, 2013.

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 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 31, 2013.

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 11-19-038, filed 9/12/11, effective 10/13/11)

WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. (1) **Introduction.**

(a) This rule only applies to periods after May 31, 2010.

(b) The state of Washington imposes business and occupation (B&O) tax on apportionable activities measured by the gross income of the business. B&O tax may only be imposed if a person has a "substantial nexus" with this state. For the purposes of apportionable activities, substantial nexus does not require a person to have physical presence in this state.

(c) The following rules may also be helpful:

(i) WAC 458-20-19402, Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(ii) WAC 458-20-19403, Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404, Financial institutions—Income apportionment. This rule 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.

(iv) WAC 458-20-19405, CPI-U adjustments to minimum nexus thresholds for apportionable activities. This rule describes the minimum nexus thresholds adjustment that must be made to account for increases to the consumer price index for tax periods after May 31, 2010.

(v) WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(((~~(v)~~))) (vi) WAC 458-20-194, Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(d) Examples included in this rule identify a number of facts and then state a conclusion; they 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. For the examples in this rule, gross income received by the taxpayer is from engaging in apportionable activities. Also, unless otherwise stated, the examples do not apply to tax liability prior to June 1, 2010.

The minimum nexus thresholds described in this rule and used in examples are subject to change because of consumer price index changes. Refer to WAC 458-20-19405 for the current threshold amounts.

(2) **Definitions.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) **"Apportionable activities"** includes only those activities subject to B&O tax under the following classifications:

(i) Service and other activities;

(ii) Royalties;

(iii) Travel agents and tour operators;

(iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent;

(v) Stevedoring and associated activities;

(vi) Disposing of low-level waste;

(vii) Title insurance producers, title insurance agents, or surplus line brokers;

(viii) Public or nonprofit hospitals;

(ix) Real estate brokers;

(x) Research and development performed by nonprofit corporations or associations;

(xi) Inspecting, testing, labeling, and storing canned salmon owned by another person;

(xii) Representing and performing services for fire or casualty insurance companies as an independent resident

managing general agent licensed under the provisions of chapter 48.17 RCW;

(xiii) Contests of chance;

(xiv) Horse races;

(xv) International investment management services;

(xvi) Room and domiciliary care to residents of a boarding home;

(xvii) Aerospace product development;

(xviii) Printing or publishing a newspaper (but only with respect to advertising income);

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income); and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xix) of this subsection if this special tax classification did not exist.

(b) **"Credit card"** means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(c) **"Gross income of the business"** means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. The term gross receipts means gross income from apportionable activities.

(d) **"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: 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 real estate mortgage investment conduit (REMIC) or other mortgage-backed or asset-backed security; and other similar items.

(e) **"Net annual rental rate"** means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(f) The terms **"nexus"** and **"substantial nexus"** are used interchangeably in this rule.

(g) **"Property"** means tangible, intangible, and real property owned or rented and used in this state during the calendar year, except property does not include ownership of or rights in computer software, including computer software used in providing a digital automated service; master copies of software; and digital goods or digital codes residing on servers located in this state. Refer to RCW 82.04.192 and 82.04.215 for definitions of the terms computer software, digital automated services, digital goods, digital codes, and master copies.

(h) **"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 or political subdivision of a foreign country.

(i) **"Securities"** includes any intangible property defined as a security under section 2 (a)(1) of the Securities Act of 1933 including, but not limited to, negotiable certificates of deposit and municipal bonds.

(3) **Substantial nexus.**

(a) Substantial nexus exists where a person is:

(i) An individual and is a resident or domiciliary of this state during the calendar year;

(ii) A business entity and is organized or commercially domiciled in this state during the calendar year; or

(iii) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and in any calendar year the person has:

(A) More than fifty thousand dollars of property in this state;

(B) More than fifty thousand dollars of payroll in this state;

(C) More than two hundred fifty thousand dollars of receipts from this state; or

(D) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

Example 1. Company commercially domiciled in Washington. Company C is commercially domiciled in Washington and has one employee in Washington who earns $30,000 per year. Company C has substantial nexus with Washington because it is commercially domiciled in Washington. The minimum nexus thresholds for property, payroll, and receipts do not apply to a business entity commercially domiciled in this state.

(b) The department will adjust the amounts listed in (a) of this subsection based on changes in the consumer price index as required by RCW 82.04.067. (See WAC 458-20-19405 for the current threshold amounts.)

(c) The minimum nexus thresholds are determined on a tax year basis. Generally, a tax year is the same as a calendar year. See RCW 82.32.270. For the purposes of this rule, tax years will be referred to as calendar years. This means that if a person meets the minimum nexus thresholds in a calendar year, that person is subject to B&O taxes for the entire calendar year.

Example 2. Company Q is organized and domiciled outside of Washington. Company Q maintains an office in Washington which houses a single employee. Company Q has $40,000 in property located in Washington, the employee receives $45,000 in compensation, and has $200,000 in apportionable receipts attributed to Washington. Company Q's total property is valued at $200,000, total payroll compensation is $400,000, and total apportionable receipts is $5,000,000. Although Company Q has physical presence in Washington, it does not have substantial nexus with Washington because: (a) It is not organized or domiciled in Washington; and (b) does not have sufficient property, payroll, or

receipts to meet the minimum nexus thresholds identified in subsection (2)(a) of this rule.

(4) **Property threshold.**

(a) **Location of property.**

(i) Real property - Real property owned or rented is in this state if the real property is located in this state.

(ii) Tangible personal property - Tangible personal property is in this state if it is physically located in this state.

(iii) Intangible property - Intangible property is in this state based on the following:

A loan is located in this state if:

(A) More than fifty percent of the fair market value of the real and/or personal property securing the loan is in this state. An automobile loan is in this state if the vehicle is properly registered in this state. Other than for property that is subject to registered ownership, the determination of whether the real or personal property securing a loan is in this state must be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded; or

(B) If (a)(iii)(A) of this subsection does not apply and the borrower is located in this state.

(iv) A borrower located in this state if:

(A) The borrower is engaged in business and the borrower's commercial domicile is located in this state; or

(B) The borrower is not engaged in business and the borrower's billing address is located in this state.

(v) A credit card receivable is in this state if the billing address of the card holder is located in this state.

(vi) A nonnegotiable certificate of deposit is property in this state if the issuing bank is in this state.

(vii) Securities:

(A) A negotiable certificate of deposit is property in this state if the owner is located in this state.

(B) A municipal bond is property in this state if the owner is located in this state.

(b) **Value of property.**

(i) Property the taxpayer owns and uses in this state, other than loans and credit card receivables, is valued at its original cost basis.

Example 3. In January 2008, ABC Corp. bought Machinery for $65,000 for use in State X. On January 1, 2011, ABC Corp. brought that Machinery into Washington for the remainder of the year. ABC Corp. has nexus with Washington based on Machinery's original cost basis value of $65,000. The value is $65,000 even though the property has depreciated prior to entering the state.

(ii) Property the taxpayer rents and uses in this state is valued at eight times the net annual rental rate.

Example 4. Out-of-state Business X rents office space in Washington for $6,000 per year and has $5,000 of office furniture and equipment in Washington. Business X has nexus with Washington because the value of the rented office space ($6,000 multiplied by eight, which is $48,000) plus the value of office furniture and equipment exceeds the $50,000 property threshold.

(iii) Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is actually charged off as a bad debt in whole or in part for federal income tax purposes (see 26 U.S.C. 166), the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(c) **Calculating property value.** To determine whether the $50,000 property threshold has been met, average the value of property in this state on the first and last day of the calendar year. The department may require the averaging of monthly values during the calendar year if reasonably required to properly reflect the average value of the taxpayer's property in this state throughout the taxable period.

Example 5. Company Y has property in Washington valued at $90,000 on January 1st and $20,000 on December 31st of the same year. The value of property in Washington is $55,000 ((90,000 + 20,000)/2). Company Y has substantial nexus with Washington.

Example 6. Company A has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought $100,000 in property into Washington on January 15th and removed it from Washington on November 15th of that calendar year. The department may compute the value of Company A's property on a monthly basis in this situation because it is required to properly reflect the average value of Company A's property in Washington ($100,000 multiplied by ten (months) divided by 12 (months), which is $83,333). Company A has nexus with Washington based on the value of the property averaged over the calendar year.

Example 7. Company B has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought $100,000 in property into Washington on January 15th and removed it from Washington on February 15th of that calendar year. The department may compute the value of Company A's property on a monthly basis in this situation because it is required to properly reflect the average value of Company B's property in Washington ($100,000 multiplied by one (month) divided by 12 (months), which is $8,333.) Company B does not have nexus with Washington based on the value of the property averaged over the calendar year, unless this amount exceeds 25% of Company B's total property value.

Example 8. IT Co. is domiciled in State X with Employee located in Washington who works from a home office. IT Co. provided to Employee $5,000 of office supplies and $15,000 of equipment owned by IT Co. IT Co. does not have nexus with Washington based on the value of the property in this State ($20,000) because it does not exceed $50,000, unless this amount exceeds 25% of IT Co.'s total property value. This example does not address the payroll threshold.

(5) **Payroll threshold.** "Payroll" is the total compensation defined as gross income under 26 U.S.C. Sec. 61 (section 61 of the Internal Revenue Code of 1986), as of June 1, 2010, paid during the calendar year to employees and to third-party representatives who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(a) Payroll compensation is received in this state if it is properly reportable in this state for unemployment compensation tax purposes, regardless of whether it was actually reported to this state.

Example 9. Company D is commercially domiciled in State X and has a single Employee whose payroll of $80,000 is properly reportable in Washington for unemployment compensation purposes. Company D has substantial nexus with Washington during the calendar year based on compensation paid Employee.

Example 10. Assume the same facts as Example 9 except only 50% of Employee's payroll is properly reportable in Washington for unemployment compensation purposes for the calendar year. Employee's Washington compensation of $40,000 does not meet the payroll threshold to establish substantial nexus with Washington, unless this amount exceeds 25% of total payroll compensation.

(b) Third-party representatives receive payroll compensation in this state if the service(s) performed occurs entirely or primarily within this state.

(6) **Receipts threshold.** The receipts threshold is met if a taxpayer receives more than $250,000 from apportionable activities that is attributed to Washington.

(a) All receipts from all apportionable activities are accumulated to determine if the receipts threshold is satisfied. Receipts from activities that are not subject to apportionment (e.g., retailing, wholesaling, and extracting) are not used to determine if the receipts threshold has been satisfied.

(b) Receipts are attributed to Washington per WAC 458-20-19402 (general attribution), 458-20-19403 (royalties), and 458-20-19404 (financial institutions).

Example 11. Company E is commercially domiciled in State X. In a calendar year it has $150,000 in royalty receipts attributed to Washington per WAC 458-20-19403 and $150,000 in gross receipts from other apportionable activities attributed to Washington per WAC 458-20-19402. Company E has substantial nexus with Washington because it has a total of $300,000 in receipts from apportionable activities attributed to Washington in a calendar year. It does not matter that the receipts were from apportionable activities that are subject to tax under different B&O tax classifications. The receipts threshold is determined by the totality of the taxpayer's apportionable activities in Washington.

Example 12. Calculation of minimum nexus thresholds during the 2010 transition year. Company F receives $200,000 in gross receipts attributed to Washington on March 15, 2010; $100,000 on July 12, 2010; and $100,000 on November 1, 2010. Company F has substantial nexus with Washington for the period June 1, 2010, through December 31, 2010, because it received $400,000 in gross receipts during 2010.

(7) **Application of 25% threshold.** If at least twenty-five percent of an out-of-state taxpayer's property, payroll, or receipts from apportionable activities is in Washington, then the taxpayer has substantial nexus with Washington. The twenty-five percent threshold is determined by dividing:

(a) The value of property located in Washington by the total value of taxpayer's property;

(b) Payroll located in Washington by taxpayer's total payroll; or

(c) Receipts attributed to Washington by total receipts.

Example 13. Company G is organized and commercially domiciled in State X. In a calendar year it has $45,000 in property, $45,000 in payroll, and $240,000 in gross receipts attributed to Washington. Its total property is valued at $200,000; its ((~~world-wide~~)) worldwide payroll is $150,000; and its total gross receipts are $2,000,000. Company G has twenty-two and a half percent of its property, thirty percent of its payroll, and twelve percent of its receipts attributed to Washington. Company G has substantial nexus with Washington because more than twenty-five percent of its payroll is located in Washington.

(8) **Application to local gross receipts business and occupations taxes.** This rule does not apply to the nexus requirements for local gross receipts business and occupation taxes.

(9) **Continuing substantial nexus.** Pursuant to RCW 82.04.220, if a person meets any of the minimum nexus thresholds in subsection (2) of this section in a calendar year, the person has nexus for the following calendar year and will owe B&O tax on its gross receipts attributable to Washington for that additional year.

Example 14. Assume Corporation J earns receipts attributable to Washington that do not exceed the minimum threshold from apportionable activities in any year, and whose physical presence in Washington ends on July 20, 2008. Corporation J's B&O tax reporting obligation for any gross receipts earned in Washington ends on December 31, 2010.

Example 15. Assume Corporation K earns receipts attributable to Washington from July 1, 2008 through March 1, 2010 and exceeds the minimum threshold from apportionable activities in 2010. Assuming Corporation K does not exceed any of the minimum nexus thresholds in 2011, the taxpayer's B&O tax reporting obligation for any gross receipts attributable to Washington ends on December 31, 2011.

Example 16. Assume Corporation L exceeded Washington's minimum nexus thresholds for apportionable income from 2010 through 2012, but does not meet them in 2013. Corporation L's B&O tax reporting obligation for any gross receipts earned in Washington ends on December 31, 2013.

AMENDATORY SECTION (Amending WSR 12-19-071, filed 9/17/12, effective 10/18/12)

WAC 458-20-19402 Single factor receipts apportionment—Generally.

PART 1. INTRODUCTION.

(101) **General.** RCW 82.04.462 establishes the apportionment method for businesses engaged in apportionable activities and that have nexus with Washington for business and occupation (B&O) tax liability incurred after May 31, 2010. The express purpose of the change in the law was to require businesses "earn(ing) significant income from Washington residents from providing services" to "pay their fair share of the cost of services that this state renders and the infrastructure it provides." Section 101, chapter 23, 1st special session, 2010.

(102) **Guide to this rule.** This rule is divided into six parts, as follows:

1. Introduction.
2. Overview of single factor receipts apportionment.
3. How to attribute receipts.

4. Receipts factor.

5. How to determine Washington taxable income.

6. Reporting instructions.

(103) **Scope of rule.** This rule applies to the apportionment of income from engaging in apportionable activities as defined in WAC 458-20-19401, except:

(a) To the apportionment of income received by financial institutions and taxable under RCW 82.04.290, which is governed by WAC 458-20-19404; and

(b) To the attribution of royalty income from granting the right to use intangible property, which is governed by WAC 458-20-19403.

(104) **Separate accounting and cost apportionment.** The apportionment method explained in this rule replaces the previously allowed separate accounting and cost apportionment methods. Separate accounting and cost apportionment are not authorized for periods after May 31, 2010.

(105) **Other rules.** Taxpayers may also find helpful information in the following rules:

(a) WAC 458-20-19401 **Minimum nexus thresholds for apportionable activities.** This rule describes minimum nexus thresholds applicable to apportionable activities that are effective after May 31, 2010.

(b) WAC 458-20-19403 **Royalty receipts attribution.** This rule describes the attribution of royalty income for the purposes of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(c) WAC 458-20-19404 **Single factor receipts apportionment—Financial institutions.** This rule 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.

(d) WAC 458-20-19405, CPI-U adjustments to minimum nexus thresholds for apportionable activities. This rule describes the minimum nexus thresholds adjustment that must be made to account for increases to the consumer price index for tax periods after May 31, 2010.

(e) WAC 458-20-194 **Doing business inside and outside the state.** This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006, through May 31, 2010.

((~~(e)~~)) (f) WAC 458-20-14601 **Financial institutions—Income apportionment.** This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(106) **Definitions.** The following definitions apply to this rule:

(a) **"Apportionable activities"** has the same meaning as used in WAC 458-20-19401 Minimum nexus thresholds for apportionable activities.

(b) **"Apportionable income"** means apportionable receipts less the deductions allowable under chapter 82.04 RCW.

(c) **"Apportionable receipts"** means gross income of the business from engaging in apportionable activities, including income received from apportionable activities attributed to locations outside this state.

(d) **"Business activities tax"** means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. In the case of sole proprietorships and pass-through entities, the term includes personal income taxes if the gross income from apportionable activities is included in the gross income subject to the personal income tax. The term "business activities tax" does not include retail sales, use, or similar transaction taxes, imposed on the sale or acquisition of goods or services, whether or not named a gross receipts tax or a tax imposed on the privilege of doing business.

(e) **"Customer"** means a person or entity to whom the taxpayer makes a sale, grants the right to use intangible property, or renders services or from whom the taxpayer otherwise directly or indirectly receives gross income of the business. If the taxpayer performs apportionable services for the benefit of a third party, the term "customer" means the third party beneficiary.

Example 1. Assume a parent purchases apportionable services for their child. The child is the customer for the purpose of determining where the benefit is received.

(f) **"Reasonable method of proportionally attributing"** means a method of determining where the benefit of an activity is received and where the receipts are attributed that is uniform, consistent, and accurately reflects the market, and does not distort the taxpayer's market.

(g) **"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 or political subdivision of a foreign country.

(h)(i) **"Taxable in another state"** means either:

(A) The taxpayer is subject to a business activities tax by another state on the taxpayer's income received from engaging in apportionable activity; or

(B) The taxpayer is not subject to a business activities tax by another state on the taxpayer's income received from engaging in apportionable activity, but the taxpayer meets the substantial nexus thresholds described in WAC 458-20-19401 for that state.

(ii) The determination of whether a taxpayer is taxable in a foreign country or political subdivision of a foreign country is made at the country or political subdivision level.

Example 2. Assume Taxpayer A is subject to a business activity tax in State X of Mexico (e.g., Taxpayer pays tax to State X), but nowhere else in Mexico. Also, assume that Taxpayer A is not subject to any national business activity tax in Mexico and does not meet the substantial nexus thresholds described in WAC 458-20-19401 for Mexico as a whole. In this case, Taxpayer is taxable in State X, but not taxable in any other portion or any other State of Mexico.

Example 3. Assume Taxpayer B is not subject to any business activity taxes in Mexico, but satisfies the substantial nexus thresholds described in WAC 458-20-19401 for Mexico as a whole. Taxpayer B is taxable in all of Mexico.

PART 2. OVERVIEW OF SINGLE FACTOR RECEIPTS APPORTIONMENT.

(201) **Single factor receipts apportionment generally.** Except as provided in WAC 458-20-19404 persons earning apportionable income who have substantial nexus with Washington as specified in WAC 458-20-19401 and who are also taxable in another state must use the apportionment

method provided in this rule to determine their taxable income from apportionable activities for B&O tax purposes. Taxable income is determined by multiplying apportionable income from each apportionable activity by the receipts factor for that apportionable activity.

This formula is:

(Taxable income)	=	(Apportionable income)	x	(Receipts factor)

See Part 4 of this rule for a discussion of the receipts factor.

(202) **Tax year.** The receipts factor applies to each tax year. A tax year is the calendar year, unless the taxpayer has specific permission from the department to use another period. (RCW 82.32.270.) For the purposes of this rule, "tax year" and "calendar year" have the same meaning.

PART 3. HOW TO ATTRIBUTE RECEIPTS.

(301) **Attribution of receipts generally.** Except as specifically provided for in WAC 458-20-19403 for the attribution of apportionable royalty receipts, this Part 3 explains how to attribute apportionable receipts. Receipts are attributed to states based on a cascading method or series of steps. The department expects that most taxpayers will attribute apportionable receipts based on (a)(i) of this subsection because the department believes that either the taxpayer will know where the benefit is actually received or a "reasonable method of proportionally attributing receipts" will generally be available. These steps are:

(a) Where the customer received the benefit of the taxpayer's service (see subsection (302) of this rule for an explanation and examples of the benefit of the service);

(i) If a taxpayer can reasonably determine the amount of a specific apportionable receipt that relates to a specific benefit of the services received in a state, that apportionable receipt is attributable to the state in which the benefit is received. This may be shown by application of a reasonable method of proportionally attributing the benefit among states. The result determines the receipts attributed to each state. Under certain situations, the use of data based on an attribution method specified in (b) through (f) of this subsection may also be a reasonable method of proportionally attributing receipts among states (see Examples 4 and 5 below).

(ii) If a taxpayer is unable to separately determine or use a reasonable method of proportionally attributing the benefit of the services in specific states under (a)(i) of this subsection, and the customer received the benefit of the service in multiple states, the apportionable receipt is attributed to the state in which the benefit of the service was primarily received. Primarily means, in this case, more than fifty percent.

(b) If the taxpayer is unable to attribute an apportionable receipt under (a) of this subsection, the apportionable receipt must be attributed to the state from which the customer ordered the service.

(c) If the taxpayer is unable to attribute an apportionable receipt under (a) or (b) of this subsection, the apportionable receipt must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(d) If the taxpayer is unable to attribute an apportionable receipt under (a), (b), or (c) of this subsection, the apportionable receipt must be attributed to the state from which the customer sends payment to the taxpayer.

(e) If the taxpayer is unable to attribute an apportionable receipt under (a), (b), (c), or (d) of this subsection, the apportionable receipt must be attributed to the state where the customer is located as indicated by the customer's address:

(i) Shown in the taxpayer's business records maintained in the regular course of business; or

(ii) Obtained during consummation of the sale or the negotiation of the contract, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(f) If the taxpayer is unable to attribute an apportionable receipt under (a), (b), (c), (d), or (e) of this subsection, the apportionable receipt must be attributed to the commercial domicile of the taxpayer.

(g) The taxpayer may not use an attribution method that distorts the apportionment of the taxpayer's apportionable receipts.

(302) **Examples.** Examples included in this rule identify a number of facts and then state a conclusion; they 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. The examples in this rule assume all gross income received by the taxpayer is from engaging in apportionable activities. Unless otherwise stated, the examples do not apply to tax liability prior to June 1, 2010.

When an example states that a particular attribution method is a reasonable method of proportionally attributing the benefit of a service, this does not preclude the existence of other reasonable methods of proportionally attributing the benefit depending on the specific facts and circumstances of a taxpayer's situation.

Example 4. Assume Law Firm has thousands of charges to clients. It is not commercially reasonable for Law Firm to track each charge to each client to determine where the benefit related to each service is received. Assume the scope of Law Firm's practice is such that it is reasonable to assume that the benefits of Law Firm's services are received at the location of the customer as reflected by the customer's billing address. Under these circumstances, Law Firm can use the billing addresses of each client as a reasonable method of proportionally attributing the benefit of its services.

Example 5. Same facts as Example 4 except, Law Firm has a single client that represents a statistically significant portion of its revenue and whose billing address is unrelated to any of the services provided. In this case, using the billing address of this client would not relate to the benefit of the services. Using the billing address for this client to determine where the benefit is received would significantly distort the apportionment of Law Firm's receipts. Therefore, Law Firm would need to evaluate the specific services provided to that client to determine where the benefits of those services are received and may use billing address to attribute the income received from other clients.

Example 6. Assume Taxpayer R attributes an apportionable receipt based on its customer's billing address, using (c) of this subsection, and the billing address is a P.O. Box

located in another state. Taxpayer R also knows that mail delivered to this P.O. Box is automatically forwarded to the customer's actual location. In this case, use of the billing address is not allowed because it would distort the apportionment of Taxpayer R's receipts.

(303) **Benefit of the service explained.** The first two steps (subsection (301)(a)(i) and (ii) of this rule) used to attribute apportionable receipts to a state are based on where the taxpayer's customer receives the benefit of the service. This subsection explains the framework for determining where the benefit of a service is received.

