WSR 14-23-010
EXPEDITED RULES
DEPARTMENT OF HEALTH
(Pharmacy Quality Assurance Commission)
[Filed November 6, 2014, 2:15 p.m.]

Title of Rule and Other Identifying Information: WAC 246-205-010, 246-320-010, 246-320-016, 246-322-210, 246-330-010, 246-335-015, 246-335-175 and 246-337-105, changing references from board of pharmacy and pharmacy board to the pharmacy quality assurance commission, and making three corrections.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Deborah Johnson, Policy Analyst, Office of the Assistant Secretary for Health Systems Quality Assurance, Washington State Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, AND RECEIVED BY January 19, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Existing rule language refers, variously, to both a board of pharmacy and pharmacy board. The proposal uniformly changes these references to the pharmacy quality assurance commission. In one case (WAC 246-320-010(48)), the omitted word "under" is added. In WAC 246-205-010, the code reviser has added an amendment, placing into alphabetical order an unrelated definition with no changes to the text; and numbering is added.

Reasons Supporting Proposal: HB 1609 (chapter 19, Laws of 2013), which became effective July 28, 2013, changed the title and reference of the board of pharmacy to the pharmacy quality assurance commission. This rule is being proposed under an expedited rule-making process because the proposed rule corrects errors and makes name changes, but does not change the effect of the rule or add any additional requirements.

Statutory Authority for Adoption: Title 246 WAC sections that will be amended per HB 1609 (chapter 19, Laws of 2013) and their corresponding statutory authorities[1]: For WAC 246-205-010 is RCW 64.44.070; for WAC 246-320-010 and 246-320-016 is RCW 43.70.040 and 70.41.030; for WAC 246-322-210 and 246-337-105 is RCW 71.12.670; for WAC 246-330-010 is RCW 43.20.050, 43.70.040, 70.230.-020 and 71.12.670; for WAC 246-335-010 and 246-335-175 is RCW 70.127.120.

[1]Limited to rules under the secretary of health and/or state board of health's (or joint) authority that have not already been updated, or are not already planned to be updated, under other rule-making processes.

Statute Being Implemented: HB 1609 (chapter 19, Laws of 2013).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Deborah Johnson, Policy Analyst, 111 Israel Road S.E., Tumwater, WA, (360) 236-4988.

November 6, 2014
Dennis E. Worsham
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 03-02-022, filed 12/23/02, effective 1/23/03)

WAC 246-205-010 Definitions. For the purposes of this chapter, the following words and phrases shall have the following meanings unless the content clearly indicates otherwise.

(1) "Authorized contractor" means any person or persons:

• Registered under chapter 18.27 RCW; and

• Certified by the department to decontaminate, demolish, or dispose of contaminated property as required by chapter 64.44 RCW and this chapter.

(2) "Basic course" means a training course which has been sponsored or approved by the department for workers and supervisors who perform or supervise decontamination on illegal drug manufacturing or storage sites.

(3) "Certificate" means a department issued written approval under this chapter.

(4) "Certified" means a person who has department issued written approval under this chapter.

(5) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated, but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(6) "Decontamination" means the process of reducing levels of known contaminants to the lowest practical level using currently available methods and processes.

(7) "Department" means the Washington state department of health.

(8) "Disposal of contaminated property" means the disposition of contaminated property under the provisions of chapter 70.105 RCW.

(9) "Hazardous chemicals" means the following substances used in the manufacture of illegal drugs:

• Hazardous substances as defined in RCW 70.105D.-020; and

• Precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the ((~~state board of~~)) pharmacy quality assurance commission, has determined present an immediate or long-term health hazard to humans.

(10) "Illegal drug manufacturing or storage site" means any property where a person illegally manufactures or stores

a controlled substance or a law enforcement agency or the property owner believes a person illegally manufactured or stored a controlled substance.

(11) "Initial site assessment" means the first evaluation of a property to determine the nature and extent of observable damage and contamination.

(12) "List of contaminated properties" means a list of properties contaminated by illegal drug manufacturing or the storage of hazardous chemicals.

(13) "Local department" means the jurisdictional local health department or district.

(14) "Local health officer" means a health officer or authorized representative as defined under chapters 70.05, 70.08, and 70.46 RCW.

(15) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or other entity.

(16) "Posting" means attaching a written or printed announcement conspicuously on property which may be, or is determined to be, contaminated by illegal drug manufacturing or the storage of a hazardous chemical.