(a) **If the taxpayer's service relates to real property, then the benefit is received where the real property is located.** The following is a nonexclusive list of services that relate to real property:

(i) Architectural;

(ii) Surveying;

(iii) Janitorial;

(iv) Security;

(v) Appraisals; and

(vi) Real estate brokerage.

(b) **If the taxpayer's service relates to tangible personal property, then the benefit is received where the tangible personal property is located or intended/expected to be located.**

(i) Tangible personal property is generally treated as located where the place of principal use occurs. If the tangible personal property is subject to state licensing (e.g., motor vehicles), the principal place of use is presumed to be where the property is licensed; or

(ii) If the tangible personal property will be created or delivered in the future, the principal place of use is where it is expected to be used or delivered.

(iii) The following is a nonexclusive list of services that relate to tangible personal property:

(A) Designing specific/unique tangible personal property;

(B) Appraisals;

(C) Inspections of the tangible personal property;

(D) Testing of the tangible personal property;

(E) Veterinary services; and

(F) Commission sales of tangible personal property.

(c) **If the taxpayer's service does not relate to real or tangible personal property, the service is provided to a customer engaged in business, and the service relates to the customer's business activities, then the benefit is received where the customer's related business activities occur.** The following is a nonexclusive list of business related services:

(i) Developing a business management plan;

(ii) Commission sales (other than sales of real or tangible personal property);

(iii) Debt collection services;

(iv) Legal and accounting services not specific to real or tangible personal property;

(v) Advertising services; and

(vi) Theatre presentations.

(d) **If the taxpayer's service does not relate to real or tangible personal property, is either provided to a customer not engaged in business or unrelated to the customer's business activities((,)); and:**

(i) The service requires the customer to be physically present, then the benefit is received where the customer is located when the service is performed. The following is a nonexclusive list of services that require the customer to be physically present:

(A) Medical examinations;

(B) Hospital stays;

(C) Haircuts; and

(D) Massage services.

(ii) The taxpayer's service relates to a specific, known location(s), then the benefit is received at those location(s). The following is a nonexclusive list of services related to specific, known location(s):

(A) Wedding planning;

(B) Receptions;

(C) Party planning;

(D) Travel agent and tour operator services; and

(E) Preparing and/or filing state and local tax returns.

(iii) If (d)(i) and (ii) of this subsection do not apply, the benefit of the service is received where the customer resides. The following is a nonexclusive list of services whose benefit is received at the customer's residence:

(A) Drafting a will;

(B) Preparing and/or filing federal tax returns;

(C) Selling investments; and

(D) Blood tests (not blood drawing).

(e) **Special rule for extension of credit.** See subsection (((~~(304)~~)) (305) of this rule for special rules attributing income related to loans (secured and unsecured) and credit cards that is received by persons who are not financial institutions as defined in WAC 458-20-19404.

(304) **Examples of the application of the benefit of service analysis and reasonable methods of proportionally attributing receipts.**

(a) **Services related to real property:**

Example 7. Architect drafts plans for a building to be built in Washington. Architect's services relate to real property which is located in Washington, therefore the customer receives the benefit of that service in Washington at the location of the real property. Architect's receipts for this service are solely attributed to Washington because the entire benefit is received in Washington.

Example 8. Franchisor hires Taxpayer, an architect, to create a design of a standardized building that will be used at four locations in Washington and two locations in Oregon. Taxpayer's services relate to real property at those six locations, therefore the customer receives the benefit of the service at the four Washington locations and the two Oregon locations. Taxpayer will attribute 2/3 (4 of 6 sites) of the receipts for this service to Washington and 1/3 (2 of 6 sites) of the receipts to Oregon.

Example 9. Assume the same facts as Example 8 except Franchisor will use the same design in all 50 states for all its franchisee's locations. Taxpayer and Franchisor do not know at the time the service is provided (and cannot reasonably estimate) how many franchise locations will exist in each state. Therefore, there is no reasonable means of proportionally attributing receipts at the time the services are performed

and it is clear that no state will have a majority of the franchise locations. Accordingly, the apportionable receipts must be attributed following the steps in subsection (301)(b) through (f) of this rule.

Example 10. Real estate broker located in Florida receives a commission for arranging the sale of real property located in Washington. The real estate broker's service is related to the real property, therefore the benefit is received in Washington, where the real property is located, and the commission income is attributed to Washington.

(b) **Services related to tangible personal property.**

Example 11. Big Manufacturing hires an engineer to design a tool that will only be used in a factory located in Brewster, Washington. Big Manufacturing receives the benefit of the engineer's services at a single location in Washington where the tool is intended to be used. Therefore, 100% of engineer's receipts from this service must be attributed to Washington.

Example 12. The same facts as in Example 11, except Big Manufacturing will use the tool equally in factories located in Brewster and in Kapa'a, Hawai'i. Therefore, Big Manufacturer receives the benefit of the service equally in two states. Because the benefit of the service is received equally in both states, a reasonable method of proportionally attributing receipts would be to attribute 1/2 of the receipts to each state.

Example 13. Taxpayer, a commissioned salesperson, sells tangible personal property (100 widgets) for Distributor to XYZ Company for delivery to Spokane. Distributor receives the benefit of Taxpayer's service where the tangible personal property will be delivered. Therefore, Taxpayer will attribute the commission from this sale to Washington.

Example 14. Same facts as in Example 13, but the widgets are to be delivered 50 to Spokane, 25 to Idaho, and 25 to Oregon. In this case, the benefit is received in all three states. Taxpayer shall attribute the receipts (commission) from this sale 50% to Washington, 25% to Idaho, and 25% to Oregon where the tangible personal property is delivered to the buyer.

Example 15. Training Company provides training to Customer's employees on how to operate a specific piece of equipment used solely in Washington. Customer receives the benefit of the service where the equipment is used, which is in Washington. Therefore, Training Company will attribute 100% of its receipts received from Customer to Washington.

(c) **Services related to customer's business activities.** The examples in this subsection assume that the customer is engaged in business and the services relate to the customer's business activities.

Example 16. Manufacturer hires Law Firm to defend Manufacturer in a class action product liability lawsuit involving Manufacturer's Widgets. The benefit of Law Firm's services relates to Manufacturer's widget selling activity in various states. A reasonable method of proportionally attributing receipts in this case would be to attribute the receipts to the locations where the Manufacturer's Widgets were delivered, which relates to Manufacturer's business activities.

Example 17. Debt Collector provides debt collection services to ABC. The benefit of Debt Collector's services relates to ABC's selling activity in various states. It is reasonable to assume that where the debtors are located is the same as where ABC's business activity occurred. If Debt Collector is able to attribute specific receipts to a specific debtor, then the receipt is attributed to where the debtor is located.

Example 18. Same facts as Example 17, except Debt Collector is unable to attribute specific benefits with specific debtors. In this case, a reasonable method of proportionally attributing benefits/receipts should be employed. Depending on Debt Collector's specific facts and circumstances, a reasonable method of proportionally attributing benefits/receipts could be: Relative number of debtors in each state; relative debt actually collected from debtors in each state; the relative amount of debt owed by debtors in each state; or another method that does not distort the apportionment of Debt Collector's receipts.

Example 19. Training Company provides training to Customer's employees who are all located in State A. The training is provided in State B. The training relates to the employees' ethical behavior within Customer's organization. Customer receives the benefit of Training Company's service in State A, where Customer's office is located and the employees presumably practice their ethical behavior. Training Company must attribute the apportionable receipts to State A where the benefit is solely received.

Example 20. Same facts as Example 19, except the training is provided for employees from several states and Training Company knows where each employee works. The benefit of the Training Company's services is received in those several states. Attributing receipts from the training based on where the employees work is a reasonable method of proportionally attributing the receipts income.

Example 21. Call Center provides "customer service" services to Retailer who has customers in all 50 states. Call Center's services relate to Retailer's selling activity in all 50 states, therefore Retailer receives the benefit of Call Center's services in all 50 states. Call Center has offices in Iowa and Alabama that answer questions about Retailer's products. Call Center records Retailer's customer's calls by area code. Call Center may attribute receipts received from Retailer based on the number of calls from area codes assigned to each state. This would be a reasonable method of proportionally attributing receipts notwithstanding the fact that mobile phone numbers and related area codes may not exactly reflect the physical location of the customer in all cases.

Example 22. Taxpayer provides internet advertising services to national retail chains, regional businesses, businesses with a single location, and businesses that operate solely over the Internet. Generally, the benefit of the advertising services is received where the customer's related business activities occur. Depending on what products or services are being provided by Taxpayer's customers, the use of relative population in the customer's market may be a reasonable method of proportionally attributing the benefit of Taxpayer's services.

Example 23. Oregon Newspaper sells newspaper advertising to Merlin's Potion Shop. Merlin's only makes over-the-counter sales from its single location in Vancouver, Washington. Merlin's Potion Shop receives the benefit of the Oregon Newspaper's advertising services in Washington where it makes sales to its customers. In this case Oregon Newspaper

will report 100% of its receipts received from Merlin's to Washington.

Example 24. Company A provides human resources services to Racko, Inc. which has three offices that use those services in Washington, Oregon, and Idaho. Racko sells widgets and has customers for its widgets in all 50 states. The benefit of the service performed by Company A is received at Racko's locations in Washington, Oregon, and Idaho. Assuming that each office is approximately the same size and uses the services to approximately the same extent, then attributing 1/3 of the receipts to each of the states in which Racko has locations using the services is a reasonable method of proportionally attributing Company A's receipts from Racko.

Example 25. Director serves on the board of directors for DEF, Inc. Director's services relate to the general management of DEF, Inc. DEF, Inc. is Director's customer and receives the benefit of Director's services at its corporate domicile. Therefore, Director must attribute the receipts earned from Director's services to DEF to DEF's corporate domicile.

(d) **Services not related to real or tangible personal property and either provided to customers not engaged in business or unrelated to the customer's business activities.**

Example 26. A Washington resident travels to California for a medical procedure. Because the Washington resident must be physically in California, the Washington resident receives the benefit of the service in California. Therefore, the service provider must attribute its income from the procedure to California.

Example 27. Washington accountant prepares a Nevada couple's Arizona and Oregon state income tax returns as well as their federal income tax return. The benefit of the accountant's service associated with the state income tax returns is attributed to Arizona and Oregon because these returns relate to specific locations (states). The benefit associated with the federal income tax return is attributed to the couple's residence. The fees for the state tax returns are attributed to Arizona and Oregon, respectively, and the fee for the federal income tax return is attributed to Nevada.

Example 28. Tour Operator provides cruises through Washington's San Juan Islands for four days and Victoria, British Columbia for one day. The benefit of the tour is received where the tour occurs. Tour Operator may use a reasonable method of proportionally attributing the benefit to determine that its customers receive 80% of the benefit in Washington and 20% outside of Washington. Therefore, Tour Operator must attribute 80% of apportionable receipts to Washington and 20% to British Columbia.

Example 29. A Washington couple hires a Washington attorney to prepare a last will and testament for Daughter who lives in California. Daughter is a third-party beneficiary and receives the benefit of the attorney's services in California because that is where Daughter lives. Washington Attorney must attribute the fee to California.

Example 30. A Washington couple hires a California accountant to prepare their joint federal income tax return. Because the couple does not have to be physically present for the accountant to perform services and services are not related to a specific location, the Washington couple receives the benefit of the accountant's services at their residence in Washington. California accountant must attribute its fee for this service to Washington.

Example 31. An Arizona resident retains a Washington stock broker to handle its investments. The stock broker receives orders from the client and executes trades of securities on the New York Stock Exchange. Because (a) the Arizona resident is not investing as part of a business; (b) the activity does not relate to real or tangible personal property; (c) and the client does not need to be physically present for the stock broker to perform its services; and (d) the services are not related to a specific location, the client receives the benefit of the services at client's place of residence. Washington stockbroker must attribute the fee to Arizona.

Example 32. Investment Manager manages a mutual fund. Investment Manager receives a fee for managing the fund based on the value of the assets in the fund on particular days. Investment Manager knows or should know the identity of the investors in the fund and their mailing addresses. The fees received by Investment Manager (whether from the mutual fund or from individual investor's accounts) are for the services provided to the investors. Investment Manager's services do not relate to real or tangible personal property and do not require that the client be physically present, therefore, the benefit of Investment Manager's services is received where the investors are located and Investment Manager's apportionable receipts must be attributed to those locations.

(305) **Special rules related to extending credit performed by nonfinancial institutions.** Businesses not included in the definition of a financial institution under WAC 458-20-19404 that provide services related to the extension of credit must attribute their income from such activities as follows:

(a) **Activities related to extending credit where real property secures the debt.** Such activities include, but are not limited to, servicing loans, making loans subject to deeds of trust or mortgages (including any fees in the nature of interest related to the loan), and buying and selling loans. Apportionable receipts from these activities are attributed in the same manner as a financial institution attributes these apportionable receipts under WAC 458-20-19404.

(b) **Activities related to credit cards.** Such activities include, but are not limited to, issuing credit cards, servicing, and billing. Apportionable receipts from these activities are attributed to the billing address of the card holder.

(c) **Other activities related to extending credit where real property does not secure the debt.** Such activities include, but are not limited to, servicing loans, making loans (including any fees related to such loans), and buying and selling loans. Apportionable receipts from these activities are attributed in the same manner a financial institution attributes income under WAC 458-20-19404.

(d) **All other apportionable receipts from such businesses are attributed using subsections (301) through (304) of this rule or WAC 458-20-19403.**

(306) **What does "unable to attribute" mean?** A taxpayer is "unable to attribute" apportionable receipts when the taxpayer has no commercially reasonable means to acquire the information necessary to attribute the apportionable receipts. Cost and time may be considered to determine

whether a taxpayer has no commercially reasonable means to acquire the information necessary to attribute apportionable receipts.

Example 33. One office of ZYX LLC has information that can easily be used to determine a reasonable proportional attribution of receipts, but does not provide this information to the office preparing the tax returns. ZYX LLC must use the information maintained by the marketing office to attribute its receipts.

Example 34. CBA, Inc. is entitled to receive information from an affiliate or unrelated third party which it could use to determine where the benefit of its services is received but chooses not to obtain that information. CBA, Inc. must use the information maintained by the affiliate or unrelated third party to attribute its apportionable receipts.

Example 35. Same facts as Example 34, except that the information is raw data that must be formatted and otherwise processed at a cost that exceeds a reasonable estimate of the possible difference in the amount of tax CBA, Inc. would owe if used another attribution method authorized in subsection 301(b) through (f). In this case, it is not commercially reasonable for CBA, Inc. to use this data to determine where to attribute its income.

PART 4. RECEIPTS FACTOR.

(401) **General.** The receipts factor is a fraction that applies to apportionable income for each calendar year. Taxpayers must calculate a separate receipts factor for each apportionable activity (business and occupation tax classification) engaged in.

(402) **Receipts factor calculation.** The receipts factor is: Washington attributed apportionable receipts divided by world-wide apportionable receipts less throw-out income (see subsection (403) of this section). The receipts factor expressed algebraically is:

$$\text{(Receipts factor)} = \frac{\text{(Washington apportionable receipts)}}{\text{((((}\sout{\text{World-wide}}\text{)) worldwide apportionable receipts) - (Throw-out income))}}$$

(a) The numerator of the receipts factor is: The total apportionable receipts attributable to Washington during the calendar year from engaging in the apportionable activity.

(b) The denominator of the receipts factor is: The total (((~~world-wide~~)) worldwide, including Washington) apportionable receipts from engaging in the apportionable activity during the calendar year, less throw-out income.

Example 36. NOP, Inc. has $400,000 of receipts attributed to Washington and $1,000,000 of ((~~world-wide~~)) worldwide receipts. Assuming that there is no throw-out income, NOP's receipts factor is 40% (400,000/1,000,000).

(c) In the very rare situation where the receipts factor (after reducing the denominator by the throw-out income) is zero divided by zero, the receipts factor is deemed to be zero.

(403) **Throw-out income.** Throw-out income includes all apportionable receipts attributed to states where the taxpayer:

(a) Is not taxable (see subsection (107) of this rule); and

(b) At least part of the activity of the taxpayer related to the throw-out income is performed in Washington.

Example 37. XYZ Corp. performs all services in Washington and has apportionable receipts attributed using the criteria listed in subsections (301) through (305) of this rule or WAC 458-20-19403 as follows: Washington $500,000; Idaho $200,000; Oregon $100,000; and California $300,000. XYZ Corp. is subject to Oregon and Idaho corporate income tax, but does not owe any California business activities taxes. XYZ does not have any throw-out income because Oregon and Idaho impose a business activities tax on its activities and it is deemed to be taxable in California because it satisfies the minimum nexus standards explained in WAC 458-20-19401 (more than $250,000 in receipts). XYZ's receipts factor is: 500,000/1,100,000 or 45.45%.

Example 38. Same facts as Example 37 except Idaho does not impose any tax on XYZ Corp. The $200,000 attributed to Idaho is throw-out income that is excluded from the denominator because: XYZ Corp. is not subject to Idaho business activities taxes; does not have substantial nexus with Idaho under Washington standards; and performs in Washington at least part of the activities related to the receipts attributed to Idaho. The receipts factor is 500,000/900,000 or 55.56%.

Example 39. The same facts as Example 38 except XYZ Corp. performs no activities in Washington related to the $200,000 attributed to Idaho. In this situation, the $200,000 is not throw-out income and remains in the denominator. The receipts factor is: 500,000/1,100,000 or 45.45%.

PART 5. HOW TO DETERMINE WASHINGTON TAXABLE INCOME.

(501) **General.** Washington taxable income is determined by multiplying apportionable income by the receipts factor for each apportionable activity the taxpayer engages in. While the receipts factor is calculated without regard to deductions authorized under chapter 82.04 RCW, apportionable income is determined by reducing the apportionable receipts by amounts that are deductible under chapter 82.04 RCW regardless of where the deduction may be attributed. This formula can be expressed algebraically as:

$$\text{(Taxable Income)} = \text{(Receipts Factor)} \times \text{(Apportionable receipts - deductions)}$$

Example 40. Calculating apportionable income. Corporation A received $2,000,000 in apportionable receipts from its ((~~world-wide~~)) worldwide apportionable activities, which included $500,000 of receipts that are deductible under Washington law. Corporation A's total apportionable income is $1,500,000 ($2,000,000 minus $500,000 of deductions). If Corporation A's receipts factor is 31.25%, then its taxable income is $468,750 ($1,500,000 multiplied by 0.3125).

PART 6. REPORTING INSTRUCTIONS.

(601) **General.**

(a) Taxpayers required to use this rule's apportionment method may report their taxable income based on their apportionable income for the reporting period multiplied by the receipts factor for the most recent calendar year the taxpayer has available.

(b) If a taxpayer does not calculate its taxable income using (a) of this subsection, the taxpayer must use actual current calendar year information.

(602) **Reconciliation.** Regardless of how a taxpayer reports its taxable income under subsection (601)(a) or (b) of this rule, when the taxpayer has the information to determine the receipts factor for an entire calendar year, it must file a reconciliation and either obtain a refund or pay any additional tax due. The reconciliation must be filed on a form approved by the department. In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply to any additional tax that may be due.

AMENDATORY SECTION (Amending WSR 12-19-072, filed 9/17/12, effective 10/18/12)

WAC 458-20-19403 Apportionable royalty receipts attribution.

PART 1. INTRODUCTION.

(101) **General.** Effective June 1, 2010, Washington changed its method of apportioning royalty receipts. This rule only addresses how apportionable royalty receipts must be attributed for the purposes of economic nexus and single factor receipts apportionment. This rule is limited to the attribution of apportionable royalty receipts for periods after May 31, 2010.

(102) **Guide to this rule.** This rule is divided into two parts as follows:

1. Introduction.

2. How to attribute apportionable royalty receipts.

(103) **Reference to WAC 458-20-19402.** This rule only provides a method to attribute apportionable royalty receipts in lieu of the attribution methods specified in WAC 458-20-19402 (301)(a) and (b). Otherwise, WAC 458-20-19402 controls the apportionment of royalty receipts. Specifically, WAC 458-20-19402 provides: (a) An overview of single factor receipts apportionment (Part 2); (b) guidance on how to attribute apportionable royalty receipts if this rule does not apply (Part 3); (c) guidance on how to calculate the receipts factor (Part 4); (d) guidance on how to determine taxable income (Part 5); and (e) reporting instructions (Part 6).

(104) **Other rules.** Taxpayers may also find helpful information in the following rules:

(a) WAC 458-20-19401 **Minimum nexus thresholds for apportionable activities.** This rule describes minimum nexus thresholds applicable to apportionable activities that are effective after May 31, 2010.

(b) WAC 458-20-19402 **Single factor receipts apportionment—Generally.** This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(c) WAC 458-20-19404 **Single factor receipts apportionment—Financial institutions.** This rule 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.

(d) WAC 458-20-19405, CPI-U adjustments to minimum nexus thresholds for apportionable activities. This rule describes the minimum nexus thresholds adjustment that must be made to account for increases to the consumer price index for tax periods after May 31, 2010.

(e) WAC 458-20-194 **Doing business inside and outside the state.** This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006, through May 31, 2010.

(((~~(e)~~))) (f) WAC 458-20-14601 **Financial institutions—Income apportionment.** This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(105) **Examples.** Examples included in this rule identify a number of facts and then state a conclusion; they 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. The examples in this rule assume all gross income received by the taxpayer is apportionable royalty receipts. Unless otherwise stated, the examples do not apply to tax liability prior to June 1, 2010.

When an example states that a particular attribution method is a reasonable method of proportionally attributing the use of an intangible, this does not preclude the existence of other reasonable methods of proportionally attributing the use depending on the specific facts and circumstances of a taxpayer's situation.

(106) **Definitions.** The definitions included in WAC 458-20-19401 and 458-20-19402 apply to this rule unless the context clearly requires otherwise. Additionally, the definitions in this subsection apply specifically to this rule.

(a) **"Apportionable royalty receipts"** means all compensation for the use of intangible property, including charges in the nature of royalties, regardless of where the intangible property will be used. Apportionable royalty receipts does not include:

(i) Compensation for any natural resources;

(ii) The licensing of prewritten computer software to an end user;

(iii) The licensing of digital goods, digital codes, or digital automated services to an end user as defined in RCW 82.04.190(11); or

(iv) Receipts from the outright sale of intangible property.

(b) **"Intangible property"** includes: Copyrights, patents, licenses, franchises, trademarks, trade names, and other similar intangible property/rights.

(c) **"Reasonable method of proportionally attributing"** means a method of determining where the use occurs, and thus where receipts are attributed that is uniform, consistent, accurately reflects the market, and is not distortive.

PART 2. HOW TO ATTRIBUTE APPORTIONABLE ROYALTY RECEIPTS.

(201) **Attribution of income.** Apportionable royalty receipts are attributed to states based on a cascading method or series of steps. The department expects that most taxpayers will attribute apportionable royalty receipts based on (a)(i) of this subsection because the department believes that either taxpayers will know the place of use or a "reasonable method

of proportionally attributing" receipts will generally be available. These steps are:

(a) **Where the customer uses the intangible property.**

(i) If a taxpayer can reasonably determine the amount of a specific apportionable royalty receipt that relates to a specific use in a state, that royalty receipt is attributable to that state. This may be shown by application of a reasonable method of proportionally attributing use, and thus receipts, among the states. The result determines the apportionable royalty receipts attributed to each state. Under certain situations, the use of data based on an attribution method specified in (b) and (c) of this subsection may also be a reasonable method of proportionally attributing receipts among states.

(ii) If a taxpayer is unable to separately determine, or use a reasonable method of proportionally attributing, the use and receipts in specific states under (a)(i) of this subsection, and the customer used the intangible property in multiple states, the apportionable royalty receipts are attributed to the state in which the intangible property was primarily used. Primarily means, in this case, more than fifty percent.

(b) **Office of negotiation.** If the taxpayer is unable to attribute apportionable royalty receipts to a location under (a) of this subsection, then apportionable royalty receipts must be attributed to the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(c) If the taxpayer is unable to attribute apportionable royalty receipts to a location under (a) and (b) of this subsection, then the steps specified in WAC 458-20-19402 (301)(c) through (g) shall apply to apportionable royalty receipts.

(202) **Framework for analysis of the "use of intangible property."** The use of intangible property and therefore the attribution of apportionable royalty receipts from the use of intangible property will generally fall into one of the following three categories:

(a) **Marketing use** means the intangible property is used by the taxpayer's customer for purposes that include, but are not limited to, marketing, displaying, selling, and exhibiting. The use of the intangible property is connected to the sale of goods or services. Typically, this category includes trademarks, copyrights, trade names, logos, or other intangibles with promotional value. Receipts from the marketing use of intangible property are generally attributed to the location of the consumer of the goods or services promoted using the intangible property.

Example 1. SportsCo licenses to AthleticCo the right to use its trademark on a basketball that AthleticCo manufactures, markets, and sells at retail on its web site. This is a marketing use. SportsCo is paid a fee based on AthleticCo's basketball sales in multiple states. SportsCo knows that sales from the AthleticCo web site delivered to Washington represent 10% of AthleticCo's total sales. Pursuant to subsection (201)(a)(i) of this section, SportsCo will attribute 10% of its apportionable royalty receipts received from AthleticCo to Washington. The remaining 90% will be attributed to other states.

Example 2. Same facts as Example 1, except that AthleticCo sells its basketballs at wholesale to MiddleCo, a distributor with its receiving warehouse located in Idaho. MiddleCo then sells the basketballs to RetailW, a retailer with stores in Washington, Oregon, and California. SportsCo would generally attribute its apportionable royalty receipts to the location of RetailW's customers. However, SportsCo does not have any data, and cannot reasonably obtain any data, relating to RetailW's customer locations. Pursuant to subsection (201)(a)(i) of this section, SportsCo may reasonably attribute receipts to Washington based on the percentage of RetailW's store locations in Washington as long as such attribution does not distort the number of customers in each state. SportsCo knows that 15% of RetailW's store locations are in Washington therefore it is reasonable for SportsCo to attribute 15% of its apportionable royalty receipts to Washington. The remaining 85% will be attributed to other states.

Example 3. MusicCo licenses to RetailCo the right to make copies of a digital song and sell those copies at retail on the internet for the U.S. market only. This is a marketing use. RetailCo has a single copy of the song on its server in Virginia. Each time a customer comes to RetailCo's web site and makes a purchase of the song, RetailCo creates a copy of the song (e.g., a new file) that is then available for sale to the customer. MusicCo would usually attribute its apportionable royalty receipts to the location of RetailCo's customers. However, MusicCo does not have any data, and cannot reasonably obtain any specific data, relating to RetailCo's customers' locations. Pursuant to subsection (201)(a)(i) of this section, MusicCo may reasonably attribute receipts to each state based on the percentage that each state's population represents in relation to the total market population, which in this case is the U.S. population, as long as such attribution does not distort the number of customers in each state.

Example 4. A local baseball star, Joe Ball, plays for a professional athletic franchise located in Washington. Joe Ball licenses to T-ShirtCo the right to put his image on t-shirts and sell them on the internet in the U.S. market. This is a marketing use limited to the U.S. by license. Joe Ball does not know where T-ShirtCo's customers are located and cannot reasonably obtain data to reasonably attribute receipts. In the absence of actual sales data from T-ShirtCo, Joe Ball cannot use relative population data to attribute receipts to the states as was done in Example 3 above. This is because Joe Ball is an overwhelmingly "local" celebrity in Washington. Joe Ball does not have a "national appeal" such that t-shirt sales by T-ShirtCo would be significant outside Washington. In this case, Joe Ball is unable to separately determine the use of the intangible property in specific states pursuant to subsection (201)(a)(i) of this section. However, it is reasonable for Joe Ball to assume that sales by T-ShirtCo of Joe Ball shirts are primarily delivered to customers in Washington. Accordingly, Joe Ball should assign all receipts received from T-ShirtCo to Washington, pursuant to subsection (201)(a)(ii) of this section.

Example 5. MegaComputer ("Mega") manufactures and sells computers. SoftwareCo licenses to MegaComputer the right to copy and install the software on Mega's computers, which are then offered for sale to consumers. This is a marketing use by Mega. Mega sells its computers to DistributorX that in turn sells the computers to RetailerY. Mega uses the intangible property at the location of the consumer. If SoftwareCo can attribute its receipts to the location of the consumer (e.g., through the use of software registration data obtained from consumer), SoftwareCo should do so. In the

absence of that more precise information, and pursuant to subsection (201)(a)(i) of this section, it would be "reasonable" for SoftwareCo to attribute its receipts in proportion to the number of RetailerY stores in each state.

(b) **Nonmarketing use** means the intangible property is used for purposes other than marketing, displaying, selling, and exhibiting. This use of the intangible property is often connected to manufacturing, research and development, or other similar nonmarketing uses. Typically, this category includes patents, know-how, designs, processes, models, and similar intangibles. Receipts from the nonmarketing use of intangible property are generally attributed to a specific location or locations where the manufacturing, research and development, or other similar nonmarketing use occurs.

Example 6. RideCo licenses the right to use its patented scooter brake to FunRide for the purpose of manufacturing scooters. FunRide will market the scooter under its own brand. This is a nonmarketing use. RideCo knows that FunRide will manufacture scooters in Michigan and Washington and that the scooter design is used equally in Michigan and Washington. Pursuant to subsection (201)(a)(i) of this section, RideCo will attribute its receipts from the license of its patent equally to Michigan and Washington.

Example 7. BurgerZ licenses to JoeHam the right to use its jumbo hamburger making process and know-how. This is a nonmarketing use. JoeHam markets the jumbo hamburgers under its own brand. JoeHam has two restaurant locations, one in Washington and one in Oregon. BurgerZ's fee for the intangible rights is based on a percentage of sales at each location. Pursuant to subsection (201)(a)(i) of this section, BurgerZ will attribute receipts from its license with JoeHam to each location based on sales at those locations.

Example 8. WidgetCo licenses the use of its patent to ManuCo, to manufacture widgets. ManuCo has three manufacturing plants located in Michigan where it will use the patent for manufacturing widgets. ManuCo also has a single research and development (R&D) facility in Washington where it will use the patented technology to develop the next generation of its widgets. These are nonmarketing uses. WidgetCo charges ManuCo a single price for the use of the patent in manufacturing and R&D. In the absence of information to the contrary, it is reasonable for WidgetCo to assume ManuCo's use of the patent is equal at all of ManuCo's relevant locations. Pursuant to subsection (201)(a)(i) of this section, because there are four locations where the patent is used equally, WidgetCo will attribute 25% of its apportionable royalty receipts to each of the four locations. Accordingly, 75% of the apportionable royalty receipts will be attributed to Michigan to reflect the use of the patent at the three manufacturing locations, and 25% of the apportionable royalty receipts will be attributable to Washington to reflect the use of the patent at the single R&D location.

(c) **Mixed use** means licensing the use of intangible property for both marketing and nonmarketing uses. Mixed use licenses may be sold for a single fee or more than one fee.

(i) **Single fee.** Where a single fee is charged for the mixed use license, it will be presumed that receipts were earned for a "marketing use" pursuant to the guidelines provided in (a) of this subsection, except to the extent that the taxpayer can reasonably establish otherwise or the department of revenue determines otherwise.

Example 9. ProcessCo licenses to KimchiCo, for a single fee, the right to use its patent and trademark for manufacturing and marketing a food processing device. KimchiCo has a single manufacturing plant in Washington and markets the finished product solely in Korea. This mixed use license for a single fee is presumed to be for a marketing use. Accordingly, ProcessCo must attribute receipts under the guidelines established for marketing uses. Pursuant to subsection (201)(a)(i) of this section, KimchiCo is marketing and selling the device only in Korea; therefore, all receipts will be attributed to Korea.

Example 10. FranchiseCo operates a restaurant franchising business and licenses the right to use its trademark, patent, and know-how to EatQuick for a single fee. EatQuick will use the intangibles to create and market its food product. This is a mixed use license for a single fee and will be presumed to be for a marketing use. EatQuick has a single restaurant location in Washington, where all sales are made. Pursuant to subsection (201)(a)(i) of this section, the intangible property is used by EatQuick in Washington at its restaurant location. Taxpayer will attribute 100% of its apportionable royalty receipts earned under the EatQuick license to Washington.

Example 11. Same facts as Example 10, except that EatQuick has five restaurant locations, one each in: Washington, California, Oregon, Idaho, and Montana. EatQuick pays an annual lump sum to FoodCo. This is a mixed use license for a single fee and will be presumed to be for marketing use. Further, FranchiseCo knows that EatQuick's use of the intangible property is equal at all locations. The intangible property is used equally by EatQuick in five states including Washington. Accordingly, pursuant to subsection (201)(a)(i) of this section, FoodCo will attribute 20% of its apportionable royalty receipts to each location, including Washington.

(ii) **More than one fee.** Where the mixed use license involves separate fees for each type of use and separate itemization is reasonable, then each fee will receive separate attribution treatment pursuant to (a) and (b) of this subsection. If the department determines that the separate itemization is not reasonable, the department may provide for more accurate attribution using the guidelines in (a) and (b) of this subsection.

Example 12. Same as Example 9, except the license agreement states that the nonmarketing use of the patent is valued at $450,000, and the marketing use of the trademark is valued at $550,000. This is a mixed use license with more than one fee. The stated values for the separate uses are reasonable. Pursuant to subsection (201)(a)(i) of this section, the receipts associated with the nonmarketing use are $450,000 and attributable to Washington where the patent is used in manufacturing. The receipts associated with the marketing use are $550,000 and attributed to Korea where the trademark is used for marketing and selling the finished product.

AMENDATORY SECTION (Amending WSR 12-19-064, filed 9/14/12, effective 10/15/12)

WAC 458-20-19404 Financial institutions—Income apportionment. (1) **Introduction.**

(a) Effective June 1, 2010, section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401, Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective after May 31, 2010.

(ii) WAC 458-20-19402, Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective after May 31, 2010.

(iii) WAC 458-20-19403, Single factor receipts apportionment—Royalties. This rule 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 458-20-19405, CPI-U adjustments to minimum nexus thresholds for apportionable activities. This rule describes the minimum nexus thresholds adjustment that must be made to account for increases to the consumer price index for tax periods after May 31, 2010.

(v) WAC 458-20-194, Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

((~~(v)~~)) (vi) WAC 458-20-14601, Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) 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 must attribute and apportion its service and other activities income as provided in this rule. Any other apportionable income must be apportioned pursuant to WAC 458-20-19402, Single factor receipts apportionment—Generally or WAC 458-20-19403, Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401, Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not includable from apportionable activities must be allocated pursuant to 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, must allocate and apportion its gross income as provided in this rule.

(b) All apportionable income shall be apportioned to this state by multiplying such income by the apportionments percentage. The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor 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. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) If the allocation and apportionment provisions of this rule 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) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) 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 rule unless the context clearly requires otherwise:

(a) **"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.

(b) **"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 and 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.

(c) **"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 rule 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.

(d) **"Credit card"** means credit, travel or entertainment card.

(e) **"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.

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

(g) **"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.

(h) **"Financial institution"** means:

(i) Any corporation or other business entity chartered under Title 30, 31, 32, or 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. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 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. Secs. 611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 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.

(i) **"Gross income of the business," "gross income,"** or **"income"**:

(i) 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 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; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of (3)(i) of this subsection, affiliated means the affiliated person and the financial institution are under common control. Control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) **"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: 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 real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

(k) **"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.

(l) **"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.

(m) **"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.

(n) **"Person"** has the meaning given in RCW 82.04.030.

(o) **"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.

(p) **"Service and other activities 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.

(q) **"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 or political subdivision of a foreign country.

(r) **"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.

(s) **"Taxable in another state"** means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401. For purposes of (s) of this subsection, "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) **"Taxable period"** means the calendar year during which tax liability is incurred.

(4) **Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the apportionable income of the taxpayer in this state during the taxable period and the denominator of which is the apportionable 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) 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 subsection (b)(i) 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 subsection (b)(i) must 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 must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) 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.

(d) 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 (b) 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.

(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 (c) of this subsection (4) 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.

(e) 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.

(f) 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 (e) 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.

(g) 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 (e) 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.

(h) 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 must be computed net of any cardholder charge backs, but must 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.

(i) 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 (b) 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 (c) 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.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) 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 subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) 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 (k)(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 (k)(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 (k)(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 (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(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 (k)(ii) of this subsection, the average value of trading assets 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.

(iii) In lieu of using the method set forth in (k)(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 (k)(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 (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(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 (k)(iii) of this subsection, it must 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.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule 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) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010.

NEW SECTION

WAC 458-20-19405 CPI-U adjustments to minimum nexus thresholds for apportionable activities. (1) **Introduction.**

(a) RCW 82.04.067(5) directs the department of revenue (department) to review the "substantial nexus thresholds" (thresholds) in RCW 82.04.067 (1)(c)(i) through (iii) each December. When the cumulative percentage change in the consumer price index for all urban consumers (CPI-U) changes by five percent or more from the measurement date, the department must adjust the thresholds to reflect that cumulative change in the CPI-U. For the first review, the measurement date is June 1, 2010. For all subsequent annual reviews, the measurement date is the date the thresholds were last adjusted.

(b) For purposes of determining the cumulative percentage change in the CPI-U, the department must compare the CPI-U available as of December 1st of the current year with the consumer price index as of the measurement date. For purposes of this subsection, the "measurement date" means the same as in (a) of this subsection.

(c) Adjustments to the thresholds will (i) be rounded to the nearest one thousand dollars, (ii) be effective as of January 1st immediately following the most recent annual review of the thresholds, and (iii) apply to tax periods beginning after the adjustments are made.

(2) **Adjusted substantial nexus thresholds**.

(a) The table below reflects the changes in the CPI-U and adjustments to the thresholds.

Calendar Year	CPI-U % Change	Time Period Measured	Receipts Threshold	Property Threshold	Payroll Threshold
2010			$250,000	$50,000	$50,000
2011	0.9%	6/1/2010 – 10/31/2010	$250,000	$50,000	$50,000
2012	4.5%	6/1/2010 – 10/31/2011	$250,000	$50,000	$50,000
2013	6.8%	6/1/2010 – 10/31/2012	$267,000	$53,000	$53,000
2014	TBD	1/1/2013 – 10/31/2013	TBD	TBD	TBD

CPI-U data through the month of October is generally the most current data available as of December 1st.

(b) The calendar year's thresholds in this subsection apply to the thresholds in RCW 82.04.067 and WAC 458-20-19401.

WSR 13-22-047
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed November 1, 2013, 10:13 a.m., effective December 2, 2013]

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

Purpose: Department revised this rule to reflect changes in the law resulting from SSB 5571 as passed by the legislature during the 2009 regular session (chapter 176, Laws of 2009), SHB 2620 (chapter 111, Laws of 2010), EHB 1357 (chapter 24, Laws of 2011), and HB 2758 (chapter 39, Laws of 2012). The legislation requires taxpayers with a monthly

and quarterly tax reporting frequency to file and pay their excise taxes to the department electronically. The legislation also required that refunds issued by the department be paid electronically if the taxpayer is required to pay taxes electronically and the department has the necessary account information.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-22802 Electronic filing and payment.

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

Other Authority: RCW 82.32.080 and 82.32.085.

Adopted under notice filed as WSR 13-12-058 on June 4, 2013.

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

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

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

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

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

Date Adopted: October 31, 2013.

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 06-23-066, filed 11/9/06, effective 12/10/06)

WAC 458-20-22802 Electronic ((~~funds transfer~~)) filing and payment. (1) **Introduction.** The department of revenue makes electronic filing (also known as e-file) and electronic payment available to taxpayers. The law requires certain taxpayers ((~~are required~~)) to file and pay ((~~the~~)) excise taxes ((~~reported on the combined excise tax return with an electronic funds transfer (EFT)~~)) electronically. RCW 82.32.080. ((~~Taxpayers who are not required to pay by EFT may still use this method of payment if they notify the department of their desire to pay by EFT in advance of making their first EFT payment.~~))

(a) Taxpayers who are ((~~either~~)) required ((~~or voluntarily choose~~)) to electronically file and pay their excise ((~~tax returns by EFT~~)) taxes must register to use e-file. If they choose to pay using certain electronic payment methods they must also furnish the department with the necessary banking information((~~, as described in subsection (9) of this section~~)). Taxpayers who are not specifically required to file or pay taxes electronically are encouraged to voluntarily take advantage of e-file and pay electronically.

(b) Electronic filing and electronic payment are available for taxes reported on the combined excise tax return, which includes those taxes administered by the department under chapter 82.32 RCW. Electronic filing and electronic payment are not available for city and town taxes on financial institutions (chapter 82.14A RCW), cigarette tax (chapter 82.24 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).

(2) **Electronic filing and electronic payment.** E-file is an internet-based application that provides a secure and encrypted method for taxpayers to file and pay Washington state's business related excise taxes.

(a) All taxpayers are required to use e-file and pay electronically unless the department waives the requirement for good cause, or the taxpayer has an assigned reporting frequency that is less than quarterly.

(b) If good cause exists, the department may waive the e-file and/or electronic payment requirement for any taxpayer. Waiver for "good cause" is generally temporary. Reasons for good cause include, but are not limited to:

(i) The taxpayer does not have the necessary equipment or software;

(ii) The equipment or software necessary is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayers own equipment;

(iv) The taxpayer does not have a bank account or credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying.

(3) **Electronic payments.** There are two electronic payment methods: Electronic funds transfer (EFT) and credit card.

Those taxpayers who are required to use e-file to submit their tax return must also pay the associated taxes electronically. For a taxpayer who is required to pay electronically, electronic funds transfer (EFT) must be used, unless the department authorizes some other type of electronic payment for that particular taxpayer.

(a) **Payment by electronic funds transfer (EFT)**. EFT is a method of transferring funds from a taxpayer's bank account into the department's bank account.

(i) **Definitions.** For the purposes of this section, the following terms will apply:

(((~~a~~))) (A) "Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit ((~~an~~)) a checking or other deposit account. Electronic funds transfer includes payments made by electronic check (e-check).

(((~~b~~))) (B) "ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(((~~c~~))) (C) "((~~ACH~~)) EFT debit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the

department's account. E-check is a singular payment transaction that functions in the same manner as an EFT debit transaction.

(((~~(d)~~))) (D) "((~~ACH~~)) EFT credit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(((~~(e)~~))) (E) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(((~~(f)~~))) (F) "Collectible funds" ((~~actually~~)) means ((~~collected~~)) funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(((~~(g)~~))) (G) "ACH CCD+addenda" and "ACH CCD+record" mean the information in a required ACH format that needs to be transmitted to properly identify the payment.

~~(((h) "Service access key" means a unique code that allows an ACH debit transaction to occur.~~

~~(3) **Taxpayers required to pay by EFT.** Taxpayers who have taxes due of $240,000 or more in a calendar year are required to pay by EFT. Total taxes due from the last complete calendar year will be used to determine whether a taxpayer is required to pay by EFT. When a calendar year total indicates a taxpayer is required to pay by EFT, the department will notify that taxpayer. The notification will be made at least three months prior to the date that the first EFT payment is required.~~

~~The requirement to pay by EFT will be waived if the taxpayer reasonably shows to the department that it will not meet or exceed the EFT threshold for taxes due in the calendar year.~~

~~(4) **Taxes covered.** The taxes covered by the EFT payment are taxes reported on the combined excise tax return. The included taxes are those administered by the department under chapter 82.32 RCW except city and town taxes on financial institutions (chapter 82.14A RCW), county tax on telephone access lines (chapter 82.14B RCW), cigarette tax (chapter 82.24 RCW), enhanced food fish tax (chapter 82.27 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).~~

~~(5) **Refunds by EFT.** Overpayments of tax will be either credited to future tax liabilities or, at the taxpayer's request, will be refunded. If the taxpayer is required to pay the taxes on the combined excise tax return by EFT, the taxpayer is entitled to a refund of those taxes by EFT. However, if the taxpayer wishes to have the refund made by EFT, the taxpayer must provide the department with the information necessary to make an appropriate EFT or the refund will be issued as a warrant (check).~~

(~~(6)~~)) (ii) **EFT methods.** Taxpayers ((~~required to pay~~)) paying by EFT must ((~~do so through the~~)) use ((~~of~~)) the ((~~ACH~~)) EFT debit ((~~or ACH~~)), EFT credit, or e-check methods. ((~~All other taxpayers paying via EFT must do so through the use of ACH debit, ACH credit or other electronic payment methods approved by the department.~~)) In an emergency, the taxpayer should contact the department for alternative methods of payment. ((~~Contact information will be included in the notification materials sent to all EFT remitters.~~

(~~(7)~~)) (iii) **Form and content of EFT**. The form and content of EFT will be as follows:

(A) If the taxpayer wishes to use EFT debit, the taxpayer must furnish the department with the information needed to complete the transaction by registering for electronic funds transfer on the department's web site.

(B) If the taxpayer wishes to use EFT credit, the taxpayer is responsible for ensuring that its bank has the information necessary in order to complete the payment. The payment must be submitted using the ACH CCD+addenda format. The EFT credit payment method requires the taxpayer to complete an EFT authorization form.

(C) If the taxpayer wishes to use e-check, they must enter their bank account and routing number for each payment transaction. The e-check transaction authorizes the department to withdraw the payment amount from the taxpayer's bank account.

(iv) **Due date of EFT payment.** The EFT payment is due on or before the next banking day following the tax return due date. ((~~An EFT payment made using the ACH credit method is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date.~~))

(A) An EFT payment made using the ((~~ACH~~)) EFT debit or e-check method is timely if the payment is initiated on or before 11:59 p.m. Pacific Time on the ((~~EFT~~)) tax return due date, and the effective date for that payment is on or before the next banking day following the tax return due date.

(B) An EFT payment made using the EFT credit method is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date.

(C) The ACH system, either ((~~ACH~~)) EFT debit or ((~~ACH~~)) EFT credit, requires that the necessary information be in the originating bank's possession on the banking day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to ((~~insure~~)) ensure timely payment.

(((~~(a)~~))) (D) The tax return due date is the next business day after the statutory due date if the statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System ((~~in the state of Washington~~)).

(((~~(b)~~))) Example. The tax return due date is December 25th, a legal and banking holiday, which, for the example, falls on a Friday. The next business day is Monday, December 28th, and this is the new tax return due date. This means EFT debit and e-check users must ((~~be completed by 5:00 p.m., Pacific Time, Tuesday, December 29th, which is the next banking day after the new due date. For an ACH debit user, the department's bank must have the appropriate information by 5:00 p.m., Pacific Time, on Monday, December 28th~~)) initiate their debit payment by 11:59 p.m., Pacific Time, on December 28th, with a payment effective date of Tuesday December 29th, in order for the payment to be considered timely. EFT credit users must contact their bank to ensure funds are deposited in the department's bank no later

than 5:00 p.m., Pacific Time, on Tuesday, December 29th, in order for the payment to be considered timely.

(((~~8~~))) (b) **Payment by credit card**. Payment by credit card is available using American Express, Discover, Visa, or MasterCard. Taxpayers who wish to make their payment with one of these credit cards are directed to the web site of a third-party, nonstate, vendor when they submit their electronic return. Taxpayers then provide their credit card number in the same manner as with any other credit card payment transaction. A credit card payment is considered timely if the payment is completed, including the time it takes to enter the required information on the credit card vendor's web site, on or before 11:59 p.m., Pacific Time, on the tax return due date. Each credit card payment may be subject to a convenience fee charged by the third-party, nonstate, vendor.