(17) "Property" means any site, lot, parcel of land, structure, or part of a structure involved in the illegal manufacture of a drug or storage of a hazardous chemical including, but not limited to:

- Single-family residences;
- Units or multiplexes;
- Condominiums;
- Apartment buildings;
- Motels and hotels;
- Boats;
- Motor vehicles;
- Trailers;
- Manufactured housing;
- Any ship, booth, or garden; or
- Any site, lot, parcel of land, structure, or part of a structure that may be contaminated by previous use.

(18) "Property owner" means a person with a lawful right of possession of the property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

(19) "Refresher course" means a department sponsored or approved biennial training course for decontamination workers and supervisors. An approved refresher course:

- Reviews the subjects taught in the initial training course; and
- Includes updated information on emerging decontamination technology.

(20) "Storage site" means any property used for the storage of hazardous chemicals or illegally manufactured controlled substances.

(21) "Supervisor" means a person certified by the department and employed by an authorized contractor who is on site during the decontamination of an illegal drug manufacturing or storage site and who is responsible for the activities performed.

(22) "Warning" means a sign posted by the local health officer conspicuously on the site of an illegal drug manufacturing or storage site informing potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe.

(23) "Worker" means a person certified by the department and employed by an authorized contractor who performs decontamination of an illegal drug manufacturing or storage site.

((~~"Warning" means a sign posted by the local health officer conspicuously on the site of an illegal drug manufacturing or storage site informing potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe.~~))

AMENDATORY SECTION (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

WAC 246-320-010 Definitions. For the purposes of this chapter and chapter 70.41 RCW, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means verbal behavior, harassment, or other actions which may result in emotional or behavioral stress or injury.

(2) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(3) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(4) "Alteration" means any change, addition, or modification to an existing hospital or a portion of an existing hospital.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, which does not affect fire and life safety, and which does not add beds or facilities in addition to that for which the hospital is currently licensed.

(5) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into a health care setting or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

(6) "Authentication" means the process used to verify an entry is complete, accurate, and final.

(7) "Bed, bed space or bassinet" means the physical environment and equipment (both movable and stationary)

designed and used for twenty-four hour or more care of a patient including level 2 and 3 bassinets. This does not include stretchers, exam tables, operating tables, well baby bassinets, labor bed, and labor-delivery-recovery beds.

(8) "Child" means an individual under the age of eighteen years.

(9) "Clinical evidence" means the same as original clinical evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; and

(e) Medical photographs.

(10) "Critical care unit or service" means the specialized medical and nursing care provided to patients facing an immediate life-threatening illness or injury. Care is provided by multidisciplinary teams of highly skilled physicians, nurses, pharmacists or other health professionals who interpret complex therapeutic and diagnostic information and have access to sophisticated equipment.

(11) "Department" means the Washington state department of health.

(12) "Dietitian" means an individual meeting the eligibility requirements for active membership in the American Dietetic Association described in *Directory of Dietetic Programs Accredited and Approved*, *American Dietetic Association*, edition 100, 1980.

(13) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

(14) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official *U.S. Pharmacopoeia* or the official *Homeopathic Pharmacopoeia of the United States*;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(15) "Electrical receptacle outlet" means an outlet where one or more electrical receptacles are installed.

(16) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(17) "Emergency contraception" means any health care treatment approved by the Food and Drug Administration that prevents pregnancy, including, but not limited to, administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

(18) "Emergency department" means the area of a hospital where unscheduled medical or surgical care is provided to patients who need care.

(19) "Emergency room" means a space where emergency services are delivered and set apart by floor-to-ceiling partitions on all sides with proper access to an exit access and with all openings provided with doors or windows.

(20) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

(21) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(22) "Emergency triage" means the immediate patient assessment by a registered nurse, physician, or physician assistant to determine the nature and urgency of the person's medical need for treatment.

(23) "Family" means individuals designated by a patient who need not be relatives.

(24) "General hospital" means a hospital that provides general acute care services, including emergency services.

(25) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the hospital.

(26) "High-risk infant" means an infant, regardless of age, whose existence is compromised, prenatal, natal, or postnatal factors needing special medical or nursing care.

(27) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include:

(a) Hospice care centers which come within the scope of chapter 70.127 RCW;

(b) Hotels, or similar places, furnishing only food and lodging, or simply domiciliary care;

(c) Clinics or physicians' offices, where patients are not regularly kept as bed patients for twenty-four hours or more;

(d) Nursing homes, as defined in and which come within the scope of chapter 18.51 RCW;

(e) Birthing centers, which come within the scope of chapter 18.46 RCW;

(f) Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

(g) Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(28) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(29) "Infant" means an individual not more than twelve months old.