(4) **Electronic refunds.** If the taxpayer pays taxes on the combined excise tax return by EFT debit, the taxpayer is entitled to a refund of those taxes by EFT. If the taxpayer wishes to have the refund made by EFT, the taxpayer must provide the department with the information necessary to make an appropriate EFT transaction or the refund will be issued as a paper check. No electronic adjustments or refunds are made directly to taxpayer credit card accounts or on e-check transactions. Overpayments of tax will either be retained to be credited to future tax liabilities or, at the taxpayer's request, will be refunded.

(5) **Coordinating a paper return and an electronic payment.** ((~~The filed return and the EFT payment will be coordinated by the department.~~)) When a taxpayer voluntarily uses the EFT credit payment method but files a paper return, the department will match the payment with the return. A return will be considered timely filed only if it is received by the department on or before the tax return due date. The associated EFT credit payment must be received by the next banking day after the tax return due date. If the return is sent ((~~by United States mail~~)) through the U.S. Postal Service, it will be considered received on the date shown by the post office cancellation mark stamped on the envelope. RCW 82.32.080. ((~~In addition, the EFT payment must be received by the next banking day after the tax return due date.~~)) If both events occur, there is timely filing and payment and no penalties apply.

(((~~9~~) **Form and contents of EFT.** ~~The form and content of EFT will be as follows:~~

~~(a) If the taxpayer wishes to use the ACH debit system of EFT, the taxpayer will furnish the department with the information needed to complete the transaction. The department's bank will provide a service access key only to the taxpayer and all transactions must be initiated by the taxpayer.~~

~~(b) If the taxpayer wishes to use the ACH credit system of the EFT, the taxpayer is responsible to see that its bank has the information necessary for timely completion. The taxpayer must provide the information necessary for its bank to complete the ACH CCD + addenda for transmittal to the department's bank.~~

~~(c) If the taxpayer is not a taxpayer that is required to pay by EFT, and wishes to use any other electronic payment method approved by the department, the taxpayer must provide the information necessary for the payment processing institution to timely process the payment.~~

(~~10~~))) (6) **Crediting and proof of payment.** The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer will depend on the means of transmission.

(a) ((~~An ACH~~)) EFT debit and e-check transactions may be proved by use of the ((~~verification~~)) confirmation number received from the ((~~department's bank~~)) department that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An ((~~ACH~~)) EFT credit transaction is initiated by the taxpayer through the taxpayer's bank. The taxpayer is responsible for completion of the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD+record showing the department's bank and account number, plus confirmation that the transaction has been settled will constitute proof of payment.

(c) Taxpayers using any other electronic payment method are responsible for completion of the transaction. Proof of payment will include transaction initiation date and any other evidence from a financial institution or credit card company that the transaction was settled.

(((~~11~~))) (7) **Correcting errors.** Errors in the ((~~EFT~~)) electronic payment process ((~~will~~)) may result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate action. Overpayments may be used as a credit or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an error in transmission. Underpayments should be corrected by the taxpayer immediately to avoid any penalties.

(((~~12~~))) (8) **Penalties.** There are no special provisions for penalties when payment is made by ((~~EFT~~)) electronic means. ((~~The general provisions for all taxpayers apply.~~)) To avoid the imposition of penalties, ((~~it is necessary for~~)) the taxpayer must provide correct bank account information to the department, and ensure their payment ((~~to be~~)) is timely.

(a) If the department finds that a taxpayer disregarded specific written instructions to file returns or remit payments electronically, as provided by RCW 82.32.080, the department will add a penalty of ten percent to the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of failure to follow written instructions.

(b) A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department:

(i) Has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions; and

(ii) Has provided the taxpayer at least forty-five days after the second written notice to come into compliance with its electronic filing and/or payment obligations. WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived.

(((~~a~~))) (c) In an ((~~ACH~~)) EFT debit and e-check transaction, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated the ((~~ACH~~)) EFT debit or e-check transaction, provided accurate bank account information, received

a ((~~verification~~)) confirmation number, and shows adequate funds were available in the account, no late payment penalties will apply with respect to those funds authorized.

(((~~(b)~~))) (d) In an ((~~ACH~~)) EFT credit transaction, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH ((~~CCD + record~~)) CCD+record, and shown that there were sufficient funds in the account, in order to prove timely compliance. If the taxpayer can make this showing, then no late payment penalties will apply ((~~as~~)) with respect to those funds authorized if the transaction is not completed.

(((~~(c) With the use of other electronic payment methods, the taxpayer's financial institution is the originator of the payment transaction~~)) (e) When a payment is made using an approved credit card, the credit card company acts as the taxpayer's agent and the taxpayer is primarily responsible for the accuracy of this transaction. ((~~The taxpayer must have timely initiated the transaction and shown that there were sufficient funds in the account in order to prove timely compliance.~~)) If the taxpayer can ((~~make this showing~~)) prove the payment was initiated and submitted timely, ((~~then~~)) no late payment penalties will apply ((~~as~~)) to those funds authorized ((~~if the transaction is not completed~~)).

WSR 13-22-048
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 1, 2013, 10:14 a.m., effective December 2, 2013]

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

Purpose: The department is amending WAC 458-20-22801 (Rule 22801) to recognize provisions of chapter 24, Laws of 2011. This legislation requires taxpayers to file and pay taxes electronically.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-22801 Tax reporting frequency.

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

Other Authority: RCW 82.32.080.

Adopted under notice filed as WSR 13-16-092 on August 7, 2013.

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

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

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

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

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

Date Adopted: November 1, 2013.

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 10-07-134, filed 3/23/10, effective 4/23/10)

WAC 458-20-22801 Tax reporting frequency((~~—Forms~~)). (1) Introduction. Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW and chapters 67.28 (Hotel/motel tax), 70.93 (Litter tax), 70.95 (Tax on tires), and 84.33 RCW (Forest excise tax), must file ((~~a~~)) an electronic tax return with the department of revenue accompanied by ((~~a~~)) an electronic payment of the tax due; ((~~Provided~~)) however, the taxes under chapter 82.24 RCW (Tax on cigarettes) must be collected through sales of revenue stamps.

(2) Reporting frequency((~~— Forms. Combined excise tax returns with payments of the tax due are to be filed monthly~~)). Taxpayers are required to electronically file and pay their excise taxes on a monthly basis. However, the department may relieve any taxpayer or class of taxpayers from this monthly obligation and may require the return to cover other longer reporting periods, but not in excess of one year. See: RCW 82.32.045.

(a) General rule. Unless otherwise provided by the department, a taxpayer must report and pay taxes due according to the following schedule:

IF ANNUAL ESTIMATED TAX LIABILITY IS:	REPORTING FREQUENCY
Over $4800.00 per year	Monthly returns:
Between $1050.00 & $4800.00 per year	Quarterly returns:
Less than $1050.00 per year	Annual returns:

(b) When requested by a taxpayer or group of taxpayers, the department may approve more frequent or less frequent reporting if, in the opinion of the department, the change assists the department in the efficient and effective administration of the tax laws of this state.

(c) For the same reasons, the department may require a taxpayer or group of taxpayers to report more frequently or less frequently. Changes in reporting frequency are effective only after the department has consented to or required the change, and notice of the change has been given by the department to the taxpayer or group of taxpayers.

(d) Situations when changes in reporting frequency may be approved or required include, but are not limited to, the following:

(i) An increase or decrease in the estimated annual tax liability of a taxpayer results in a different threshold as provided in section (2)(a) above;

(ii) A taxpayer or group of taxpayers has substantial periods of no taxable business activity during the calendar year, i.e., ((~~seasonal~~)) temporary businesses;

(iii) The department finds a taxpayer or a group of taxpayers has repeatedly failed to comply with tax reporting and/or payment obligations;

(iv) The type of tax reported is required to be filed on a specific reporting frequency.

(e) Notice. No change in reporting frequency will be effective except upon at least thirty days advance written or electronic notice from the department to the taxpayer at the taxpayer's last provided e-mail address or reported business address.

(f) ((~~Forms.~~)) Filing. Returns must be ((~~made upon forms which~~)) submitted electronically. Taxpayers approved by the department may continue to submit paper returns that are either provided by the department, or approved and accepted by the department. Paper forms (including ((~~blank~~)) multi-purpose returns for past and present reporting periods) are available for download from the department's web site.

(g) Taxes not reported upon the combined excise tax return, i.e. forest excise tax, etc. must be reported at such times and upon such forms as are otherwise provided by the department.

(3) See WAC 458-20-228 for information on returns, remittances, penalties, extensions, stay of collection.

(4) See WAC 458-20-22802 for information on available electronic methods for filing and paying taxes. ((~~Note: Use of e-file and e-pay are mandatory for some specific taxpayers.~~))

WSR 13-22-049
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 1, 2013, 10:16 a.m., effective December 2, 2013]

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

Purpose: The department is amending WAC 458-20-228 (Rule 228) to:

- Recognize legislation that requires taxpayers to file and pay taxes electronically, chapter 23, Laws of 2010, and chapter 24, Laws of 2011.
- Recognize legislation which imposes a thirty-five percent penalty for a tax deficiency resulting from a "disregarded transaction" under RCW 82.32.655, chapter 23, Laws of 2010.
- Recognize legislation that updates language regarding the misuse of a reseller permit and "other documents" authorized by use under RCW 82.04.470, chapter 112, Laws of 2010.
- Recognize legislation that adjusted how payments are applied to outstanding taxpayer liabilities, extended existing personal liability provisions to spirit tax trust funds collected from customers, and recognized the transfer of the administration of spirits taxes to the department, chapter 39, Laws of 2012.
- Update the time frames in interest calculation examples.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-228.

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

Other Authority: RCW 82.32.080, 82.32.085, 82.32.655, and 82.04.470.

Adopted under notice filed as WSR 13-16-095 on August 7, 2013.

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

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

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

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

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

Date Adopted: November 1, 2013.

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 10-07-134, filed 3/23/10, effective 4/23/10)

WAC 458-20-228 Returns, payments, penalties, extensions, interest, stay of collection. (1) **Introduction.** This section discusses the responsibility of taxpayers to pay their tax by the appropriate due date, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

(a) **Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance. Taxpayers have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a toll-free question and information phone line (1-800-647-7706), provides information and electronic forms on the internet (http://dor.wa.gov), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and sections discussing important tax issues and changes. ((~~It's all friendly, free, and easy to access.~~))

(b) **What is electronic filing (or e-file), and how can it help me?** ((~~Many common reporting errors are preventable when taxpayers take advantage of the department's electronic filing (e-file) system.~~)) E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's business related excise taxes online. The e-file system ((~~helps taxpayers by perform-~~

~~ing all the~~)) automatically performs math calculations and ((~~checking~~)) checks for other types of reporting errors. **Using e-file to file electronically will help taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.** ((~~Persons who wish to use e-file should access~~)) E-file can be accessed on the department's internet site ((~~(~~))http://dor.wa.gov((~~) and~~)). Open the page for electronic filing((~~, which has~~)). The page contains additional links to pages answering frequently asked questions, and ((~~explaining~~)) explains the registration process for e-file. Taxpayers may also call the department's toll-free electronic filing help desk for more information, during regular business hours.

((~~Chapter 176, Laws of 2009 (Substitute Senate Bill No. 5571) requires~~)) All taxpayers ((~~who have been assigned a monthly reporting frequency~~)) are required to electronically file and electronically pay their taxes unless the department waives the requirement for good cause, or the taxpayer has an assigned reporting frequency that is less than quarterly. The requirement for electronic filing and payment also includes taxpayers who ((~~meet~~)) once met the criteria for being assigned to a monthly reporting frequency, but who since have been authorized by the department to file and remit taxes on a less frequent basis. ((~~The requirement to file and pay electronically is effective beginning with the July 2009 excise tax return due on August 25th.~~)) For more detailed information on the requirement and exceptions for electronic filing (e-file) and electronic payment (e-pay), see WAC 458-20-22802 (Electronic filing and payment).

(c) **Index of subjects addressed in this section:**

Topic—Description	See subsection
Where can I get my questions answered, or learn more about what I owe and how to report it? - By phone or online, the department provides a number of free and easy resources to help you find answers. ((~~One of them is right for you.~~))	(1)(a) of this section, (see above)
What is electronic filing (or e-file), and how can it help me? - E-filing guides you through the return and helps you avoid many common mistakes.	(1)(b) of this section, (see above)
Do I need to file a return? - How do I ((~~get~~)) access returns and file them? ((~~Can I file my returns electronically? Some taxpayers are required to file and pay electronically.~~))	(2) of this section
What methods of payment can I use? - What can I use to pay my taxes?	(3) of this section
When is my tax payment due? - Different reporting frequencies can have different due dates. What if the due date is a weekend or a holiday? If my payment is in the mail on the due date, am I late or on time?	(4) of this section
Penalties - What types of penalty exist? How big are they? When do they apply?	(5) of this section
Statutory restrictions on imposing penalties - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?	(6) of this section
Interest - In most cases interest is required. What interest rates apply? How is interest applied?	(7) of this section
Application of payment towards liability - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?	(8) of this section
Waiver or cancellation of penalties - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?	(9) of this section
Waiver or cancellation of interest - Interest will only be waived in two limited situations. What are they?	(10) of this section
Interest and penalty waiver for active duty military personnel - Is a majority owner of the business on active duty with the military? BOTH interest and penalty can be waived if all the statutory requirements are met. What are the requirements?	(11) of this section
Stay of collection - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?	(12) of this section
Extensions - Can I get an extension of my due date? How long does an extension last? A special extension may be available if the governor proclaims a state of emergency in your area.	(13) of this section

(2) **Do I need to file a return?** A "return" is defined as any paper or electronic document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW ((~~82.32.090(8). Note: Some taxpayers are required to file and pay their returns electronically. Please refer to WAC 458-20-22802 (Electronic filing and payment) to determine if you are included under this filing requirement, and to find more information on the process~~)) 82.32.045.

(a) Electronic returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes

imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be ((~~made upon forms,~~)) filed through the electronic filing (e-file) system (see subsection (1)(b) of this section), or by other means((~~, provided or accepted~~)) if approved by the department.

(((~~(i) The department provides tax returns upon request. If a taxpayer does not create an online account with the department for electronic filing (e-file), the department will mail returns when that taxpayer opens an active tax reporting account, and will continue to mail returns prior to each due date of the tax. However, it remains the responsibility of that taxpayer to timely request a return if one is not received, or to otherwise insure that the return is filed in a timely manner. Blank returns for past and present reporting periods are available for download from the department's web site prior to the due date.~~

~~(ii)~~)) E-file taxpayers do not receive paper returns. However, if an e-file taxpayer specifically requests it, the department will send an electronic reminder for each upcoming return as the time to file approaches.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return, or register to file by e-file, if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Some consumers may not be required to register with the department and obtain a tax registration endorsement. (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department. Use tax can be reported and paid on a "Consumer Use Tax Return" or the consumer can create an online account at the department's web site to conveniently report and pay use tax electronically. Consumer use tax returns are available from the department at any of the local district offices. A consumer may also call the department's toll free number 1-800-647-7706 to request a consumer use tax return by fax or mail. Finally, the consumer use tax return is available for download from the department's internet site at http://dor.wa.gov, along with a number of other returns and forms which are available there.

The interest and penalty provisions of this rule may apply if use tax is not paid on time. Unregistered consumers should refer to WAC 458-20-178 (Use tax) for an explanation of their tax reporting responsibilities.

(3) **What methods of payment can I use?** The law requires taxpayers to file and pay their taxes electronically. There are two electronic payment methods: Electronic funds transfer (EFT) and credit card. The department may waive the electronic payment requirement for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. Waivers may be temporary or permanent, and may be made on the department's own motion. (See WAC 458-20-22802 for more information on electronic filing and payment.)

(a) For taxpayers not required to pay electronically, payment may be made by cash, check, cashier's check, or money order((~~, and in certain cases by electronic funds transfers, or other electronic means approved by the department~~)).

(((~~(a)~~))) (b) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(((~~(b)~~))) (c) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(((~~(c) The law requires that certain taxpayers file and pay their taxes electronically. The department notifies taxpayers who are required to pay their taxes in this manner, and can explain how to set up a method of electronic payment. (See WAC 458-20-22802 for more information on electronic filing and payment.)~~)))

(4) **When is my tax payment due?** RCW 82.32.045 provides that payment of the taxes due with the excise tax return must be made monthly and within twenty-five days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency ((~~are~~)) is due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing will be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) When a taxpayer is not required to electronically file and pay taxes and chooses to file or pay taxes through the U.S. Postal Service, the postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 1.12.070. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

(c) ((~~Some~~)) Taxpayers ((~~are~~)) required to file and pay taxes electronically((~~.~~)) should refer to WAC 458-20-22802 (Electronic filing and payment) for more information regarding electronic filing (e-file), electronic payment (e-pay) due dates, and when electronic payments are considered received.

(d) If a taxpayer suspects that it will not be able to file and pay by the coming due date, it may be able to obtain an extension of the due date to temporarily avoid additional penalties. Refer to subsection (12) of this section for details on requesting an extension.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this section. (The department's electronic filing system (e-file) can help taxpayers avoid additional penalties and interest. See subsection (1)(b) of this section for more information.)

The penalty types and rates addressed in this subsection are:

Penalty Type—Description	Penalty Rate	See subsection
Late payment of a return - Five percent added when payment is not received by the due date, and increases if the tax due remains unpaid.	5/15/25%	(5)(a) of this section
Unregistered taxpayer - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.	5%	(5)(b) of this section
Assessment - Five percent added when a tax assessment is issued if the tax was "substantially underpaid," and increases if the tax due remains unpaid.	5/15/25% or 0/15/25%	(5)(c) of this section
Issuance of a warrant - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.	10%	(5)(d) of this section
Disregard of specific written instructions - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.	10%	(5)(e) of this section
Evasion - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.	50%	(5)(f) of this section
Misuse of resale certificates or a reseller permit - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate or reseller permit, but should not have.	50%	(5)(g) of this section
Failure to remit sales tax to seller - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.	10%	(5)(h) of this section
Failure to obtain the contractor's unified business identifier (UBI) number - A ((~~flat~~)) two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.	$250 (max)	(5)(i) of this section
Disregarded transaction - A thirty-five percent penalty of the additional tax found to be due as a result of engaging in a disregarded transaction.	35%	(5)(j) of this section

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a five percent penalty if the tax due on a taxpayer's return is not paid by the due date. A total penalty of fifteen percent is imposed if the tax due is not paid on or before the last day of the month following the due date, and a total penalty of twenty-five percent is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) through (iii) of this subsection for some of the most common circumstances.

(i) **Will I avoid the penalty if I file my return without the payment?** The department may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. Failure to file the return can result in the issuance of an assessment for the actual, or an estimated, amount of unpaid tax. Any assessment issued may include an assessment penalty. (See RCW 82.32.100 and (c) of this subsection for details of when and how the assessment penalty applies.) If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) **What if my account is given an active nonreporting status, but I later have taxes I need to report and pay?** WAC 458-20-101 provides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to

the Revenue Act without filing excise tax returns. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis (i.e., the last day of January next succeeding the year in which the tax liability accrued).

(iii) **I didn't register my business with the department when I started it, and now I think I was supposed to be paying taxes! What should I do?** You should fill out and send in a ((~~Master~~)) business license application to get your business registered. It is important for you to register before the department identifies you as an unregistered taxpayer and contacts you about your business activities. (WAC 458-20-101 provides information about registering your business.) Except as noted below, if a person engages in taxable activities while unregistered, but then registers prior to being contacted by the department, the registration is considered voluntary. When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

(I) Collected retail sales tax from customers and failed to remit it to the department; or

(II) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(B) Even though other circumstances may warrant retention of the late payment of return penalty, if a person has voluntarily registered, the unregistered taxpayer penalty (see (b) of this subsection) will not be due.

(b) **Unregistered taxpayer.** RCW 82.32.090(4) imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily register prior to being contacted by the department. "Voluntarily register" means to properly complete and submit a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number, all of which is done before any contact from the department. For example, if a person properly completes and submits a ((~~master~~)) business license application to the department of labor and industries for the purpose of obtaining a UBI number, and this is done prior to any contact from the department of revenue, the department considers that person to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed ((~~master~~)) business license application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

(c) **Assessment.** If the department issues an assessment for substantially underpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of fifteen percent against the amount of tax that remains unpaid. If any tax included in the assessment is not paid within thirty days of the original or extended due date, the penalty will further increase to a total of twenty-five percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

(i) As used in this section, "substantially underpaid" means that:

(A) The taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination; and

(B) The amount of underpayment is at least one thousand dollars. If both of these conditions are true when an assessment is issued, it will include the initial five percent assessment penalty. If factual adjustments are made after issuance of an assessment, and those adjustments change whether a taxpayer paid less than eighty percent of the tax due, the department will reevaluate imposition of the original five percent penalty.

(ii) If the initial five percent assessment penalty is included with an assessment when it is issued, the penalty is calculated against the total amount of tax that was not paid when originally due and payable (see RCW 82.32.045). Audit payments made prior to issuance of an assessment will be applied to the assessment after calculation of the initial five percent assessment penalty. At the discretion of the department, preexisting credits or amendments paid prior to an audit or unrelated to the scope of the assessment may be applied before the five percent assessment penalty is calculated, reducing the amount of the penalty. Additional assessment penalty is assessed against the amount of tax that remains unpaid at that particular time, after payments are applied to the assessment.

(d) **Issuance of a warrant.** If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ten percent of the amount of the tax due, but not less than ten dollars. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

(e) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090(5).

(i) **What is "disregard of specific written instructions"?** A taxpayer is considered to have received specific written instructions when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement.

The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) **What if I try to follow the written instructions, but I still don't get it quite right?** The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(f) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax found to be due will be added. RCW 82.32.090(((~~(6)~~)))(7). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) **Evasion penalty only applies to the specific taxes that a taxpayer intended to evade.** To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) **What actions may establish an intent to evade?** The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

(g) **Misuse of resale certificates ((~~or a~~)), reseller permits, and other documents.** Any buyer who uses a resale certificate ((~~or~~)), a reseller permit, or other documentation authorized under RCW 82.04.470, to purchase items or retail services without payment of sales tax, and who is not entitled to use the certificate ((~~or~~)), permit, or other documentation for the purchase, will be assessed a penalty of fifty percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of resale certificates ((~~and~~)), reseller permits, and other documentation, refer to WAC 458-20-102 (Resale certificates).

(h) **Failure to remit sales tax to seller.** The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

(i) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed two hundred and fifty dollars. RCW 82.32.070(2).

(j) **Engaging in disregarded transactions.** Chapter 23 (2ESSB 6143), Laws of 2010 1st sp. s. imposes a thirty-five percent penalty for engaging in a disregarded transaction as defined in RCW 82.32.655(3). See RCW 82.32.090(6), 82.32.655, and 82.32.660.

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The penalties imposed for the late payment of a return, unregistered taxpayer, assessment, and issuance of a warrant (see subsection (5)(a) through (d) of this section) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(((~~(7)~~)))(8).

(b) The department may impose either the evasion penalty (subsection (5)(f) of this section) or the penalty for disregarding specific written instructions (subsection (5)(e) of this section), but may not impose both penalties on the same tax. RCW 82.32.090(((~~(8)~~)))(9). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)(g) of this section) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(c) The penalty provided in subsection (5)(j) of this section may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (5)(f) of this section.

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050 and 82.32.060. Interest accrued against an underpayment only applies to ((~~taxes only~~)) underpaid tax. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) ((~~For tax liabilities arising before January 1, 1992, interest will be added at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment, or December 31, 1998, whichever comes first. Any interest accrued on these liabilities after December 31, 1998, will be added at the annual variable interest rates described below in (e) of this subsection. RCW 82.32.050.~~

~~(b) For tax liabilities arising after December 31, 1991, and before January 1, 1998, interest will be added at the annual variable interest rates described below in (e) of this subsection, from the last day of the year in which the deficiency is incurred until the date of payment.~~

~~(e)~~)) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described below in (e) of this subsection. For information on interest imposed before December 31, 1998, see RCW 82.32.050.

((~~(d)~~)) (b) **How is interest applied to an assessment that includes underpaid tax from multiple years?** The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, ((~~2000~~)) 2010. The assessment includes periods from January 1, ((~~1997~~)) 2008, through September 30, ((~~1999~~)) 2009.

(i) ((~~For calendar year 1997 tax, interest begins January 1, 1998, (from the last day of the year). When the assessment is issued the interest is computed through June 30, 2000, (the due date of the assessment).~~

~~(ii)~~)) For calendar year ((~~1998~~)) 2008 tax, interest begins February 1, ((~~1999~~)) 2009, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, ((~~2000~~)) 2010, (the due date).

(((~~iii~~))) (ii) For the ((~~1999~~)) 2009 tax period ending with September 30, ((~~1999~~)) 2009, interest begins November 1, ((~~1999~~)) 2009, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, ((~~2000~~)) 2010, (the due date).

(((~~iv~~))) (iii) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(((~~e~~))) (c) **How is each year's interest rate determined?** The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate for each new year will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. The average is calculated using the federal short-term rates from January, April, July of the calendar year immediately preceding the new year, and October of the previous preceding year, as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(((~~f~~))) (d) **How is the interest applied if an assessment includes some years that are underpaid and some that are overpaid?** If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) **Application of payment towards liability.** The department will apply taxpayer payments ((~~first to~~)) in the following order:

- Interest, ((~~next to~~))
- penalties, ((~~and then to the~~))
- fees,
- other nontax amounts,
- tax, except spirits tax,
- spirits tax,

without regard to any direction of the taxpayer. RCW 82.32.080.

In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (((~~Termination, dissolution, or abandonment of corporate business – Personal liability of person in control of collected sales tax funds~~)) Limited liability business entity – Terminated, dissolved, abandoned, insolvent – Collection of unpaid trust fund taxes), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability, and then to other trust fund tax liabilities. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of five hundred dollars, retail sales tax of four hundred dollars for YEAR 1, six hundred dollars retail sales tax for YEAR 2, two thousand dollars of other taxes for YEAR 1, and seven thousand dollars of other taxes for YEAR 2. The order of application of any payments will be first against the five hundred dollars of total interest and penalties, second against the four hundred dollars retail sales tax in YEAR 1, third against the two thousand dollars of other taxes in YEAR 1, fourth against the six hundred dollars retail sales tax of YEAR 2, and finally against the seven thousand dollars of other taxes in YEAR 2.

(9) **Waiver or cancellation of penalties.** RCW 82.32.105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpay-

ment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. It is possible that a taxpayer will qualify for a waiver of one type of penalty, without obtaining a waiver for all penalties associated with a particular tax liability. Circumstances determined to be beyond the control of the taxpayer when considering a waiver of one type of penalty are not necessarily pertinent when considering a waiver of a different penalty type. For example, circumstances that qualify for waiver of a late payment of return penalty do not necessarily also justify waiver of the substantial underpayment assessment penalty. Refer to WAC 458-20-102 (Resale certificates) for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of a resale certificate or reseller permit found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's appeals division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Appeals, small claims and settlements). Refund requests must be made within the statutory limitation period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not canceling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See (a)(iii)(E) of this subsection.

(G) The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received. (Note: Tax returns and other forms are immediately available to download at no cost from the department's internet site, http://dor.wa.gov. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this section. Taxpayers who have registered to file electronically with e-file will avoid potential penalties relating to paper returns not received. See subsection (1)(b) of this section.)

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in (a)(ii)(G) of this subsection;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(iii) and (b) of this section;

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in (a)(ii)(F) of this subsection); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) of this

section) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105(1) and (a) of this subsection) or after a twenty-four month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.105(2).

If a taxpayer has obtained a tax registration endorsement with the department prior to engaging in business within the state and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. As a result, the taxpayer's very first return due can qualify for a waiver under the twenty-four month review provision. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see (a) of this subsection). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a twenty-four month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a twenty-four month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same twenty-four month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous twenty-four month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The twenty-four month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's September ((~~2003~~)) 2012 return has had the original due date of October twenty-fifth extended to November twenty-fifth. The return and payment are received after the November twenty-fifth extended due date. A penalty waiver is requested. Since the delinquent return represented the month of September ((~~2003~~)) 2012, the twenty-four months which will be reviewed begin on September 1, ((~~2001~~)) 2010, and end with August 31, ((~~2003~~)) 2012, (the twenty-four months prior to September ((~~2003~~)) 2012). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the twenty-four month period under review.

(iv) A twenty-four month review is only valid when considering waiver of the late payment of return penalty described in subsection (5)(a) of this section. The twenty-four month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Interest and penalty waiver for active duty military personnel.** RCW 82.32.055 provides a waiver of BOTH interest and penalty imposed under chapter 82.32 RCW when:

(a) The majority owner of the business is:

(i) On active duty in the military;

(ii) Participating in an armed conflict;

(iii) Assigned to a location outside the territorial boundaries of the United States; and

(b) The gross income of the business is one million dollars or less for the calendar year immediately prior to the year in which the majority owner is initially deployed outside the United States for the armed conflict.

Interest and penalty may not be waived or canceled for a period longer than twenty-four months. The waiver applies to interest or penalty based on the date they are imposed, which must be within the twenty-four month waiver period.

To receive a waiver or cancellation of interest and penalty under this subsection, the taxpayer must submit a copy of the majority owner's deployment orders for deployment outside the territorial boundaries of the United States.

(12) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see (a) of this subsection). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see (b) of this subsection). The department will grant a taxpayer's stay of collection request, as described in RCW

82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection. Effective January 1, 1997, the interest rates prescribed by RCW 82.32.190 and 82.32.200 changed from nine percent and twelve percent per annum, respectively, to the same predetermined annual variable rates as are described in subsection (7)((~~(e)~~)) (c) of this ((~~section~~)) rule.

(13) **Extensions.** The department, for good cause, may extend the due date for filing any return.

(a) Any permanent extension more than ten days beyond the due date, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

(b) Chapter 181, Laws of 2008 (Senate Bill No. 6950), allows department of revenue to grant extensions of the due date for any taxes due to department of revenue when the governor has proclaimed a state of emergency under RCW 43.06.040. In general, the bill gives department of revenue the authority to provide extensions on its own initiative, or at the specific request of any taxpayers affected by the emergency. The specific details of how, where, and to whom any extensions are granted will depend on the type and scope of each unique emergency and will be determined when an emergency is declared.

WSR 13-22-051

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 13-02—Filed November 1, 2013, 12:39 p.m., effective December 2, 2013]

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

Purpose: This adoption amends chapter 173-224 WAC, Wastewater discharge permit fees, to increase fees for some permit fee categories where expenditures exceed the revenues being collected. The fee increases, approved by the Washington state legislature, total 4.55 percent for state fiscal year 2014 and 4.63 percent for state fiscal year 2015. The fee categories subject to the fee increases are: Aquatic pest control, boatyards, concentrated animal feeding operations, dairies, industrial, municipal, construction stormwater general permits and individual permits, private and government-owned domestic wastewater treatment plants, and municipal domestic wastewater treatment plants with a residential equivalent total greater than 250,000.

Ecology is also adopting language that provided clarity within the rule but that did not change the effect of the rule.

Citation of Existing Rules Affected by this Order: Amending chapter 173-224 WAC, Wastewater discharge permit fees.

Statutory Authority for Adoption: RCW 90.48.465 Water pollution control.

Adopted under notice filed as WSR 13-17-101 on August 21, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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, 2013.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 08-16-109, filed 8/5/08, effective 9/5/08)

WAC 173-224-030 Definitions. "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

"Aggregate production" means the mining or quarrying of sand, gravel, or rock, or the production of concrete, or asphalt or a combination thereof.

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type		Number of Animals per Animal Unit
Dairy Cows		
	Jersey Breed	
	Milking Cow	0.900
	Dry Cow	0.900
	Heifer	0.220
	Calf	0.220
	Other Breeds	
	Milking Cow	1.400
	Dry Cow	1.000
	Heifer	0.800
	Calf	0.500
Feedlot Beef		0.877
Horses		0.500
Sheep		0.100
Swine for breeding		0.375
Swine for slaughter		0.110
Laying hens & pullets > 3 months		0.004
Broilers & pullets < 3 months		0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the crop preparing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents will be considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for the hoisting and lifting of ship hulls.

"Crop preparing" means the preparation of fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"cu. yds/yr" means the total production from an aggregate production facility in cubic yards during the most recent completed calendar year.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

"Existing operations" means those industrial operations requiring a wastewater discharge permit before July 1, 1993.

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal byproducts, excluding crop preparing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

"Gross revenue for business" means the gross income from Washington business activities as reported to the Washington state department of revenue.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial storm water" means an operation required to be covered under ecology's NPDES and state waste discharge baseline general permit for storm water discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for storm water only.

"MGD" means permitted flow expressed in million gallons per day.

"Manufacturing" means the making of goods and articles by hand or especially, by machinery into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means the preparation of metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means the manufacturing of semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating aggregate site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that has no current mining or processing, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation ((~~off-~~

~~site~~)) off-site for processing, use, or sale and still be considered a nonoperating site. This definition can be found in ecology's *National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations.*

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70.105 and 70.105D RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals (fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means the activity of receiving sewage deposited into and carried off by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW ((~~98.48.260~~)) 98.48.160.

"Storm water" means an industrial operation or construction activity discharging storm water runoff as defined in 40 C.F.R. 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means the washing, packing, and shipping of fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

AMENDATORY SECTION (Amending WSR 11-20-035, filed 9/27/11, effective 10/28/11)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or $250.00, whichever is greater. An application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is being modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
Aluminum Alloys	$16,713.00	$16,713.00
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	98,554.00	98,554.00
b. State Permit	49,279.00	49,279.00
Aluminum Forming	50,136.00	50,136.00
Aggregate Production - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,876.00	2,876.00
2. Nonoperating aggregate site (fee per site)	118.00	118.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	1,198.00	1,198.00
2. 50,000 - < 300,000 tons/yr.	2,877.00	2,877.00
3. 300,000 tons/yr. and greater	3,598.00	3,598.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	1,198.00	1,198.00
2. 25,000 - < 200,000 cu. yds/yr.	2,877.00	2,877.00
3. 200,000 cu. yds/yr. and greater	3,598.00	3,598.00
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	2,876.00	2,876.00
2. Asphalt	2,876.00	2,876.00
3. Concrete	2,876.00	2,876.00
Aggregate Production - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,012.00	2,012.00
2. Nonoperating aggregate site (fee per site)	83.00	83.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	840.00	840.00
2. 50,000 - < 300,000 tons/yr.	2,013.00	2,013.00
3. 300,000 tons/yr. and greater	2,517.00	2,517.00
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	840.00	840.00
2. 25,000 - < 200,000 cu. yds/yr.	2,013.00	2,013.00
3. 200,000 cu. yds/yr. and greater	2,517.00	2,517.00
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	2,013.00	2,013.00
2. Asphalt	2,013.00	2,013.00
3. Concrete	2,013.00	2,013.00
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	5,012.00	5,012.00
b. Finfish hatching and rearing - General Permit Coverage	3,511.00	3,511.00
c. Shellfish hatching	((~~182.00~~)) 190.00	190.00
Aquatic Pest Control		
a. Irrigation Districts	((~~433.00~~)) 474.00	((~~453.00~~)) 496.00
b. Mosquito Control Districts	((~~433.00~~)) 474.00	((~~453.00~~)) 496.00
c. Invasive Moth Control	((~~433.00~~)) 474.00	((~~453.00~~)) 496.00
d. Aquatic Species Control & Eradication	((~~433.00~~)) 474.00	((~~453.00~~)) 496.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
e. Oyster Growers	((~~433.00~~)) 474.00	((~~453.00~~)) 496.00
f. Rotenone Control	((~~433.00~~)) 474.00	((~~453.00~~)) 496.00
Boat Yards - Individual Permit Coverage		
a. With storm water only discharge	428.00	428.00
b. All others	856.00	856.00
Boat Yards - General Permit Coverage		
a. With storm water only discharge	((~~341.00~~)) 373.00	((~~357.00~~)) 390.00
b. All others	((~~691.00~~)) 756.00	((~~723.00~~)) 791.00
Coal Mining and Preparation		
a. < 200,000 tons per year	6,680.00	6,680.00
b. 200,000 - < 500,000 tons per year	15,042.00	15,042.00
c. 500,000 - < 1,000,000 tons per year	26,739.00	26,739.00
d. 1,000,000 tons per year and greater	50,136.00	50,136.00
Combined Industrial Waste Treatment		
a. < 10,000 gpd	3,342.00	3,342.00
b. 10,000 - < 50,000 gpd	8,354.00	8,354.00
c. 50,000 - < 100,000 gpd	16,713.00	16,713.00
d. 100,000 - < 500,000 gpd	33,422.00	33,422.00
e. 500,000 gpd and greater	50,136.00	50,136.00
Combined Food Processing Waste Treatment Facilities	16,000.00	16,000.00
Combined Sewer Overflow System		
a. < 50 acres	3,342.00	3,342.00
b. 50 - < 100 acres	8,354.00	8,354.00
c. 100 - < 500 acres	10,030.00	10,030.00
d. 500 acres and greater	13,368.00	13,368.00
Commercial Laundry	428.00	428.00
Concentrated Animal Feeding Operation		
a. < 200 Animal Units	((~~196.00~~)) 214.00	((~~205.00~~)) 224.00
b. 200 - < 400 Animal Units	((~~491.00~~)) 537.00	((~~514.00~~)) 562.00
c. 400 - < 600 Animal Units	((~~984.00~~)) 1,076.00	((~~1,029.00~~)) 1,126.00
d. 600 - < 800 Animal Units	((~~1,474.00~~)) 1,612.00	((~~1,542.00~~)) 1,687.00
e. 800 Animal Units and greater	((~~1,968.00~~)) 2,153.00	((~~2,059.00~~)) 2,253.00
Crop Preparing - Individual Permit Coverage		
a. 0 - < 1,000 bins/yr.	333.00	333.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
b. 1,000 - < 5,000 bins/yr.	669.00	669.00
c. 5,000 - < 10,000 bins/yr.	1,337.00	1,337.00
d. 10,000 - < 15,000 bins/yr.	2,676.00	2,676.00
e. 15,000 - < 20,000 bins/yr.	4,425.00	4,425.00
f. 20,000 - < 25,000 bins/yr.	6,183.00	6,183.00
g. 25,000 - < 50,000 bins/yr.	8,271.00	8,271.00
h. 50,000 - < 75,000 bins/yr.	9,192.00	9,192.00
i. 75,000 - < 100,000 bins/yr.	10,694.00	10,694.00
j. 100,000 - < 125,000 bins/yr.	13,368.00	13,368.00
k. 125,000 - < 150,000 bins/yr.	16,712.00	16,712.00
l. 150,000 bins/yr. and greater	20,055.00	20,055.00
Crop Preparing - General Permit Coverage		
a. 0 - < 1,000 bins/yr.	232.00	232.00
b. 1,000 - < 5,000 bins/yr.	468.00	468.00
c. 5,000 - < 10,000 bins/yr.	937.00	937.00
d. 10,000 - < 15,000 bins/yr.	1,873.00	1,873.00
e. 15,000 - < 20,000 bins/yr.	3,100.00	3,100.00
f. 20,000 - < 25,000 bins/yr.	4,328.00	4,328.00
g. 25,000 - < 50,000 bins/yr.	5,788.00	5,788.00
h. 50,000 - < 75,000 bins/yr.	6,433.00	6,433.00
i. 75,000 - < 100,000 bins/yr.	7,481.00	7,481.00
j. 100,000 - < 125,000 bins/yr.	9,360.00	9,360.00
k. 125,000 - < 150,000 bins/yr.	11,698.00	11,698.00
l. 150,000 bins/yr. and greater	14,037.00	14,037.00
Dairies $.50 per Animal Unit not to exceed $((~~1,376.00~~)) 1,506.00 for FY ((~~2012~~)) 2014 and $((~~1,440.00~~)) 1,576.00 for FY ((~~2013~~)) 2015 & beyond		
Facilities Not Otherwise Classified - Individual Permit Coverage		
a. < 1,000 gpd	1,671.00	1,671.00
b. 1,000 - < 10,000 gpd	3,342.00	3,342.00
c. 10,000 - < 50,000 gpd	8,355.00	8,355.00
d. 50,000 - < 100,000 gpd	13,368.00	13,368.00
e. 100,000 - < 500,000 gpd	26,606.00	26,606.00
f. 500,000 - < 1,000,000 gpd	33,422.00	33,422.00
g. 1,000,000 gpd and greater	50,135.00	50,135.00
Facilities Not Otherwise Classified - General Permit Coverage		
a. < 1,000 gpd	1,172.00	1,172.00
b. 1,000 - < 10,000 gpd	2,425.00	2,425.00
c. 10,000 - < 50,000 gpd	5,851.00	5,581.00
d. 50,000 - < 100,000 gpd	9,360.00	9,360.00
e. 100,000 - < 500,000 gpd	18,715.00	18,715.00
f. 500,000 - < 1,000,000 gpd	23,394.00	23,394.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
g. 1,000,000 gpd and greater	35,095.00	35,095.00
Flavor Extraction		
a. Steam Distillation	171.00	171.00
Food Processing		
a. < 1,000 gpd	1,670.00	1,670.00
b. 1,000 - < 10,000 gpd	4,259.00	4,259.00
c. 10,000 - < 50,000 gpd	7,604.00	7,604.00
d. 50,000 - < 100,000 gpd	11,948.00	11,948.00
e. 100,000 - < 250,000 gpd	16,712.00	16,712.00
f. 250,000 - < 500,000 gpd	21,977.00	21,977.00
g. 500,000 - < 750,000 gpd	27,572.00	27,572.00
h. 750,000 - < 1,000,000 gpd	33,422.00	33,422.00
i. 1,000,000 - < 2,500,000 gpd	41,175.00	41,175.00
j. 2,500,000 - < 5,000,000 gpd	45,957.00	45,957.00
k. 5,000,000 gpd and greater	50,136.00	50,136.00
Fuel and Chemical Storage		
a. < 50,000 bbls	1,671.00	1,671.00
b. 50,000 - < 100,000 bbls	3,342.00	3,342.00
c. 100,000 - < 500,000 bbls	8,354.00	8,354.00
d. 500,000 bbls and greater	16,713.00	16,713.00
Hazardous Waste Clean Up Sites		
a. Leaking Underground Storage Tanks (LUST)		
1. State Permit	4,383.00	4,383.00
2. NPDES Permit Issued pre 7/1/94	4,383.00	4,383.00
3. NPDES Permit Issued post 7/1/94	8,765.00	8,765.00
b. Non-LUST Sites		
1. 1 or 2 Contaminants of concern	8,570.00	8,570.00
2. > 2 Contaminants of concern	17,140.00	17,140.00
Ink Formulation and Printing		
a. Commercial Print Shops	2,571.00	2,571.00
b. Newspapers	4,286.00	4,286.00
c. Box Plants	6,856.00	6,856.00
d. Ink Formulation	8,571.00	8,571.00
Inorganic Chemicals Manufacturing		
a. Lime Products	8,354.00	8,354.00
b. Fertilizer	10,058.00	10,058.00
c. Peroxide	13,368.00	13,368.00
d. Alkaline Earth Salts	16,713.00	16,713.00
e. Metal Salts	23,393.00	23,393.00
f. Acid Manufacturing	33,416.00	33,416.00
g. Chlor-alkali	66,846.00	66,846.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
Iron and Steel		
a. Foundries	16,713.00	16,713.00
b. Mills	33,453.00	33,453.00
Metal Finishing		
a. < 1,000 gpd	2,004.00	2,004.00
b. 1,000 - < 10,000 gpd	3,341.00	3,341.00
c. 10,000 - < 50,000 gpd	8,353.00	8,353.00
d. 50,000 - < 100,000 gpd	16,712.00	16,712.00
e. 100,000 - < 500,000 gpd	33,420.00	33,420.00
f. 500,000 gpd and greater	50,133.00	50,133.00
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	1,046.00	1,046.00
b. 1,000 - < 10,000 gpd	1,459.00	1,459.00
c. 10,000 - < 50,000 gpd	3,136.00	3,136.00
d. 50,000 - < 100,000 gpd	7,314.00	7,314.00
e. 100,000 - < 500,000 gpd	12,531.00	12,531.00
f. 500,000 - < 1,000,000 gpd	17,758.00	17,758.00
g. 1,000,000 - < 2,500,000 gpd	22,982.00	22,982.00
h. 2,500,000 - < 5,000,000 gpd	28,082.00	28,082.00
i. 5,000,000 gpd and greater	33,422.00	33,422.00
Noncontact Cooling Water With Additives - General Permit Coverage		
a. < 1,000 gpd	733.00	733.00
b. 1,000 - < 10,000 gpd	1,461.00	1,461.00
c. 10,000 - < 50,000 gpd	2,195.00	2,195.00
d. 50,000 - < 100,000 gpd	5,120.00	5,120.00
e. 100,000 - < 500,000 gpd	8,773.00	8,773.00
f. 500,000 - < 1,000,000 gpd	12,432.00	12,432.00
g. 1,000,000 - < 2,500,000 gpd	16,086.00	16,086.00
h. 2,500,000 - < 5,000,000 gpd	19,739.00	19,739.00
i. 5,000,000 gpd and greater	23,394.00	23,394.00
Noncontact Cooling Water Without Additives - Individual Permit Coverage		
a. < 1,000 gpd	838.00	838.00
b. 1,000 - < 10,000 gpd	1,671.00	1,671.00
c. 10,000 - < 50,000 gpd	2,509.00	2,509.00
d. 50,000 - < 100,000 gpd	5,851.00	5,851.00
e. 100,000 - < 500,000 gpd	10,030.00	10,030.00
f. 500,000 - < 1,000,000 gpd	14,203.00	14,203.00
g. 1,000,000 - < 2,500,000 gpd	18,310.00	18,310.00
h. 2,500,000 - < 5,000,000 gpd	22,559.00	22,559.00
i. 5,000,000 gpd and greater	26,739.00	26,739.00
Noncontact Cooling Water Without Additives - General Permit Coverage		

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
a. < 1,000 gpd	586.00	586.00
b. 1,000 - < 10,000 gpd	1,172.00	1,172.00
c. 10,000 - < 50,000 gpd	1,757.00	1,757.00
d. 50,000 - < 100,000 gpd	4,095.00	4,095.00
e. 100,000 - < 500,000 gpd	7,019.00	7,019.00
f. 500,000 - < 1,000,000 gpd	9,944.00	9,944.00
g. 1,000,000 - < 2,500,000 gpd	12,868.00	12,868.00
h. 2,500,000 - < 5,000,000 gpd	15,793.00	15,793.00
i. 5,000,000 gpd and greater	18,715.00	18,715.00
Nonferrous Metals Forming	16,713.00	16,713.00
Ore Mining		
a. Ore Mining	3,342.00	3,342.00
b. Ore mining with physical concentration processes	6,682.00	6,682.00
c. Ore mining with physical and chemical concentration processes	26,739.00	26,739.00
Organic Chemicals Manufacturing		
a. Fertilizer	16,713.00	16,713.00
b. Aliphatic	33,422.00	33,422.00
c. Aromatic	50,136.00	50,136.00
Petroleum Refining		
a. < 10,000 bbls/d	33,422.00	33,422.00
b. 10,000 - < 50,000 bbls/d	66,266.00	66,266.00
c. 50,000 bbls/d and greater	133,699.00	133,699.00
Photofinishers		
a. < 1,000 gpd	1,337.00	1,337.00
b. 1,000 gpd and greater	3,342.00	3,342.00
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	6,680.00	6,680.00
b. Hydroelectric	6,680.00	6,680.00
c. Nonfossil Fuel	10,028.00	10,028.00
d. Fossil Fuel	26,739.00	26,739.00
Pulp, Paper and Paper Board		
a. Fiber Recyclers	16,711.00	16,711.00
b. Paper Mills	33,422.00	33,422.00
c. Groundwood Pulp Mills		
1. < 300 tons per day	50,136.00	50,136.00
2. > 300 tons per day	100,270.00	100,270.00
d. Chemical Pulp Mills w/o Chlorine Bleaching	133,692.00	133,692.00
e. Chemical Pulp Mills w/Chlorine Bleaching	150,400.00	150,400.00
Radioactive Effluents and Discharges (RED)		