(30) "Invasive procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(31) "Licensed practical nurse" means an individual licensed under provisions of chapter 18.79 RCW.

(32) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

(33) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

(34) "Medical staff" means physicians and other practitioners appointed by the governing authority.

(35) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(36) "Multidisciplinary treatment team" means a group of individuals from various disciplines and clinical services who assess, plan, implement, and evaluate treatment for patients.

(37) "Neglect" means mistreatment or maltreatment; a disregard of consequences or magnitude constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts which may result in emotional or behavioral problems, physical manifestations, and disorders.

(38) "Neonate" means a newly born infant under twenty-eight days of age.

(39) "Neonatologist" means a pediatrician who is board certified in neonatal-perinatal medicine or board eligible in neonatal-perinatal medicine, provided the period of eligibility does not exceed three years, as defined and described in *Directory of Residency Training Programs* by the Accreditation Council for Graduate Medical Education, American Medical Association, 1998 or the *American Osteopathic Association Yearbook and Directory*, 1998.

(40) "New construction" means any of the following:

(a) New facilities to be licensed as a hospital;

(b) Renovation; or

(c) Alteration.

(41) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(42) "Nursing personnel" means registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care.

(43) "Operating room (OR)" means a room intended for invasive and noninvasive surgical procedures.

(44) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(a) "Inpatient" means services that require admission to a hospital for twenty-four hours or more.

(b) "Outpatient" means services that do not require admission to a hospital for twenty-four hours or more.

(45) "Patient care areas" means all areas of the hospital where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

(46) "Patient care unit or area" means a physical space of the hospital including rooms or areas containing beds or bed spaces, with available support ancillary, administrative, and services for patient.

(47) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(48) "Pharmacist" means an individual licensed by the ((~~state board of~~)) pharmacy quality assurance commission under chapter 18.64 RCW.

(49) "Pharmacy" means every place properly licensed by the ((~~board of~~)) pharmacy quality assurance commission where the practice of pharmacy is conducted.

(50) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(51) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

(52) "Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition.

(53) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interven-

tions for implementation by designated hospital staff under defined circumstances under hospital policy and procedure.

(54) "Psychiatric service" means the treatment of patients pertinent to a psychiatric diagnosis.

(55) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, obstetrical delivery, surgery, or other diagnostic or treatment procedures.

(56) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

(57) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

(58) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(59) "Seclusion" means the involuntary confinement of a patient in a room or area where the patient is physically prevented from leaving.

(60) "Seclusion room" means a secure room designed and organized for temporary placement, care, and observation of one patient with minimal sensory stimuli, maximum security and protection, and visual and auditory observation by authorized personnel and staff. Doors of seclusion rooms have staff-controlled locks.

(61) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the items in (a) through (g) of this subsection.

(62) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10 point scale with 1 being the least and 10 being the most pain.

(63) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories:

(a) Patients with a cardiac condition;

(b) Patients with an orthopedic condition;

(c) Patients receiving a surgical procedure; and

(d) Any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

(64) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(65) "Surgical procedure" means any manual or operative procedure performed upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defect, prolonging life or relieving suffering, and involving any of the following:

(a) Incision, excision, or curettage of tissue;

(b) Suture or repair of tissue including a closed as well as an open reduction of a fracture;

(c) Extraction of tissue including the premature extraction of the products of conception from the uterus; or

(d) An endoscopic examination.

(66) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity as defined in RCW 7.70.065 or has given permission.

(67) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a general hospital providing emergency services and for continuity of care for that patient.

(68) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(69) "Unlicensed assistive personnel (UAP)" means individuals trained to function in an assistive role to nurses in the provision of patient care, as delegated by and under the supervision of the registered nurse. Typical activities performed by unlicensed assistive personnel include, but are not limited to: Taking vital signs; bathing, feeding, or dressing patients; assisting patient with transfer, ambulation, or toileting. Definition includes: Nursing assistants; orderlies; patient care technicians/assistants; and graduate nurses (not yet licensed) who have completed unit orientation. Definition excludes: Unit secretaries or clerks; monitor technicians; therapy assistants; student nurses fulfilling educational requirements; and sitters who are not providing typical UAP activities.

(70) "Victim of sexual assault" means a person is alleged to have been sexually assaulted and who presents as a patient.

(71) "Vulnerable adult" means, as defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself; an adult with a developmental disability under RCW 71A.10.020; an adult with a legal guardian under chapter 11.88 RCW; an adult living in a long-term care facility (an adult family home, assisted living facility or nursing home); an adult living in their own or a family's home receiving services from an agency or contracted individual provider; or an adult self-directing their care under RCW 74.39.050. For the purposes of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves. For the purposes of this chapter, it shall also include hospitalized adults.

(72) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-016 Department responsibilities—On-site survey and complaint investigation. This section

outlines the department's on-site survey and complaint investigation activities and roles.

(1) Surveys. The department will:

(a) Conduct on-site surveys of each hospital on average at least every eighteen months or more often using the health and safety standards in this chapter and chapter 70.41 RCW;

(b) Coordinate the on-site survey with other agencies, including local fire jurisdictions, state fire marshal, ((~~state~~)) and the pharmacy ((~~board~~)) quality assurance commission, and report the survey findings to those agencies;

(c) Notify the hospital in writing of the survey findings following each on-site survey;

(d) Require each hospital to submit a corrective action plan addressing each deficient practice identified in the survey findings;

(e) Notify the hospital when the hospital submitted plan of correction adequately addresses the survey findings; and

(f) Accept on-site surveys conducted by the Joint Commission or American Osteopathic Association as meeting the eighteen-month survey requirement in accordance with RCW 70.41.122.

(2) Complaint investigations. The department will:

(a) Conduct an investigation of every complaint against a hospital that concerns patient well being;

(b) Notify the hospital in writing of state complaint investigation findings following each complaint investigation;

(c) Require each hospital to submit a corrective action plan addressing each deficient practice identified in the complaint investigation findings; and

(d) Notify the hospital when the hospital submitted plan of correction adequately addresses the complaint investigation findings.

(3) The department may:

(a) Direct a hospital on how to implement a corrective action plan based on the findings from an on-site survey or complaint investigation; or

(b) Contact a hospital to discuss the findings of the Joint Commission or American Osteopathic Association on-site accreditation survey.

AMENDATORY SECTION (Amending WSR 95-22-012, filed 10/20/95, effective 11/20/95)

WAC 246-322-210 Pharmacy and medication services. The licensee shall:

(1) Maintain the pharmacy in the hospital in a safe, clean, and sanitary condition;

(2) Provide evidence of current approval of pharmacy services by the ((~~Washington state board of~~)) pharmacy quality assurance commission under chapter 18.64 RCW;

(3) Develop and implement procedures for prescribing, storing, and administering medications according to state and federal laws and rules, including:

(a) Assuring professional staff who prescribe are authorized to prescribe under chapter 69.41 RCW;

(b) Assuring orders and prescriptions for medications administered and self-administered include:

(i) Date and time;

(ii) Type and amount of drug;

(iii) Route of administration;

(iv) Frequency of administration; and

(v) Authentication by professional staff;

(c) Administering drugs;

(d) Self-administering drugs;

(e) Receiving and recording or transcribing verbal or telephone drug orders by authorized staff;

(f) Authenticating verbal and telephone orders by prescriber in a timely manner, not to exceed forty-eight hours for inpatients;

(g) Use of medications and drugs owned by the patient but not dispensed by the hospital pharmacy, including:

(i) Specific written orders;

(ii) Identification and administration of drug;

(iii) Handling, storage and control;

(iv) Disposition; and

(v) Pharmacist and physician inspection and approval prior to patient use to ensure proper identification, lack of deterioration, and consistency with current medication profile;

(h) Maintaining drugs in patient care areas of the hospital including:

(i) Hospital pharmacist or consulting pharmacist responsibility;

(ii) Legible labeling with generic and/or trade name and strength as required by federal and state laws;

(iii) Access only by staff authorized access under hospital policy;

(iv) Storage under appropriate conditions specified by the hospital pharmacist or consulting pharmacist, including provisions for:

(A) Storing medicines, poisons, and other drugs in a specifically designated, well-illuminated, secure space;

(B) Separating internal and external stock drugs; and

(C) Storing Schedule II drugs in a separate locked drawer, compartment, cabinet, or safe;

(i) Preparing drugs in designated rooms with ample light, ventilation, sink or lavatory, and sufficient work area;

(j) Prohibiting the administration of outdated or deteriorated drugs, as indicated by label;