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
a. < 3 waste streams	32,332.00	32,332.00
b. 3 - < 8 waste streams	56,147.00	56,147.00
c. 8 waste streams and greater	92,478.00	92,478.00
RCRA Corrective Action Sites	23,490.00	23,490.00
Seafood Processing		
a. < 1,000 gpd	1,671.00	1,671.00
b. 1,000 - < 10,000 gpd	4,259.00	4,259.00
c. 10,000 - < 50,000 gpd	7,604.00	7,604.00
d. 50,000 - < 100,000 gpd	11,948.00	11,948.00
e. 100,000 gpd and greater	16,713.00	16,713.00
Shipyards		
a. Per crane, travel lift, small boat lift	3,342.00	3,342.00
b. Per drydock under 250 ft in length	3,342.00	3,342.00
c. Per graving dock	3,342.00	3,342.00
d. Per marine way	5,012.00	5,012.00
e. Per sycrolift	5,012.00	5,012.00
f. Per drydock over 250 ft in length	6,682.00	6,682.00
g. In-water vessel maintenance	6,682.00	6,682.00
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstorm water)		
a. Nonputrescible	6,682.00	6,682.00
b. < 50 acres	13,367.00	13,367.00
c. 50 - < 100 acres	26,739.00	26,739.00
d. 100 - < 250 acres	33,422.00	33,422.00
e. 250 acres and greater	50,136.00	50,136.00
Textile Mills	66,846.00	66,846.00
Timber Products		
a. Log Storage	3,342.00	3,342.00
b. Veneer	6,682.00	6,682.00
c. Sawmills	13,368.00	13,368.00
d. Hardwood, Plywood	23,393.00	23,393.00
e. Wood Preserving	32,094.00	32,094.00
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	110.00	110.00
b. 1,000 - < 5,000 gpd	224.00	224.00
c. 5,000 - < 10,000 gpd	440.00	440.00
d. 10,000 - < 20,000 gpd	887.00	887.00
e. 20,000 and greater	1,464.00	1,464.00
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	3,342.00	3,342.00

INDUSTRIAL FACILITY CATEGORIES	FY ((~~2012~~)) 2014 ANNUAL PERMIT FEE	FY ((~~2013~~)) 2015 ANNUAL PERMIT FEE & BEYOND
b. 0.5 - < 1.0 acre	6,682.00	6,682.00
c. 1.0 acre and greater	10,028.00	10,028.00
Water Plants - Individual Permit Coverage	4,361.00	4,562.00
Water Plants - General Permit Coverage	3,052.00	3,193.00
Wineries		
a. < 500 gpd	341.00	341.00
b. 500 - < 750 gpd	684.00	684.00
c. 750 - < 1,000 gpd	1,367.00	1,367.00
d. 1,000 - < 2,500 gpd	2,734.00	2,734.00
e. 2,500 - < 5,000 gpd	4,362.00	4,362.00
f. 5,000 gpd and greater	5,987.00	5,987.00

(a) Facilities other than those in the aggregate production, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Crop preparation and aggregate production permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. When required, the department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized ((~~general~~)) partner;

(C) In the case of a general partnership, by an authorized general partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for crop preparers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the crop preparing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating aggregate operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode must be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY ((~~2012~~)) 2014 Annual Permit Fee	FY ((~~2013~~)) 2015 Annual Permit Fee & Beyond
< 250,000	$((~~2.07~~)) 2.16	$2.16
> 250,000	((~~1.44~~)) 1.58	((~~1.51~~)) 1.65

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and government-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or government-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or government-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY ((~~2012~~)) 2014 Annual Permit Fee	FY ((~~2013~~)) 2015 Annual Permit Fee & Beyond
.1 MGD and Greater	$((~~9,592.00~~)) 10,492.00	$((~~10,035.00~~)) 10,978.00
.05 MGD to < .1 MGD	((~~3,838.00~~)) 4,198.00	((~~4,015.00~~)) 4,392.00
.0008 MGD to < .05 MGD	((~~1,919.00~~)) 2,099.00	((~~2,008.00~~)) 2,196.00
< .0008 MGD	((~~578.00~~)) 633.00	((~~605.00~~)) 662.00

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine

hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORM WATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

		FY ((~~2012~~)) 2014 Annual Permit Fee	FY ((~~2013~~)) 2015 Annual Permit Fee & Beyond
a.	Individual Construction or Industrial Storm Water Permits		
1.	< 50 acres	$((~~3,838.00~~)) 4,198.00	$((~~4,015.00~~)) 4,392.00
2.	50 -< 100 acres	((~~$7,670.00~~)) 8,389.00	((~~$8,024.00~~)) 8,777.00
3.	100 -< 500 acres	((~~$11,514.00~~)) 12,594.00	((~~$12,046.00~~)) 13,177.00
4.	500 acres and greater	((~~$15,349.00~~)) 16,789.00	((~~$16,058.00~~)) 17,566.00
b.	Facilities Covered Under the Industrial Storm Water General Permit		
1.	Municipalities and state agencies	((~~$1,256.00~~)) 1,374.00	((~~$1,314.00~~)) 1,438.00
2.	New permit holders without historical gross revenue information	((~~$660.00~~)) 721.00	((~~$690.00~~)) 754.00
3.	The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
	Gross Revenue		

	FY ((~~2012~~)) 2014 Annual Permit Fee	FY ((~~2013~~)) 2015 Annual Permit Fee & Beyond
Less than $100,000	(($~~122.00~~)) 134.00	(($~~128.00~~)) 140.00
$100,000 -< $1,000,000	(($~~529.00~~)) 578.00	(($~~553.00~~)) 605.00
$1,000,000 -< $2,500,000	(($~~634.00~~)) 693.00	(($~~663.00~~)) 725.00
$2,500,000 -< $5,000,000	(($~~1,058.00~~)) 1,157.00	(($~~1,107.00~~)) 1,211.00
$5,000,000 -< $10,000,000	(($~~1,587.00~~)) 1,736.00	(($~~1,660.00~~)) 1,816.00
$10,000,000 and greater	(($~~1,917.00~~)) 2,097.00	(($~~2,006.00~~)) 2,194.00

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

c. Construction Activities Covered Under the Construction Storm Water General Permit(s)

1.	Less than 5 acres disturbed area	$(($~~496.00~~)) 543.00	$(($~~519.00~~)) 568.00
2.	5 -< 7 acres of disturbed area	(($~~808.00~~)) 883.00	(($~~845.00~~)) 924.00
3.	7 -< 10 acres of disturbed area	(($~~1,090.00~~)) 1,192.00	(($~~1,140.00~~)) 1,247.00
4.	10 -< 20 acres of disturbed area	(($~~1,487.00~~)) 1,627.00	(($~~1,556.00~~)) 1,702.00
5.	20 acres and greater of disturbed area	(($~~1,850.00~~)) 2,023.00	(($~~1,935.00~~)) 2,117.00

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal storm water permit annual fee for the entities listed below will be:

Name of Entity	FY ((~~2012~~)) 2014 Annual Permit Fee	FY ((~~2013~~)) 2015 Annual Permit Fee & Beyond
King County	$(($~~43,710.00~~)) 47,810.00	$(($~~45,729.00~~)) 50,024.00
Snohomish County	(($~~43,710.00~~)) 47,810.00	(($~~45,729.00~~)) 50,024.00
Pierce County	(($~~43,710.00~~)) 47,810.00	(($~~45,729.00~~)) 50,024.00
Tacoma, City of	(($~~43,710.00~~)) 47,810.00	(($~~45,729.00~~)) 50,024.00
Seattle, City of	(($~~43,710.00~~)) 47,810.00	(($~~45,729.00~~)) 50,024.00
Washington Department of Transportation	(($~~43,710.00~~)) 47,810.00	(($~~45,729.00~~)) 50,024.00
Clark County	(($~~43,710.00~~)) 47,810.00	(($~~45,729.00~~)) 50,024.00

(b) Municipal storm water general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, will be determined in the following manner: For fiscal year ((~~2012~~)) 2014, ecology will charge $(($~~1.27~~)) 1.39 per housing unit inside the geographic area covered by the permit for those cities and counties whose

median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to $((~~.62~~)) .68 per housing unit inside the geographic area covered by the permit. For fiscal year ((~~2013~~)) 2015, ecology will charge $((~~1.33~~)) 1.45 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to $((~~.65~~)) .71 per housing unit inside the geographic area covered by the permit. Fees will not exceed $((~~43,710.00~~)) 47,810.00 for fiscal year ((~~2012~~)) 2014 and $((~~45,729.00~~)) 50,024.00 for fiscal year ((~~2013~~)) 2015. The minimum annual fee will not be lower than $((~~1,818.00~~)) 1,988.00 for fiscal year ((~~2012~~)) 2014 and $((~~1,902.00~~)) 2,080.00 for fiscal year ((~~2013~~)) 2015 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling $((~~.62~~)) .68 per housing unit for fiscal year ((~~2012~~)) 2014. The fee amount for FY ((~~2013~~)) 2015 will be $((~~.65~~)) .71 per housing unit.

(c) Other entities required to have permit coverage under a municipal storm water general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((~~2012~~)) 2014 Annual Permit Fee	FY ((~~2013~~)) 2015 Annual Permit Fee & Beyond
Less than $100,000	$((~~127.00~~)) 139.00	$((~~133.00~~)) 145.00
$100,000 -< $1,000,000	(($~~512.00~~)) 560.00	(($~~536.00~~)) 586.00
$1,000,000 -< $5,000,000	(($~~1,279.00~~)) 1,399.00	(($~~1,338.00~~)) 1,464.00
$5,000,000 -< $10,000,000	(($~~1,918.00~~)) 2,098.00	(($~~2,007.00~~)) 2,195.00
$10,000,000 and greater	(($~~3,197.00~~)) 3,497.00	(($~~3,345.00~~)) 3,659.00

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal storm water permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or $30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or $15,000.

(iii) For entities that would otherwise be covered under a municipal storm water general permit as determined in (c) of this subsection, the fiscal year ((~~2012~~)) 2014 annual fee for a permit written for a specific entity shall be $((~~9,092.00~~)) 9,945.00. For FY ((~~2013~~)) 2015, the annual fee will be $((~~9,512.00~~)) 10,405.00.

(e) Ecology will assess a single permit fee for entities which apply only as co-permittees or co-applicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the co-permittees had applied separately.

AMENDATORY SECTION (Amending WSR 09-20-020, filed 9/28/09, effective 10/29/09)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the fiscal year to which they apply. The department shall notify permit holders of fee charges by mailing billing statements. Permit fees must be received by the department within forty-five days after the department mails a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation for individual permits. Computation of permit fees shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the issuance date of the permit. In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon acceptance of the application by the department. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the permit has been terminated by the department. Permits terminated during the fiscal year will pay the annual fee assessment regardless of the permit termination date.

(3) Permit fees for sand and gravel (aggregate) general permit holders will be assessed as in subsection ((~~(3)~~)) (2) of this section and:

(a) Nonoperating ((~~aggregate~~)) sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these

activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production will be assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees will be based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, will be based on the average of the three previous calendar years production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous three calendar years or for the number of full calendar years of operation if less than three. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(d) Asphalt portable batch plants, concrete portable batch plants and portable rock crushing operations will be assessed fees as in subsection ((~~(3)~~)) (2) of this section. Each permitted operation must commit to being shut down for a minimum of twelve calendar months before the status can be changed to nonoperating.

(4) Fees for crop preparation general permit holders will be assessed as in subsection ((~~(3)~~)) (2) of this section and will be computed on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(d). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(5) Facilities with construction and industrial storm water general permit coverage will have their annual permit fees begin on the permit issuance date. Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

(6) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction storm water general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

(7) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

(8) The applicable permit fee shall be paid by check or money order payable to the "Department of Ecology" and mailed to the Wastewater Discharge Permit Fee Program, P.O. Box 47611, Olympia, Washington 98504-7611.

(9) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

(10) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days will be turned over for collection. In addition, a surcharge totaling twenty percent of the delinquent amount owed will also be added. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

AMENDATORY SECTION (Amending WSR 11-20-035, filed 9/27/11, effective 10/28/11)

WAC 173-224-090 Permit fee reductions. With the exception of facilities covered under the industrial storm water general permit who are not eligible to apply for a fee reduction, any business required to pay a fee under an industrial or construction fee category may receive a reduction of its permit fee.

Small business fee reduction.

(1) To qualify for the fee reduction, a business must:

(a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or storm water discharge permit; and

(d) Have an original annual fee assessment totaling five hundred dollars or greater.

(2) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions of subsection (1) of this section have been met. The application shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

(3) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(4) The permit fee for small businesses determined to be eligible under subsection (1) of this section shall be reduced to fifty percent of the assessed annual permit fee.

Extreme hardship fee reduction. Any industrial or construction small business with annual gross revenue totaling one hundred thousand dollars or less of the goods and services produced using the processes regulated by the waste discharge or storm water discharge permit may apply for an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below ((~~$122.00 for fiscal year 2012 and $128.00 for fiscal year 2013~~)) $128.00.

WSR 13-22-056
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 13-282—Filed November 4, 2013, 9:41 a.m., effective December 5, 2013]

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

Purpose: The amendments implement 2013 legislation and expand the conditions for mitigating wolf/human conflicts to include noncommercial operators and the types of domestic animal losses that may be compensated by the department. The amendments make the wildlife conflict rules consistent with the wolf management plan within current statutes, encourage cooperative agreements with the department to prevent and mitigate losses other than documented mortalities to livestock, and allow citizens to protect their domestic animals from attack by wolves.

Citation of Existing Rules Affected by this Order: Amending WAC 232-36-030, 232-36-040, 232-36-051, 232-36-060, 232-36-110, 232-36-200, 232-36-210 and 232-36-400; and new section WAC 232-36-052.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.240, chapter 77.36 RCW and ESSB [E2SSB] 5193.

Adopted under notice filed as WSR 13-17-085 on August 19, 2013.

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 [1], Amended 9 [8], 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 4, 2013.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

WAC 232-36-030 Definitions. Definitions used in rules of the fish and wildlife commission are defined in RCW 77.08.010, and the definitions for wildlife interactions are defined in RCW 77.36.010. In addition, unless otherwise provided, the following definitions are applicable to this chapter:

"Act of damaging" means that private property is in the process of being damaged by wildlife((~~, and the wildlife are on the private property, which contains commercial crops, pasture, or livestock~~)).

"Big game" means those animals listed in RCW 77.08.030.

"Claim" means an application to the department for compensation under this chapter.

"Claimant" means owner of commercial crop ((~~or~~)), livestock, or other property who has filed a wildlife damage claim for cash compensation.

"Commercial crop" means a commercially raised horticultural and/or agricultural product and includes the growing or harvested product, but does not include livestock, forest land, or rangeland. For the purposes of this chapter, Christmas trees and managed pasture grown using agricultural methods including one or more of the following: Seeding, planting, fertilizing, irrigating, and all parts of horticultural trees, are considered a commercial crop and are eligible for cash compensation.

((~~"Commercial livestock" means cattle, sheep, and horses held or raised by a person for sale.~~))

"Compensation" means a cash payment, materials, or service.

"Completed written claim" means that all of the information required on a department ((~~crop or livestock~~)) property damage claim form is supplied and complete, including all supplemental information and certifications required to process the claim.

"Damage" means economic losses caused by wildlife interactions.

"Damage claim assessment" means department approved methods to evaluate crop loss and value caused by deer or elk damage to commercial crops, ((~~or~~)) livestock losses and value caused by bear, cougar, or wolves, or damages to other property.

"Domestic animal" means any animal that is lawfully possessed and controlled by a person.

"Eligible farmer" means an owner who satisfies the definition of eligible farmer pursuant to RCW 82.08.855 (4)(b)(i) through (iv).

"Emergent" means an unforeseen circumstance beyond the control of the landowner or tenant, that presents a real and immediate threat to crops, domestic animals, or fowl.

"Game animal" means wild animals that shall not be hunted except as authorized by the commission.

"Guard dog" means dogs trained for the purpose of protecting livestock from attack by wildlife or for herding livestock.

"Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

"Immediate threat of physical harm" means that animal-to-human bodily contact is imminent; and the animal is in attack posture/mode.

"Livestock" means horses, cattle, sheep, goats, swine, donkeys, mules, llamas, and alpacas.

"Owner" means a person who has a legal right to commercial crops, ((~~commercial~~)) livestock, or other private property that was damaged during a wildlife interaction.

"Physical act of attacking" means actual or imminent animal-to-human or animal-to-animal physical contact.

"Public hunting" means an owner satisfies the "public hunting" requirement for his or her land, as defined in WAC 232-36-300.

"Wild animal" means those species of the class Mammalia whose members exist in Washington in a wild state.

"Wildlife control operator" means a person who has successfully completed the training and obtained one or more levels of certification from the department to assist landowners to prevent or control problems caused by wildlife.

"Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, ((~~commercial~~)) livestock, or other property.

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

WAC 232-36-040 Wildlife/human interaction and conflict resolution for private property damage. The department is the primary source for property owners seeking to determine legal and effective remedies for addressing wildlife interactions. Protection of property using nonlethal techniques is the primary response encouraged by the department. Harassment and/or lethal removal may also be important techniques to protect human safety or to protect property. The following criteria describe the compensation available to protect property ((~~that does not qualify under commercial crop or livestock damage~~)):

(1) ((~~Unless specifically appropriated by the legislature,~~)) Cash compensation will ((~~not~~)) only be provided to property owners by the department if the funds are appropriated by the legislature or provided through local or federal grants or contracts.

(2) Compensation will be prioritized in the following order:

(a) As conditioned by the legislature or granting entity.

(b) Property prioritization:

(i) Private property that is primarily designed for public use, where there is a human safety risk not addressed by other entities.

(ii) Private property that directly contributes to commercial crop or to livestock production.

(iii) Private property used for other business purposes.

(iv) Public property.

(v) Residential property.

(vi) Recreational property.

((~~(b)~~)) (c) Species prioritization:

(i) Damages caused by wildlife listed as endangered, threatened, sensitive, or categories of concern by the state or federal government.

(ii) Damages caused by big game animals.

(iii) Other federal and state protected species.

(iv) Other wildlife species except unclassified species and predatory birds.

(3) The department may make agreements with private landowners to prevent property damage. These agreements may include the use of:

(a) Best management practices to reduce risk of private property damage;

(b) Scaring or hazing materials;

(c) Fencing materials;

(d) Volunteers referred by the department for hazing, fence repair, etc; and

(e) Lethal removal options.

(4) Private property owners must utilize nonlethal abatement techniques prior to requesting other compensation from the department or before utilizing lethal techniques ((~~as outlined in WAC 232-36-050~~)).

(a) Use of nonlethal techniques must be documented and consistent with procedures and requirements established by the department.

(b) Evidence of damage (e.g., photographs) must be provided by the property owner.

(c) Property owner must comply with reporting requirements of the department.

(5) Wildlife may not be captured and transported or relocated off the owner's property (parcel where damage occurred) unless:

(a) Authorized by rule of the commission; or

(b) By written permit from the department; and

(c) Owner is in compliance with department rules, permits, and reporting requirements.

(6) The department will establish written procedures for assisting private property owners, using the criteria and priorities provided in this rule. The procedures will include enlistment of partners and volunteers through agreements, permits, and incentives to help mitigate wildlife interactions.

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

WAC 232-36-051 Killing wildlife causing private property damage. The fish and wildlife commission is authorized to classify wildlife as game, and/or as endangered or protected species, and/or as a predatory bird consistent with RCW 77.08.010 and 77.12.020. The commission is also authorized, pursuant to RCW 77.36.030, to establish the lim-

itations and conditions on killing or trapping wildlife that is causing ((~~property~~)) damage on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property.

The conditions for killing wildlife vary, based primarily on the classification of the wildlife species, the imminent nature of the threat to damage private property, the type of private property damage, and the preventive and nonlethal methods employed by the person prior to the damage event. Additional conditions defined by the department may also be important, depending on individual situations. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

(1) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-014) unless authorized by commission rule or with a permit from the department, with the following additional requirements:

(a) Federally listed threatened or endangered species will require federal permits or federal authority, in addition to a state permit.

(b) All migratory birds are federally protected and may require a federal permit or federal authority, in addition to a state permit.

(2) Killing wildlife causing damage to a commercial crop or ((~~commercial~~)) to livestock.

((~~(a)~~)) It is permissible to kill unclassified wildlife, predatory birds, and ((~~big~~)) game animals that are in the act of damaging commercial crops or attacking livestock or other domestic animals, under the following conditions:

((~~(i)~~)) (a) Predatory birds (defined in RCW 77.08.010(39)) and unclassified wildlife that are in the act of damaging commercial crops or attacking livestock or other domestic animals may be killed with the express permission of the owner at any time on private property, to protect domestic animals, livestock, or commercial crops ((~~or livestock~~)).

((~~(ii)~~)) (b) An owner with a valid, written damage prevention agreement with the department may kill an individual (one) ((~~big~~)) game animal while it is in the act of damaging commercial crops; a permit will be provided if authorized in the agreement.

((~~(iii)~~)) (c) An individual (one) ((~~big~~)) game animal may be killed during the physical act of attacking livestock or domestic animals.

((~~(iv)~~)) (d) Multiple ((~~big~~)) game animals may be killed while they are in the act of damaging commercial crops or attacking livestock if the owner is issued a kill permit by the department.

((~~(v)~~)) (e) A damage prevention agreement or kill permit must include: An approved checklist of the reasonable preventative and nonlethal means that must be employed prior to lethal removal; a description of the properties where lethal removal is allowed; the species and sex of the animal that may be killed; the terms of the agreement/permit; the dates when lethal removal is authorized; who may kill the animal(s); and other conditions developed within department procedural documents.

((~~(b) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-014) unless authorized by commission rule or with a permit from the department, with the following additional requirements:~~

~~(i) Federally listed threatened or endangered species will require federal permits or federal authority, in addition to a state permit.~~

~~(ii) All migratory birds are federally protected and may require a federal permit or federal authority, in addition to a state permit.~~

~~(2)~~)) (3) Killing wildlife causing damage or killing wildlife to prevent private property damage.

(a) An individual (one) ((~~big~~)) game animal may be killed during the physical act of attacking ((~~livestock or pets~~)) domestic animals.

(b) Predatory birds (as defined in RCW 77.08.010(39)), unclassified wildlife, and eastern gray squirrels may be killed with the express permission of the property owner at any time, to prevent private property damage on private real property.

(c) Subject to subsection ((~~(6)~~)) (7) of this section, the following list of wildlife species may be killed with the express permission of the owner, when causing damage to private property: Raccoon, fox, bobcat, beaver, muskrat, mink, river otter, weasel, hare, and cottontail rabbits.

(d) The department may make agreements with landowners to prevent private property damage by wildlife. The agreements may include special hunting season permits such as: Landowner damage prevention permits, spring black bear hunting permits, permits issued through the landowner hunting permit program, kill permits, and Master Hunter permits.

(e) Landowners are encouraged to allow general season hunters during established hunting seasons on their property to help minimize damage potential and concerns.

((~~(3)~~)) (4) Wildlife control operators may assist property owners under the conditions of their permit, as established in WAC 232-36-060 and 232-36-065.

((~~(4)~~)) (5) Tribal members may assist property owners under the conditions of valid comanagement agreements between tribes and the department. Tribes must be in compliance with the agreements including, but not limited to, adhering to reporting requirements and harvest restrictions.