(k) Restricting access to pharmacy stock of drugs to:

(i) Legally authorized pharmacy staff; and

(ii) Except for Schedule II drugs, to a registered nurse designated by the hospital when all of the following conditions are met:

(A) The pharmacist is absent from the hospital;

(B) Drugs are needed in an emergency, and are not available in floor supplies; and

(C) The registered nurse, not the pharmacist, is accountable for the registered nurse's actions;

(4) The appropriate professional staff committee shall approve all policies and procedures on drugs, after documented consultation with:

(a) The pharmacist or pharmacist consultant directing hospital pharmacy services; and

(b) An advisory group comprised of representatives from the professional staff, hospital administration, and nursing services;

(5) When planning new construction of a pharmacy:

(a) Follow the general design requirements for architectural components, electrical service, lighting, call systems, hardware, interior finishes, heating, plumbing, sewerage, ventilation/air conditioning, and signage in WAC 246-318-540;

(b) Provide housekeeping facilities within or easily accessible to the pharmacy;

(c) Locate pharmacy in a clean, separate, secure room with:

(i) Storage, including locked storage for Schedule II controlled substances;

(ii) All entrances equipped with closers;

(iii) Automatic locking mechanisms on all entrance doors to preclude entrance without a key or combination;

(iv) Perimeter walls of the pharmacy and vault, if used, constructed full height from floor to ceiling;

(v) Security devices or alarm systems for perimeter windows and relites;

(vi) An emergency signal device to signal at a location where twenty-four-hour assistance is available;

(vii) Space for files and clerical functions;

(viii) Break-out area separate from clean areas; and

(ix) Electrical service including emergency power to critical pharmacy areas and equipment;

(d) Provide a general compounding and dispensing unit, room, or area with:

(i) A work counter with impermeable surface;

(ii) A corrosion-resistant sink, suitable for handwashing, mounted in counter or integral with counter;

(iii) Storage space;

(iv) A refrigeration and freezing unit; and

(v) Space for mobile equipment;

(e) If planning a manufacturing and unit dose packaging area or room, provide with:

(i) Work counter with impermeable surface;

(ii) Corrosion-resistant sink, suitable for handwashing, mounted in counter or integral with counter; and

(iii) Storage space;

(f) Locate admixture, radiopharmaceuticals, and other sterile compounding room, if planned, in a low traffic, clean area with:

(i) A preparation area;

(ii) A work counter with impermeable surface;

(iii) A corrosion-resistant sink, suitable for handwashing, mounted in counter or integral with counter;

(iv) Space for mobile equipment;

(v) Storage space;

(vi) A laminar flow hood in admixture area; and

(vii) Shielding and appropriate ventilation according to WAC 246-318-540 (3)(m) for storage and preparation of radiopharmaceuticals;

(g) If a satellite pharmacy is planned, comply with the provisions of:

(i) Subsection (5)(a), (5)(c)(i), (ii), (iii), (iv), (v), and (vi) of this section when drugs will be stored;

(ii) Subsection (5)(c)(vii), (viii), and (ix) of this section, if appropriate; and

(iii) Subsections (5)(d) and (f) of this section if planned;

(h) If a separate outpatient pharmacy is planned, comply with the requirements for a satellite pharmacy including:

(i) Easy access;

(ii) A conveniently located toilet meeting accessibility requirements in WAC 51-20-3100; and

(iii) A private counseling area.

AMENDATORY SECTION (Amending WSR 13-08-068, filed 4/1/13, effective 5/2/13)

WAC 246-330-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means to impose willful or reckless mental or emotional anguish by threat, verbal behavior, harassment, or other verbal or nonverbal actions which may result in emotional or behavioral stress or injury.

(2) "Advanced registered nurse practitioner" means an individual licensed under chapter 18.79 RCW.

(3) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(4) "Alteration" means any change, addition, functional change, or modification to an existing ambulatory surgical facility or a portion of an existing ambulatory surgical facility.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, does not affect fire and life safety, and does not add facilities in addition to that for which the ambulatory surgical facility is currently licensed. Minor alterations do not require prior review and approval by the department.

(5) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. An ambulatory surgical facility includes one or more surgical suites that are adjacent to and within the same building as, but not in, the office of a practitioner in an individual or group practice, if the primary purpose of the one or more surgical suites is to provide specialty or multispecialty outpatient surgical services, irrespective of the types of anesthesia administered in the one or more surgical suites. An ambulatory surgical facility that is adjacent to and within the same building as the office of a practitioner in an individual or group practice may include a surgical suite that shares a reception area, restroom, waiting room, or wall with the office of the practitioner in an individual or group practice.

(6) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into the ambulatory surgical facility or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

(7) "Authentication" means the process used to verify an entry is complete, accurate, and final.

(8) "Change of ownership" means:

(a) A sole proprietor who transfers all or part of the ambulatory surgical facility's ownership to another person or persons;

(b) The addition, removal, or substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or

(c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes.

(9) "Clinical evidence" means evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; or

(e) Medical photographs.

(10) "Department" means the Washington state department of health.

(11) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

(12) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(13) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent of immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to provide a safe transfer to a hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

(14) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(15) "Family" means individuals designated by a patient who need not be relatives.

(16) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Lower levels of sedation that unintentionally progress to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(17) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the ambulatory surgical facility.

(18) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services as defined in chapter 70.41 RCW.

(19) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(20) "Invasive medical procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(21) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

(22) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

(23) "Medical staff" means practitioners and advanced registered nurse practitioners appointed by the governing authority.

(24) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(25) "Near miss" means an event which had the potential to cause serious injury, death, or harm but did not happen due to chance, corrective action or timely intervention.

(26) "Neglect" means mistreatment or maltreatment, a disregard of consequences constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts that may result in emotional or behavioral problems, physical manifestations, and disorders.

(27) "New construction" means any renovation, alteration or new facility to be licensed as an ambulatory surgical facility.

(28) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(29) "Operating room" means a room intended for invasive procedures.

(30) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(31) "Patient care areas" means all areas of the ambulatory surgical facility where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

(32) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(33) "Pharmacist" means an individual licensed by the ((~~state board of~~)) pharmacy quality assurance commission under chapter 18.64 RCW.

(34) "Pharmacy" means every place properly licensed by the ((~~board of~~)) pharmacy quality assurance commission where the practice of pharmacy is conducted.

(35) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(36) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(37) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

(38) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated ambulatory surgical facility staff under defined circumstances recorded in policy and procedure.

(39) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, surgery, or other diagnostic or treatment procedures.

(40) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

(41) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

(42) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(43) "Sedation" means the administration of drugs to obtund, dull, reduce the intensity of pain or awareness, allay patient anxiety and control pain during a diagnostic or therapeutic procedure where the administration of those drugs by any route carries the risk of loss of protective reflexes to include any of the following:

(a) "Minimal sedation or anxiolysis" is a state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected;

(b) "Moderate or conscious sedation" is a depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(c) "Deep sedation" is a depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(44) "Sexual assault" means, according to RCW 70.125.030, one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the offenses in (a) through (h) of this subsection.

(45) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10-point scale with 1 being the least and 10 being the most pain.

(46) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(47) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cytogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of disease, process or injury through that branch of medicine that treats diseases, injuries and deformities by manual or operative methods by a practitioner.

(48) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity or has given permission.

(49) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a hospital providing emergency services and for continuity of care for that patient.

(50) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(51) "Vulnerable adult" means:

(a) As defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself;

(b) An adult with a developmental disability per RCW 71A.10.020;

(c) An adult with a legal guardian per chapter 11.88 RCW;

(d) An adult living in a long-term care facility (an adult family home, boarding home or nursing home);

(e) An adult living in their own or a family's home receiving services from an agency or contracted individual provider; or

(f) An adult self-directing their care per RCW 74.39.050;

(g) For the purposes of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(52) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

AMENDATORY SECTION (Amending WSR 04-01-197, filed 12/24/03, effective 1/24/04)

WAC 246-335-015 Definitions. For the purposes of this chapter, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "AAA" means the area agency on aging designated by the aging and adult services administration to contract for home care services with the department of social and health services.

(2) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a licensed nurse, therapist, dietician, or social worker to assess health status and progress.

(3) "Administrator" means an individual responsible for managing the operation of an in-home services agency.

(4) "Agency" means an in-home services agency licensed to provide home health, home care, hospice or hospice care center services.

(5) "Assessment" means:

(a) For home health and hospice agencies and hospice care centers, an evaluation of patient needs by an appropriate health care professional; or

(b) For home care agencies, an on-site visit by appropriate agency personnel to determine services requested or recommended to meet client needs.

(6) "Authenticated" means a written signature or unique identifier verifying accuracy of information.