((~~(5)~~)) (6) Hunting licenses and tags are not required to kill wildlife under this section, unless the killing is pursuant to subsections ((~~(2)~~)) (3)(c) and (d) of this section. Tribal members operating under subsection ((~~(4)~~)) (5) of this section are required to meet tribal hunting license, tag, and permit requirements.

((~~(6)~~)) (7) Except as specifically provided in a permit from the department or a rule of the commission, people taking wildlife under this rule are subject to the laws and rules of the state including, but not limited to, those found in Titles 77 RCW and 220 and 232 WAC.

NEW SECTION

WAC 232-36-052 Killing wolves attacking domestic animals. The commission is authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on kill-

ing or trapping wildlife that is causing damage on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

(1) An owner of domestic animals, the owner's immediate family member, the agent of an owner, or the owner's documented employee may kill one gray wolf (*Canis lupus*) without a permit issued by the director, regardless of its state classification, if the wolf is attacking their domestic animals.

(a) This section applies to the area of the state where the gray wolf is not listed as endangered or threatened under the federal Endangered Species Act.

(b) Any wolf killed under this authority must be reported to the department within twenty-four hours.

(c) The wolf carcass must be surrendered to the department.

(d) The owner of the domestic animal must grant or assist the department in gaining access to the property where the wolf was killed for the purposes of data collection or incident investigation.

(2) If the department finds that a private citizen killed a gray wolf that was not attacking a domestic animal, or that the killing was not consistent with this rule, then that person may be prosecuted for unlawful taking of endangered wildlife under RCW 77.15.120.

(3) In addition to the provisions of subsection (1) of this section, the director may authorize additional removals by permit under the authority of RCW 77.12.240.

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

WAC 232-36-060 Director or his/her designee is empowered to grant wildlife control operator certifications. For purposes of training individuals to assist landowners with employing nonlethal management techniques, or to harass, kill, trap, release, and dispatch animals that are causing damage to private property, the director or his/her designee may issue wildlife control operator (WCO) certifications.

(1) To qualify for WCO certification, applicants must:

(a) Be at least eighteen years of age;

(b) Take and complete the department's WCO certifications course;

(c) Be certified by the department and have the equipment, knowledge, and ability to control the wildlife species causing conflict or property damage;

(d) Be legally eligible to possess a firearm and without a felony or domestic violence conviction including, but not limited to, convictions under chapter 9.41 RCW, unless firearm possession rights have been restored;

(e) Not have a gross misdemeanor fish and wildlife conviction within the last five years; and

(f) Pay the enrollment fee for each certification training/education. After July 1, 2010, this fee shall be fifty dollars (RCW 77.12.184) per certification.

(2) Once a person is granted WCO certification, he or she must apply for a permit pursuant to WAC 232-36-065 in order to harass, kill, trap, release, or dispatch animals causing damage to private property.

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

WAC 232-36-110 Application for cash compensation for commercial crop damage—Procedure. Pursuant to this section, the department may distribute money appropriated by the legislature to pay commercial crop damage caused by wild deer or elk in the amount of up to ten thousand dollars per claim, unless following an appeal the department is ordered to pay more (see RCW 77.36.130(2)). The department shall develop claim procedures and application forms consistent with this section for cash compensation of commercial crop damage. Partnerships with other public and private organizations to assist with completion of applications, assessment of damage, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Owners who have worked with the department to prevent deer or elk damage, yet who still experience loss and meet eligibility requirements, may file a claim for cash compensation.

(2) The claimant must notify the department within seventy-two hours of discovery of crop damage and at least seventy-two hours prior to harvest of the claimed crop.

(3) A complete, written claim must be submitted to the department within sixty days of when the damage stops.

(4) Owners may only file one claim per year. Multiple partners in a farming operation are considered one owner. Operations involving multiple partners must designate a "primary grower" to receive payment from the department.

(5) The claim form declaration must be signed, affirming that the information provided is factual and truthful per the certification set out in RCW 9A.72.085, before the department will process the claim.

(6) In addition to a completed claim form, an applicant must provide:

(a) A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service or other documentation indicating the applicant's gross sales or harvested value of commercial crops for the previous tax year.

(b) The assessment method used consistent with WAC 232-36-120, valuation of property damage.

(c) Applicant must provide proof of ownership of claimed commercial crops or contractual lease of claimed commercial crops consistent with department procedural requirements for submission of documents.

(d) Written documentation of approved methodology used to assess and determine final crop loss and value.

(e) Applicant must provide records documenting average yield on claimed crop and parcel, certified yield reports, production reports and weight certificates completed at the time weighed for claimed year, and other applicable documents that support yield loss and current market price. Current market price will be determined less transportation and cleaning costs when applicable.

(f) Declaration signed under penalty of perjury as provided in RCW 9A.72.085, indicating that the applicant is eligible for the claim, meets eligibility requirements listed under this section, and that all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(g) Copy of the insurance policy and payment on the commercial crop where loss is claimed.

(h) Copy of application for other sources of loss compensation and any payment or denial documentation.

Damage claim assessment:

(7) Damage claim assessment of amount and value of commercial crop loss is the primary responsibility of the claimant. A crop damage evaluation and assessment must be conducted by a licensed crop insurance adjustor:

(a) The owner must submit a damage claim assessment prepared by a crop insurance adjustor licensed by the state of Washington and certified by the federal crop insurance service.

(b) The department will provide the claimant with a list of approved adjustors and written authorization to proceed with an assessment. The owner must select an adjustor from the approved list and arrange for the completion of a crop damage assessment. Adjustor fees will be the ((~~shared~~)) responsibility of the ((~~owner and the~~)) department.

(c) The department or the owner may accept the damage claim assessment provided by the licensed adjuster or may hire a state licensed adjustor of their choosing and conduct a separate assessment or evaluation of the crop loss amount and value. The party hiring an adjustor to conduct a separate assessment or evaluation is responsible for payment of all fees.

(8) Disagreement between the claimant and the department over the crop loss value may be settled through an adjudicative proceeding.

Settlement of claims:

(9) ((~~Subject to money appropriated to pay commercial crop damage, undisputed claims will be paid, less one-half of the crop adjustor's fee or a maximum of six hundred dollars for the owner's share of the crop adjustor's fee.~~)) The crop adjustor's fee is not subject to the ten thousand dollar payment limit per owner.

(10) Compensation paid by the department, in addition to any other compensation received by the claimant, may not exceed the total value of the assessed crop loss.

(11) The owner will be notified by the department upon completion of the evaluation and has sixty days to accept or appeal the department's offer for settlement of the claim, or the claim is considered satisfied and not subject to appeal.

(12) The department shall prioritize payment for commercial crop damage in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for commercial crop damage during the ((~~first~~)) current fiscal year ((~~of a biennium~~)), the claim shall be held over until the following fiscal year when funds become available. Claims that are carried over will take first priority and receive payment before any new claims are paid. ((~~Claims will not be carried from one biennium to the next.~~))

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

WAC 232-36-200 Payment for ((~~commercial~~)) livestock damage and other domestic animals—Limitations. Owners who have worked with the department to prevent depredation but continue to experience losses, or who experience unforeseen losses, may be eligible to file a damage claim and receive cash compensation. Cash compensation will only be provided to livestock owners by the department when specifically appropriated by the legislature or other funding entity. Damages payable under this section are limited to the lost or diminished value of ((~~commercial~~)) livestock caused by wild bears, cougars, or wolves and shall be paid only to the owner of the livestock, without assignment. Cash compensation for livestock losses from bears, cougars, and wolves shall not include damage to other real or personal property, including other vegetation or animals, consequential damages, or any other damages ((~~including~~)) except veterinarian services may be eligible. However, livestock owners under written agreement with the department will be compensated consistent with their agreement which may extend beyond the limitations in this section. The department is authorized to pay ((~~up to two hundred dollars per sheep and one thousand five hundred dollars per head of cattle or per horse~~)) the market value for the livestock or guard dog lost, the market value of reduced weight gains for livestock, and no more than ten thousand dollars to the ((~~commercial~~)) livestock owner per claim.

Claims for cash compensation will be denied when:

(1) Funds for livestock compensation have not been specifically appropriated by the legislature or other funding entity;

(2) The claim is for livestock other than sheep, cattle, or horses, when only state funds are available; or any domestic animals not allowed by the funding entity;

(3) ((~~The owner of the commercial livestock does not meet the definition of "eligible farmer" in RCW 82.08.855 (4)(b)(i) through (iv);~~

~~(4) The loss estimate is less than five hundred dollars;~~

~~(5)~~)) The owner fails to provide the department with an approved checklist of the preventative and nonlethal means that have been employed, or the owner failed to comply with the terms and conditions of his or her agreement(s) with the department;

((~~(6)~~)) (4) The owner has accepted noncash compensation to offset livestock losses in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for livestock losses within a fiscal year;

((~~(7)~~)) (5) Damages to the ((~~commercial~~)) livestock or other domestic animals claimed are covered by insurance or are eligible for payment from other entities. However, any portion of the damage not covered by others is eligible for filing a claim with the department;

((~~(8)~~)) (6) The owner fails to provide on-site access to the department or designee for inspection and investigation of alleged attack or to verify eligibility for claim;

((~~(9)~~)) (7) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within this chapter;

(((~~(10)~~))) (8) No claim will be processed if the owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge; or

(((~~(11)~~))) (9) The owner or designee has salvaged or rendered the carcass or allowed it to be scavenged without an investigation completed under the direction of the department((~~; or~~

~~(12) The department has expended all funds appropriated for payment of such claims for the current fiscal year~~)).

AMENDATORY SECTION (Amending WSR 10-13-182, filed 6/23/10, effective 7/24/10)

WAC 232-36-210 Application for cash compensation for ((~~commercial~~)) livestock damage or other domestic animal—Procedure. Pursuant to this section, the department may distribute money specifically appropriated by the legislature or other funding entity to pay ((~~commercial~~)) livestock or guard dog losses caused by wild bear, cougar, or wolves in the amount of up to ten thousand dollars per claim unless, following an appeal, the department is ordered to pay more (see RCW 77.36.130(2)). The department will develop claim procedures and application forms consistent with this section for cash compensation of ((~~commercial~~)) livestock or guard dog losses. Partnerships with other public and private organizations to assist with completion of applications, assessment of losses, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Owners who have worked with the department to prevent livestock depredation, yet who still experience loss or losses that occur under emergent situations, may file a claim for cash compensation if they meet eligibility requirements.

(2) Claimant must notify the department within twenty-four hours of discovery of livestock or other domestic animal attack or as soon as feasible.

(3) Damage claim assessment of amount and value of ((~~commercial livestock~~)) domestic animal loss is the primary responsibility of the claimant.

(4) ((~~Assessment~~)) Investigation of the loss and review and approval of the assessment will be conducted by the department:

(a) The owner must provide access to department staff or designees to investigate the cause of death or injury to ((~~livestock~~)) domestic animals and use reasonable measures to protect evidence at the depredation site.

(b) Federal officials may be responsible for the investigation when it is suspected that the attack was by a federally listed species.

(5) Claimant must request a damage claim application within ten days of a loss.

(6) A complete, written claim must be submitted to the department within sixty days of an attack on ((~~commercial livestock~~)) domestic animals.

(7) The claim form declaration must be signed, affirming that the information provided is factual and truthful, before the department will process a claim.

(8) In addition to a completed claim form, an applicant must provide:

(a) ((~~A copy of applicant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service indicating the applicant's gross sales or value of commercial livestock for the previous tax year.~~

~~(b)~~)) Claimant must provide proof of legal ownership or contractual lease of claimed livestock.

(((~~c~~))) (b) Claimant must provide records documenting ((~~livestock~~)) the value of the domestic animal based on current market price.

(((~~d~~))) (c) Declaration signed under penalty of perjury indicating that the applicant is eligible for the claim, meets eligibility requirements listed under this ((~~section~~)) chapter, and all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(((~~e~~))) (d) Copy of any insurance policy covering ((~~livestock~~)) loss claimed.

(((~~f~~))) (e) Copy of application for other sources of loss compensation and any payment or denial documentation.

Settlement of claims:

(9) Subject to money appropriated to pay for ((~~commercial livestock~~)) domestic animal losses, undisputed claims will be paid up to ten thousand dollars.

(10) Valuation of the lost livestock will be determined by the market at the time the animals would normally be sold. Livestock will be valued based on the average weight of herd mates at the time of sale multiplied by the cash market price received; depredated cows or ewes will be replaced based on the value of a bred animal of the same age and type as the one lost, and bulls will be replaced using actual purchase price prorated based on a four-year depreciation cycle minus salvage value. The department may utilize the services of a certified livestock appraiser to assist in the evaluation of livestock claims.

(11) Claims for higher than normal livestock losses, reduced weight gains, or reduced pregnancy rates must include:

(a) At least three years of records prior to the year of the claim;

(b) The losses must occur on large open pastures where regular monitoring of livestock is impractical (and therefore discovery of carcasses infeasible) as determined by the department;

(c) Verification by the department that wolves are occupying the area;

(d) The losses cannot be reasonably explained by other causes;

(e) Claims will be assessed for losses in excess of the previous three year running average; and

(f) Owners must be in compliance with the department's preventative measures checklist and/or damage prevention agreement.

(12) Compensation paid by the department, in addition to any other compensation, may not exceed the total value of the assessed ((~~livestock~~)) loss.

(((~~(11)~~))) (13) Upon completion of the evaluation, the department will notify the owner of its decision to either deny the claim or make a settlement offer (order). The owner has sixty days from the date received to accept the department's offer for settlement of the claim or to submit an appeal of the

order. The response must be in writing and the signed document may be mailed or submitted by fax or e-mail. If no written acceptance or request for appeal is received, the offer is considered rejected and not subject to appeal.

((~~(12)~~)) (14) If the claimant accepts the department's offer, the department will send payment to the owner within thirty days from receipt of the written acceptance document.

(15) The department will prioritize payment for ((~~commercial~~)) livestock losses in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for ((~~commercial~~)) livestock losses during the ((~~first~~)) current fiscal year ((~~of a biennium~~)), the claim shall be held over until the following fiscal year when funds become available. Claims that are carried over will take first priority and receive payment before any new claims are paid. ((~~Claims will not be carried from one biennium to the next.~~))

AMENDATORY SECTION (Amending WSR 13-05-003, filed 2/6/13, effective 3/9/13)

WAC 232-36-400 Commercial crop or livestock damage claim—Dispute resolution. For claims where the owner has met all claim eligibility criteria and procedures, but ultimately rejects the written settlement offer (order) for crop or livestock loss and/or value assessment, the provisions of this section shall apply:

Informal resolution:

(1) If the owner rejects the property loss or value assessment and would like to discuss a negotiated settlement, he or she can request a meeting by notifying the department in writing within ten days of receiving the settlement offer or claim denial (order).

(2) A department representative and the owner or designee(s) will meet and attempt to come to mutual resolution.

(3) A livestock appeals committee may be established with a minimum of ((~~three~~)) six citizen members appointed by ((~~statewide livestock organization(s),~~)) the director, and a representative from the department of fish and wildlife((~~, and a representative from the department of agriculture~~)) to review and recommend a settlement if requested by the claimant or the department. The citizen members must represent a variety of interests including at least: Three statewide organizations representing the interests of livestock owners; two representing wildlife advocates; and one at large.

(4) Monetary compensation or noncash compensation, mutually agreed upon by both the department and owner, shall be binding and constitute full and final payment for claim.

(5) If parties cannot agree upon damages, or the owner wishes to appeal the claim denial or the department's settlement offer (order), the owner may request an adjudicative proceeding consistent with chapter 34.05 RCW within sixty days of receiving a copy of the department's decision.

(6) The request must comply with the following:

(a) The request must be in writing, and the signed document may be mailed or submitted by fax or e-mail;

(b) It must clearly identify the order being contested (or attach a copy of the order);

(c) It must state the grounds on which the order is being contested and include the specific facts of the order that are relevant to the appeal; and

(d) The request must identify the relief being requested from the proceeding (e.g., modifying specific provisions of the order).

(7) The proceeding may only result in the reversal or modification of an order when the preponderance of evidence shows:

(a) The order was not authorized by law or rule;

(b) A fact stated in the order is not supported by substantial evidence;

(c) The award amount offered is inconsistent with applicable procedures; or

(d) Material evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

(8) The burden of proof is on the appellant (owner) to show that he or she is eligible for a claim and that the damage assessment is reliable (see RCW 77.36.130(4)).

(9) Findings of the hearings officer are subject to the annual funding limits appropriated by the legislature and payment rules (WAC 232-36-110(12), 232-36-210(9), and 232-36-260) of the commission.

WSR 13-22-070
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 5, 2013, 11:33 a.m., effective December 15, 2013]

Effective Date of Rule: December 15, 2013.

Purpose: The purpose of this rule making is to amend language in WAC 296-46B-920, pertaining to scope of work requirements for load bank testing and preventative maintenance. This rule making will amend the 07-scope of work requirements for electrical licensing to allow 07-level nonresidential maintenance specialty contractors and electricians the ability to perform installation and connections of temporary electrical conductors and equipment for the purpose of load testing. Currently, the rule requires this type of work to be performed by a 01-general electrical contractor, using 01-general journey level electricians.

Citation of Existing Rules Affected by this Order: Amending WAC 296-46B-920.

Statutory Authority for Adoption: RCW 19.28.031 and 19.28.251.

Adopted under notice filed as WSR 13-18-062 on September 3, 2013.

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

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

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

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

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

Date Adopted: November 5, 2013.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-920 Electrical/telecommunications license/certificate types and scope of work. (1) **General electrical (01):** A general electrical license and/or certificate encompasses all phases and all types of electrical and telecommunications installations and minor plumbing under RCW 18.106.150. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater).

Specialties.

(2) All specialties listed in this subsection may perform the electrical work described within their specific specialty as allowed by the occupancy and location described within the specialty's scope of work. Except for residential (02), the scope of work for these specialties does not include plumbing work regulated under chapter 18.106 RCW. See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater). **Specialty** (limited) electrical licenses and/or certificates are as follows:

(a) **Residential (02):** Limited to the telecommunications, low voltage, and line voltage wiring of one- and two-family dwellings, or multifamily dwellings not exceeding three stories above grade. All wiring is limited to nonmetallic sheathed cable, except for services and/or feeders, exposed installations where physical protection is required, and for wiring buried below grade.

(i) This specialty also includes the wiring for ancillary structures such as, but not limited to: Appliances, equipment, swimming pools, septic pumping systems, domestic water systems, limited energy systems (e.g., doorbells, intercoms, fire alarm, burglar alarm, energy control, HVAC/refrigeration, etc.), multifamily complex offices/garages, site lighting when supplied from the residence or ancillary structure, and other structures directly associated with the functionality of the residential units.

(ii) This specialty does not include wiring occupancies defined in WAC 296-46B-900(1), or commercial occupancies such as: Motels, hotels, offices, assisted living facilities, or stores.

(iii) See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty.

(b) **Pump and irrigation (03):** Limited to the electrical connection of circuits, feeders, controls, low voltage, related telecommunications, and services to supply: Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls, and irrigation water pumps, circular irrigating system's pumps and pump houses.

This specialty may also perform the work defined in (c) of this subsection.

Also see RCW 18.106.010 (10)(c).

(c) **Domestic pump (03A):** Limited to the extension of a branch circuit, which is supplied and installed by others, to signaling circuits, motor control circuits, motor control devices, and pumps which do not exceed 7 1/2 horsepower at 250 volts AC single phase input power, regardless of motor controller output or motor voltage/phase, used in residential potable water or residential sewage disposal systems. Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls.

Also see RCW 18.106.010 (10)(c).

(d) **Signs (04):** Limited to placement and connection of signs and outline lighting, the electrical supply, related telecommunications, controls and associated circuit extensions thereto; and the installation of a maximum 60 ampere, 120/240 volt single phase service to supply power to a remote sign only. This specialty may service, maintain, or repair exterior luminaires that are mounted on a pole or other structure with like-in-kind components.

(i) Electrical licensing/certification is not required to:

(A) Clean the nonelectrical parts of an electric sign;

(B) Form or pour a concrete pole base used to support a sign;

(C) Operate machinery used to assist an electrician in mounting an electric sign or sign supporting pole; or

(D) Assemble the structural parts of a billboard.

(ii) Electrical licensing/certification is required to: Install, modify, or maintain a sign, sign supporting pole, sign face, sign ballast, lamp socket, lamp holder, disconnect switch, or any other part of a listed electric sign.

(e) **Limited energy system (06):** Limited to the installation of signaling and power limited circuits and related equipment. This specialty is restricted to low-voltage circuits. This specialty includes the installation of telecommunications, HVAC/refrigeration low-voltage wiring, fire protection signaling systems, intrusion alarms, energy management and control systems, industrial and automation control systems, lighting control systems, commercial and residential amplified sound, public address systems, and such similar low-energy circuits and equipment in all occupancies and locations.

(i) For the purposes of this section, when a line voltage connection is removed and reconnected to a replacement component located inside the control cabinet, the replacement must be like-in-kind or replaced using the equipment manufacturer's authorized replacement component. The line voltage circuit is limited to 120 volts 20 amps maximum and must have a means of disconnect.

(ii) The limited energy systems (06) specialty may repair or replace line voltage connections terminated inside the cabinet to power supplies internal to the low voltage equipment

provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the circuit.

(iii) The limited energy systems (06) specialty may not replace or modify the line voltage circuit or cabling or alter the means of connection of the line voltage circuit to the power supply or to the control cabinet.

Limited energy electrical contractors may perform all telecommunications work under their specialty **(06)** electrical license and administrator's certificate.

(f) **HVAC/refrigeration systems:**

(i) See WAC 296-46B-100 for specific HVAC/refrigeration definitions.

(ii) For the purposes of this section when a component is replaced, the replacement must be like-in-kind or made using the equipment manufacturer's authorized replacement component.

(iii) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may:

(A) Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all residential occupancies;

(B) Install, repair, replace, and maintain line voltage components within HVAC/refrigeration equipment. Such line voltage components include product illumination luminaires installed within and powered from the HVAC/refrigeration system (e.g., reach-in beverage coolers, frozen food cases, produce cases, etc.) and new or replaced factory authorized accessories such as internally mounted outlets;

(C) Repair, replace, or maintain the internal components of the HVAC/refrigeration equipment disconnecting means or controller so long as the disconnecting means or controller is not located within a motor control center or panelboard;

(D) Install, repair, replace, and maintain short sections of raceway to provide physical protection for low-voltage cables. For the purposes of this section a short section cannot mechanically interconnect two devices, junction boxes, or other equipment or components; and

(E) Repair, replace, or maintain line voltage flexible supply whips not over six feet in length, provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the whip. There is no limitation on the whip raceway method (e.g., metallic replaced by nonmetallic).

(iv) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may not:

(A) Install line voltage controllers or disconnect switches external to HVAC/refrigeration equipment;

(B) Install, repair, replace, or maintain:

• Integrated building control systems, other than HVAC/refrigeration systems;

• Single stand-alone line voltage equipment or components (e.g., heat cable, wall heaters, radiant panel heaters, baseboard heaters, contactors, motor starters, and similar equipment) unless the equipment or component:

Is exclusively controlled by the HVAC/refrigeration system and requires the additional external connection to a mechanical system(s) (e.g., connection to water piping, gas piping, refrigerant system, ducting for the HVAC/refrigeration system, gas fireplace flume, ventilating systems, etc. (i.e., as in the ducting connection to a bathroom fan)). The external connection of the equipment/component to the mechanical system must be required as an integral component allowing the operation of the HVAC/refrigeration system; or

Contains a HVAC/refrigeration mechanical system(s) (e.g., water piping, gas piping, refrigerant system, etc.) within the equipment (e.g., "through-the-wall" air conditioning units, self-contained refrigeration equipment, etc.);

• Luminaires that serve as a building or structure lighting source, even if mechanically connected to a HVAC/refrigeration system (e.g., troffer luminaire used as a return air device, lighting within a walk-in cooler/freezer used for personnel illumination);

• Raceway/conduit systems;

• Line voltage: Service, feeder, or branch circuit conductors. However, if a structure's feeder/branch circuit supplies HVAC/refrigeration equipment containing a supplementary overcurrent protection device(s), this specialty may install the conductors from the supplementary overcurrent device(s) to the supplemental HVAC/refrigeration equipment if the supplementary overcurrent device and the HVAC/refrigeration equipment being supplied are located within sight of each other; or

• Panelboards, switchboards, or motor control centers external to HVAC/refrigeration system.

(v) HVAC/refrigeration **(06A):**

(A) This specialty is not limited by voltage, phase, or amperage.

(B) No unsupervised electrical trainee can install, repair, replace, or maintain any part of a HVAC/refrigeration system that contains any circuit rated over 600 volts whether the circuit is energized or deenergized.

(C) This specialty may:

• Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies:

That have no more than three stories on/above grade; or

Regardless of the number of stories above grade if the installation:

• Does not pass between stories;

• Is made in a previously occupied and wired space; and

• Is restricted to the HVAC/refrigeration system;

• Repair, replace, and maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all occupancies regardless of the number of stories on/above grade.

• Install a bonding conductor for metal gas piping to an existing accessible grounding electrode conductor or grounding electrode only when terminations can be made external to electrical panelboards, switchboards, or other distribution equipment.

(D) This specialty may not install, repair, replace, or maintain: Any electrical wiring governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations) located outside the HVAC/refrigeration equipment.

(vi) HVAC/refrigeration - Restricted **(06B):**

(A) This specialty may not perform any electrical work where the primary electrical power connection to the HVAC/

refrigeration system exceeds: 250 volts, single phase, or 120 amps.

(B) This specialty may install, repair, replace, or maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies that have no more than three stories on/above grade.

(C) This specialty may not install, repair, replace, or maintain:

• The allowed telecommunications/low-voltage HVAC/refrigeration wiring in a conduit/raceway system; or

• Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(g) **Nonresidential maintenance (07):** Limited to maintenance, repair and replacement of like-in-kind existing electrical equipment and conductors. This specialty does not include maintenance activities in residential dwellings defined in (a) of this subsection for the purposes of accumulating training experience toward qualification for the residential **(02)** specialty electrician examination.

(i) This specialty includes the installation and connections of temporary conductors and equipment for the purpose of load testing, not to exceed 600 volts.

(ii) This specialty may perform the work defined in (h), (i), (j), (k), and (l) of this subsection.

(h) **Nonresidential lighting maintenance and lighting retrofit (07A):** Limited to working within the housing of existing nonresidential luminaires for work related to repair, service, maintenance of luminaires and installation of energy efficiency lighting retrofit upgrades. This specialty includes replacement of lamps, ballasts, sockets and the installation of listed lighting retrofit reflectors and kits. All work is limited to the luminaire body, except remote located ballasts may be replaced or retrofitted with approved products. This specialty does not include installing new luminaires or branch circuits; moving or relocating existing luminaires; or altering existing branch circuits.

(i) **Residential maintenance (07B):** This specialty is limited to residential dwellings as defined in WAC 296-46B-920 (2)(a), multistory dwelling structures with no commercial facilities, and the interior of dwelling units in multistory structures with commercial facilities. This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901.

This specialty is limited to equipment and circuits to a maximum of 250 volts, 60 amperes, and single phase maximum.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit or whip.

For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(j) **Restricted nonresidential maintenance (07C):** This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901 except for the replacement or repair of circuit breakers.

This specialty is limited to equipment and circuits to a maximum of 277 volts and 20 amperes for lighting branch circuits only and/or maximum 250 volts and 60 amperes for other circuits.

The replacement of luminaires is limited to in-place replacement required by failure of the luminaire to operate. Luminaires installed in suspended lay-in tile ceilings may be relocated providing: The original field installed luminaire supply whip is not extended or relocated to a new supply point; or if a manufactured wiring assembly supplies luminaire power, a luminaire may be relocated no more than eight feet providing the manufactured wiring assembly circuiting is not changed.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit. For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip.

This specialty may perform the work defined in (h) and (i) of this subsection.

This specialty cannot perform any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(k) **Appliance repair (07D):** Servicing, maintaining, repairing, or replacing household appliances, small commercial/industrial appliances, and other small electrical utilization equipment.

(i) For the purposes of this subsection:

(A) The appliance or electrical utilization equipment must be self-contained and built to standardized sizes or types. The appliance/equipment must be connected as a single unit to a single source of electrical power limited to a maximum of 250 volts, 60 amperes, single phase.

(B) Appliances and electrical utilization equipment include, but are not limited to: Ovens, office equipment, vehicle repair equipment, commercial kitchen equipment, self-contained hot tubs and spas, grinders, and scales.

(C) Appliances and utilization equipment do not include systems and equipment such as: Alarm/energy management/similar systems, luminaires, furnaces/heaters/air conditioners/heat pumps, sewage disposal equipment, door/gate/similar equipment, or individual components installed so as to create a system (e.g., pumps, switches, controllers, etc.).

(ii) This specialty includes:

(A) The in-place like-in-kind replacement of the appliance or equipment if the same unmodified electrical circuit is used to supply the equipment being replaced. This specialty also includes the like-in-kind replacement of electrical components within the appliance or equipment;

(B) The disconnection and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit; and

(C) The installation of an outlet box and outlet at an existing appliance or equipment location when converting the appliance from a permanent electrical connection to a plug and cord connection. Other than the installation of the outlet box and outlet, there can be no modification to the existing branch circuit supplying the appliance or equipment.

(iii) This specialty does not include:

(A) The installation, repair, or modification of branch circuits conductors, services, feeders, panelboards, disconnect switches, or raceway/conductor systems interconnecting multiple appliances, equipment, or other electrical components.

(B) Any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(C) Any plumbing work regulated under chapter 18.106 RCW.

(l) **Equipment repair (07E):** Servicing, maintaining, repairing, or replacing utilization equipment.

See RCW 19.28.095 for the equipment repair scope of work and definitions. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(m) **Telecommunications (09):** Limited to the installation, maintenance, and testing of telecommunications systems, equipment, and associated hardware, pathway systems, and cable management systems.

(i) This specialty includes:

(A) Installation of open wiring systems of telecommunications cables.

(B) Surface nonmetallic raceways designated and used exclusively for telecommunications.

(C) Optical fiber innerduct raceway.

(D) Underground raceways designated and used exclusively for telecommunications and installed for additions or extensions to existing telecommunications systems not to exceed fifty feet inside the building.

(E) Incidental short sections of circular or surface metal raceway, not to exceed ten feet, for access or protection of telecommunications cabling and installation of cable trays and ladder racks in telecommunications service entrance rooms, spaces, or closets.

(F) Audio or paging systems where the amplification is integrated into the telephone system equipment.

(G) Audio or paging systems where the amplification is provided by equipment listed as an accessory to the telephone system equipment and requires the telephone system for the audio or paging system to function.

(H) Closed circuit video monitoring systems if there is no integration of line or low-voltage controls for cameras and equipment. Remote controlled cameras and equipment are considered (intrusion) security systems and must be installed by appropriately licensed electrical contractors and certified electricians.

(I) Customer satellite and conventional antenna systems receiving a telecommunications service provider's signal. All receiving equipment is on the customer side of the telecommunications network demarcation point.

(ii) This specialty does not include horizontal cabling used for fire protection signaling systems, intrusion alarms, access control systems, patient monitoring systems, energy management control systems, industrial and automation control systems, HVAC/refrigeration control systems, lighting control systems, and stand-alone amplified sound or public address systems. Telecommunications systems may interface with other building signal systems including security, alarms, and energy management at cross-connection junctions within telecommunications closets or at extended points of demarcation. Telecommunications systems do not include the installation or termination of premises line voltage service, feeder, or branch circuit conductors or equipment. Horizontal cabling for a telecommunications outlet, necessary to interface with any of these systems outside of a telecommunications closet, is the work of the telecommunications contractor.

(n) **Door, gate, and similar systems (10):** This specialty may install, service, maintain, repair, or replace door/gate/similar systems electrical operator wiring and equipment.

(i) For the purposes of this subsection, door/gate/similar systems electrical operator systems include electric gates, doors, windows, awnings, movable partitions, curtains and similar systems. These systems include, but are not limited to: Electric gate/door/similar systems operators, control push buttons, key switches, key pads, pull cords, air and electric treadle, air and electric sensing edges, coil cords, take-up reels, clocks, photo electric cells, loop detectors, motion detectors, remote radio and receivers, antenna, timers, lockout switches, stand-alone release device with smoke detection, strobe light, annunciator, control panels, wiring and termination of conductors.

(ii) This specialty includes:

(A) Low-voltage, NEC Class 2, door/gate/similar systems electrical operator systems where the door/gate/similar systems electrical operator system is not connected to other systems.

(B) Branch circuits originating in a listed door/gate/similar systems electric operator control panel that supplies only door/gate/similar systems system components providing: The branch circuit does not exceed 600 volts, 20 amperes and the component is within sight of the listed door/gate/similar systems electric operator control panel.

(C) Reconnection of line voltage power to a listed door/gate/similar systems electric operator control panel is permitted provided:

• There are no modifications to the characteristics of the branch circuit/feeder;

• The circuit/feeder does not exceed 600 volts, 20 amperes; and

• The conductor or conduit extending from the branch circuit/feeder disconnecting means or junction box does not exceed six feet in length.

(iii) This specialty does not include any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty may not install, repair, or replace branch circuit (line voltage) conductors, services, feeders, panelboards, or disconnect switches supplying the door/gate/similar systems electric operator control panel.

(3) A specialty electrical contractor, other than the **(06)** limited energy specialty electrical contractor, may only perform telecommunications work within the equipment or

occupancy limitations of their specialty electrical contractor's license. Any other telecommunications work requires a telecommunications contractor's license.

WSR 13-22-076
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 5, 2013, 4:48 p.m., effective December 6, 2013]

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

Purpose: WAC 392-121-182 Alternative learning experience requirements, requires updating to clarify questions on current requirements and to address changes as a result of passage of ESB [ESSB] 5946. The changes include the following:

- Removes the rules around differential funding (subsection (8)), as these were designed to implement the funding cut that ended on June 30, 2013.
- Removes all time requirements from the weekly contact rules, as required by ESB [ESSB] 5946.
- Allows schools to forgo direct personal contact as a part of the monthly evaluation for students making satisfactory progress after at least one month.
- Creates the role of "school-based support staff" that districts may use to fulfill the requirements for students enrolled in online courses.
- Other changes and adjustments to streamline the implementation, recordkeeping, and reporting for alternative learning experience programs.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: RCW 28A.150.290(1).

Adopted under notice filed as WSR 13-17-082 on August 19, 2013.

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

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

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

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

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

Date Adopted: September 26, 2013.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 12-17-107, filed 8/20/12, effective 9/20/12)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience((~~, including an alternative learning experience online program as defined in RCW 28A.150.262~~)). It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

(A) ((~~A course or a set of courses developed by a certificated teacher and documented in an individual written student learning plan for any student who meets the definition for enrollment specified by WAC 392-121-106. A student may enroll part-time in an alternative learning experience. Such enrollment is subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC; and~~

~~(B) The student pursues the requirements of the written student learning plan~~)) Provided in whole or in part independently from a regular classroom setting or schedule, but ((~~the learning plan~~)) may include some components of direct instruction; ((~~and~~

~~(C) The student's learning is~~)) (B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's policy and this chapter.

(ii) The ((~~broad~~)) categories of alternative learning experience ((~~programs include, but~~)) courses are ((~~not limited to~~)):

(A) "Online ((~~programs~~)) course" means an alternative learning experience course that has the same meaning as ((~~defined~~)) provided in RCW ((~~28A.150.262;~~

~~(B) Parent partnership programs that include significant participation and partnership by parents and families in the design and implementation of a student's learning experience; and~~

~~(C) Contract based learning programs.~~

~~(b)~~)) 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work.

(c) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

((~~(c) "Written student learning plan" means a written plan for learning that is developed and approved by a certificated teacher and defines the requirements of an individual student's alternative learning experience. The written student learning plan must include at least the following elements:~~

~~(i) A beginning and ending date for the student's alternative learning experience;~~

~~(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;~~

~~(iii) A description of how weekly direct personal contact requirements will be fulfilled;~~

~~(iv) A description of each alternative learning experience course included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or program. Courses must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;~~

~~(v) Identification of the certificated teacher responsible for each course included as part of the plan;~~

~~(vi) Identification of all instructional materials that will be used to complete the learning plan; and~~

~~(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;~~

~~(viii) Identification of whether each alternative learning experience course meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district. For each high school alternative learning experience course, the written student learning plan must specify whether the course meets state and district graduation requirements.~~))

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "((~~Satisfactory progress~~)) In-person instructional contact" means face-to-face contact between a certificated teacher ((~~has determined that a student's progress toward achieving the specific~~)) and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning ((~~goals and performance objectives specified~~)) activities or requirements identified in the written student learning plan ((~~is satisfactory. The evaluation of satisfactory progress is conducted in a manner consistent with school district student evaluation or grading procedures, and is based on the professional judgment of a certificated teacher~~)); and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of ((~~direct personal~~)) contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which ((~~direct personal~~)) contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session;

(j) "School-based support staff" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

((~~(h)~~)) (l) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

((~~(ii) Related to an alternative learning experience course identified in the written student learning plan. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students.~~

~~(i) "Parent" has the same definition as "parent" in WAC 392-172A-01125;~~

~~(j) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. The in-person instructional contact must be:~~

~~(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and~~))

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan. ((~~In-person instructional contact may be accomplished in a group setting between the teacher and multiple students.~~

~~(k) "School week"~~)) (m) "Total weekly time" means ((~~any seven-day calendar period starting with Sunday and continuing through Saturday~~)) the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan.

(n) "Written student learning plan" means a written plan for learning that includes at least ((~~three days when a district's schools are in session~~)) the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district.

(4) **Alternative learning experience program requirements:**

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's par-

ents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact((:

~~(i) Direct personal contact~~)) with a certificated teacher at least once a school week((,)) until the student completes all course objectives or otherwise meets the requirements of the learning plan((~~; or~~

~~(ii)~~)):

(i) Direct personal contact; or

(ii) In-person instructional contact ((~~according to the following time requirements:~~

~~(A) Fifteen minutes per school week for students whose learning plan includes an estimate of five hours per school week or less;~~

~~(B) Thirty minutes per school week for students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week; and~~

~~(C) One hour for students whose learning plan includes an estimate of more than fifteen hours per week~~)); or

(iii) ((~~For students whose written student learning plan includes only online courses as defined by RCW 28A.250.010,~~)) Synchronous digital instructional contact ((~~according to the following time requirements:~~

~~(A) Fifteen minutes per school week for students whose learning plan includes an estimate of five hours per school week or less;~~

~~(B) Thirty minutes per school week for students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week; and~~

~~(C) One hour for students whose learning plan includes an estimate of more than fifteen hours per week~~)).

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher ((~~and~~)) or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student((~~,~~)) with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(((~~iii~~))) (v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(((~~iv~~))) (vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

(((~~v~~))) (viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

(5) **Required school district board policies for alternative learning experiences:** The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) **Alternative learning experience implementation requirements:**

(a) School districts that offer alternative learning experience((~~s~~)) courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience((~~s~~)) courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience((~~s~~)) courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience ((~~program~~)) course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience((~~s~~)) courses or course work must be consistent in quality with those available to the district's overall student population.

(g) Instructional materials used in alternative learning experience((~~s~~)) courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience ((~~programs~~)) courses or course work if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. ((~~However,~~)) Nothing ((~~in this subsection~~)) herein shall:

(i) Prohibit((~~s~~)) school districts from contracting with school district employees to provide services or experiences to students; or

(ii) Prohibit school districts from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts that contract with school district employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district that provides ((~~one or more~~)) alternative learning experience((~~s~~)) courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(n) ((~~State-funded alternative learning experience online programs must be accredited by the Northwest Accreditation~~

~~Commission or another national, regional, or state accreditation program listed by the office of superintendent of public instruction on its web site.~~

~~(o)~~)) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences. School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's alternative learning experience courses by the office of the state auditor.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district in the subsequent month's enrollment count ((~~for the month of the evaluation that showed the lack of satisfactory progress~~)).

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had ((~~direct personal~~)) contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) ((**Differentiated funding:** For the 2011-12 and 2012-13 school year, school districts reporting student enrollment pursuant to the requirements of this section shall generate and receive funding at eighty percent of the formula funding that would have been generated under the state basic education formula for such enrollment unless the following conditions are met, in which case school districts shall generate and receive funding at ninety percent of the formula funding:

(a) For alternative learning experience online programs under RCW 28A.150.262, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives either:

(i) Face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection; or

(ii) Synchronous digital instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection if the student's written student learning plan includes only online courses as defined by RCW 28A.250.010.

(b) For all other types of alternative learning experience programs, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection;

(c) The instructional contact time must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan;

(d) Using the estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan, as required in subsection (3)(c)(ii) of this section:

(i) For students whose learning plan includes an estimate of five hours per school week or less, on average at least fifteen minutes of contact per school week during each month of reported enrollment for the student;

(ii) For students whose learning plan includes an estimate of more than five hours per school week but less than sixteen hours per school week, on average at least thirty minutes of contact per school week during each month of reported enrollment for the student;

(iii) For students whose learning plan includes an estimate of more than fifteen hours per school week, on average at least one hour of contact per school week during each month of reported enrollment for the student.

(9))) **Assessment requirements:**

(a) All students enrolled in alternative learning experience((s)) courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident alternative learning experience ((schools, programs, or)) courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(((10) **Program evaluation requirements:** School districts offering alternative learning experiences must engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation must follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

(11))) (9) **Reporting requirements:**

(a) Each school district offering alternative learning experience((s)) courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experience((~~s~~)) courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experience((~~s~~)) courses or course work must ((~~report~~)) annually report the following to the superintendent of public instruction ((~~on the types of programs and course offerings subject to this section. The annual report shall identify~~)):

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program((~~. The annual report shall~~)); and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(((~~12~~))) (d) Each school district offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. Beginning with the 2013-14 school year, school districts must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(10) **Documentation and record retention requirements:** School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (((~~11~~))) (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of ((~~direct personal~~)) contact must include the date of the ((~~direct personal~~)) contact, the method of communication by which the ((~~direct personal~~)) contact was accomplished, and documentation to support the subject of the communication.

(((~~(ii) For students receiving either in-person instructional contact time or synchronous digital instructional contact time, evidence may include classroom attendance records;~~)))

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section((~~; and~~

~~(j) Evidence of face-to-face contact required in subsection (8)(a) of this section~~)).

WSR 13-22-083
PERMANENT RULES
APPLE COMMISSION

[Filed November 6, 2013, 7:57 a.m., effective December 7, 2013]

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

Purpose: The rule identifies those authorized to make expenditures for the Washington apple commission on promotional hosting and the objectives for those expenditures.

Statutory Authority for Adoption: RCW 15.04.200, chapters 15.24, 34.05 RCW.

Adopted under notice filed as WSR 13-19-044 on September 13, 2013.

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 1, Amended 0, Repealed 0.

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

Date Adopted: November 6, 2013.

Todd Fryhover
President

Chapter 24-16 WAC

RULES OF THE WASHINGTON STATE APPLE COMMISSION

NEW SECTION

WAC 24-16-030 Rules for implementation of promotional hosting by the Washington apple commission. RCW 15.04.200 provides that agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners. "Promotional hosting" means the hosting of individuals or groups of individuals at

meetings, meals, events, tours, or other gatherings for the purpose of agricultural development, trade promotion, cultivating trade relations, or in the aid of the marketing, advertising, or sale of Washington state apples. "Hosting" may include providing meals, refreshments, lodging, transportation, gifts of nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

The rules governing promotional hosting expenditures for the Washington apple commission shall be as follows:

(1) Budget approval. Commission expenditures for agricultural development or trade promotion and promotional hosting shall be pursuant to specific budget items in the commission's annual budget as approved by the commission and the director.

(2) Officials and agents authorized to make expenditures. The following officials and agents are authorized to make expenditures for agricultural development, trade promotion, and promotional hosting in accordance with the provisions of these rules:

(a) Commissioners;

(b) President;

(c) Vice-president;

(d) Export marketing staff;

(e) Contracted international representatives of the commission as defined within the scope of their contract with the commission.

Individual commissioners shall make promotional hosting expenditures, and seek reimbursements for those expenditures, only in those instances where expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be identified and supported by an expense report and promotional hosting form to which receipts are attached. These forms will be supplied by the commission, and shall require the following information:

(a) Name and company (if applicable) of each person hosted;

(b) General purpose of the hosting;

(c) Date of the hosting;

(d) Location of the hosting;

(e) To whom payment was or will be made;

(f) Signature of person seeking payment or reimbursement.

(4) The commission chair, president/secretary, and vice-president/treasurer are authorized to approve direct payment or reimbursements submitted in accordance with these rules: Provided, That they are not authorized to approve their own invoices.

(5) The following persons may be hosted when it is reasonably believed such hosting will promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state apples: Provided, That such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private business, associations, commissions, and accompanying staff and interpreter(s);

(b) Foreign government officials and accompanying staff and interpreter(s);

(c) Federal, state and local officials: Provided, That lodging, meals, and transportation will not be provided when such officials may obtain full reimbursement for these expenses from their governmental employer;

(d) The general public, at meetings or gatherings open to the general public;

(e) Commissioners, employees and contracted international representatives of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through (d) of this subsection are being hosted, will promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state apples;

(f) Spouses, or significant others of the persons listed in (a), (b), (c), and (e) of this subsection when attendance of such spouse or significant other is customary and expected or will serve to promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state apples.

WSR 13-22-094
PERMANENT RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed November 6, 2013, 10:51 a.m., effective December 7, 2013]

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

Purpose: This rule amendment is necessary for implementation of the Affordable Care Act on January 1, 2014. The health care authority is creating new WAC 182-526-0102 to address coordinating appeals with the Washington health benefits exchange.

Statutory Authority for Adoption: RCW 41.05.021; 42 C.F.R. § 431, 435, and 457; 45 C.F.R. § 155.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148).

Adopted under notice filed as WSR 13-20-142 on October 2, 2013.

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

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

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

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

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

Date Adopted: November 6, 2013.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-526-0102 Coordinated appeals process with the Washington health benefits exchange. (1) The health care authority (HCA) coordinates with the Washington state health benefits exchange (HBE) to ensure a seamless appeal process for determinations related to eligibility for Washington apple health (WAH) when the modified adjusted gross income (MAGI) methodology is used as described in WAC 182-509-0305.

(2) An applicant, recipient, or an authorized representative of an applicant or recipient may request a WAH hearing:

(a) By telephone;

(b) By mail (which should be sent to Health Care Authority, P.O. Box 45504, Olympia, WA 98504-5504);

(c) In person;

(d) By facsimile transmission;

(e) By e-mail; or

(f) By any other commonly available electronic means.

(3) When an applicant or recipient appeals an HBE determination of eligibility for health insurance premium tax credits (HIPTC) or cost-sharing reductions with HBE and also requests a hearing with the health care authority related to WAH eligibility, the ALJ will not require the applicant or recipient to submit information to the ALJ that the applicant or recipient previously submitted to HBE.

(4) If an applicant or recipient submits to HBE a request for a hearing related to WAH eligibility, the ALJ will accept the date HBE received the request for the hearing as the date filed for the purposes of timeliness standards and will treat it as a valid hearing request.

(5) If the applicant or recipient appeals only the determination related to WAH eligibility, subsection (3) of this section does not apply.