(7) "Authorizing practitioner" means an individual authorized to approve a home health, hospice or hospice care center plan of care.

(a) For home health services:

(i) A physician licensed under chapter 18.57 or 18.71 RCW;

(ii) A podiatric physician and surgeon licensed under chapter 18.22 RCW; or

(iii) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW;

(b) For hospice and hospice care center services:

(i) A physician licensed under chapter 18.57 or 18.71 RCW; or

(ii) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW;

(8) "Bereavement" means care provided to the patient's family with the goal of alleviating the emotional and spiritual discomfort associated with the patient's death.

(9) "Client" means an individual receiving home care services.

(10) "Construction" for the purposes of hospice care centers means:

(a) New building(s) to be used as a hospice care center;

(b) Addition(s) to or conversion(s), either in whole or in part, of an existing building or buildings to be used as a hospice care center or a portion thereof; or

(c) Alteration or modification to a hospice care center.

(11) "Contractor" means an individual, person, or licensee who has a written contract with a licensee to provide patient or client care services or equipment.

(12) "Deemed status" means a designation assigned by the department for an in-home services agency licensed to provide home health, home care, or hospice services meeting the provisions of WAC 246-335-050, certified or accredited by organizations recognized by RCW 70.127.085, or monitored under contract with the department of social and health services under RCW 70.127.085 to provide home care services.

(13) "Department" means the Washington state department of health.

(14) "Dietician" means a person certified under chapter 18.138 RCW or registered by the American Dietetic Association.

(15) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, or related services that support the plan of care provided by in-home services agencies licensed to provide home health, hospice or hospice care center services.

(16) "Document" means the process of recording information relating to patient or client care verified by signature or unique identifier, title, and date.

(17) "Family" means an individual or individuals who are important to, and designated in writing by, the patient or client and need not be relatives, or who are legally authorized to represent the patient or client.

(18) "Health care professional" means an individual who provides health or health-related services within the individual's authorized scope of practice and who is licensed, registered or certified under Title 18 RCW, Business and professions.

(19) "Home care agency" or "in-home services agency licensed to provide home care services" means a person administering or providing home care services directly or through a contract arrangement to clients in places of permanent or temporary residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260 (3)(e) and rules adopted thereunder is not considered a home health agency for purposes of this chapter.

(20) "Home care aide" means an individual providing home care services.

(21) "Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable clients that enables them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical tasks, as defined in this section or delegated tasks of nursing under RCW 18.79.260 (3)(e) and rules adopted thereunder.

(22) "Home health agency" or "in-home services agency licensed to provide home health services" means a person administering or providing two or more home health services directly or through a contract arrangement to patients in places of permanent or temporary residence. A person administering or providing only nursing services may elect to be an in-home services agency licensed to provide home health services.

(23) "Home health aide" means an individual registered or certified as a nursing assistant under chapter 18.88A RCW.

(24) "Home health aide services" means services provided by home health aides in an in-home services agency licensed to provide home health, hospice, or hospice care center services under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care may include ambulation and exercise, medication assistance level 1 and level 2, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services, and other nonmedical tasks, as defined in this section.

(25) "Home health services" means services provided to ill, disabled, or vulnerable patients. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, home medical supplies or equipment services, and professional medical equipment assessment services.

(26) "Home medical supplies or equipment services" means providing diagnostic, treatment, and monitoring equipment and supplies used in the direct care of patients or clients as stated in a plan of care.

(27) "Homelike" for the purposes of a hospice care center means an environment having the qualities of a home, including privacy, comfortable surroundings, opportunities for patient self-expression, and supporting interaction with the family, friends, and community.

(28) "Hospice agency" or "in-home services agency licensed to provide hospice services" means a person administering or providing hospice services directly or through a contract arrangement to patients in places of permanent or temporary residence under the direction of an interdisciplinary team.

(29) "Hospice care center" or "in-home services agency licensed to provide hospice care center services" means a homelike, noninstitutional facility where hospice services are provided, and that meet the requirements for operation under RCW 70.127.280 and applicable rules.

(30) "Hospice care center service category" means the different levels of care provided in a hospice care center, including continuous care, general inpatient care, inpatient respite care, and routine home care.

(a) "Continuous care" means care for patients requiring a minimum of eight hours of one-to-one services in a calendar day, with assessment and supervision by an RN. An RN, LPN or home health aide may provide the care or treatment, according to practice acts and the rules adopted thereunder, of acute or chronic symptoms, including a crisis in their caregiving.

(b) "General inpatient care" means care for patients requiring an RN on-site twenty-four hours a day, for assessment and supervision. An RN, LPN or home health aide may provide the care or treatment, according to practice acts and the rules adopted thereunder, of acute or chronic symptoms, including a crisis in their caregiving.

(c) "Inpatient respite care" means care for patients whose caregivers require short-term relief of their caregiving duties.

(d) "Routine home care" means the core level of service for patients not receiving continuous care, general inpatient care, or inpatient respite care.

(31) "Hospice care center services" means hospice services provided in a hospice care center and may include any of the levels of care defined as hospice care center service categories.

(32) "Hospice services" means symptom and pain management provided to a terminally ill patient, and emotional, spiritual and bereavement support for the patient and family in a place of temporary or permanent residence, including hospice care centers, and may include the provision of home health and home care services for the terminally ill patient through an in-home services agency licensed to provide hospice or hospice care center services.

(33) "In-home services agency" or "in-home services licensee" means a person licensed to administer or provide home health, home care, hospice or hospice care center services directly or through a contract arrangement to patients or clients in a place of temporary or permanent residence.

(34) "In-home services category" means home health, home care, hospice, or hospice care center services.

(35) "Interdisciplinary team" means the group of individuals involved in patient care providing hospice services or hospice care center services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor and volunteer.

(36) "Licensed practical nurse" or "LPN" means an individual licensed as a practical nurse under chapter 18.79 RCW.

(37) "Licensed nurse" means a licensed practical nurse or registered nurse.

(38) "Licensee" means the person to whom the department issues the in-home services license.

(39) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. These patients require periodic monitoring by a licensed nurse, therapist, dietician, or social worker to assess health status and progress.

(40) "Managed care plan" means a plan controlled by the terms of the reimbursement source.

(41) "Medical director" means a physician licensed under chapter 18.57 or 18.71 RCW responsible for the medical component of patient care provided in an in-home services agency licensed to provide hospice and hospice care center services according to WAC 246-335-055 (4)(a).

(42) "Medication assistance level 1" means home health aide assistance with medications, that includes the application, instillation or insertion of medications under a plan of care, for patients of an in-home services agency licensed to provide home health, hospice or hospice care center services and are under the direction of appropriate agency health care personnel. The assistance must be provided in accordance with the Nurse Practice Act as defined in chapter 18.79 RCW and rules adopted thereunder and the nursing assistant scope of practice as defined in chapter 18.88A RCW and the rules adopted thereunder.

(43) "Medication assistance level 2" means assistance with medications as defined by the ((~~board of~~)) pharmacy quality assurance commission in chapter 246-888 WAC.

(44) "Nonmedical tasks" means those tasks which do not require clinical judgment and which can be performed by unlicensed individuals. These tasks are ordinarily performed by the patient or client, which if not for the patient or client's cognitive or physical limitation(s), would be completed independently by the patient, client, or family. These tasks may be completed by home health aides or home care aides. These nonmedical tasks include, but are not limited to:

(a) "Ambulation" which means assisting the patient or client to move around. Ambulation includes supervising or guiding the patient or client when walking alone or with the help of a mechanical device such as a walker, assisting with difficult parts of walking such as climbing stairs, supervising or guiding the patient or client if the patient or client is able to propel a wheelchair, pushing of the wheelchair, and providing constant or standby physical assistance to the patient or client if totally unable to walk alone or with a mechanical device.

(b) "Bathing" which means assisting the patient or client to wash. Bathing includes supervising or guiding the patient or client to bathe, assisting the patient or client with difficult tasks such as getting in or out of the tub or washing the back, and completely bathing the patient or client if totally unable to wash self.

(c) "Body care" which means skin care including the application of over the counter ointments or lotions. "Body care" excludes foot care for patients or clients who are diabetic or have poor circulation.

(d) "Feeding" which means assistance with eating. Feeding includes supervising or guiding the patient or client when able to feed self, assisting with difficult tasks such as cutting food or buttering bread, and orally feeding the patient or client when unable to feed self.

(e) "Medication assistance level 2" which means assistance with medications as defined in the ((~~board of~~)) pharmacy quality assurance commission rules, chapter 246-888 WAC, and consistent with nursing assistant rules under chapter 18.88A RCW.

(f) "Positioning" which means assisting the patient or client to assume a desired position, and with turning and exercises to prevent complications, such as contractures and pressure sores. Range of motion ordered as part of a physical therapy treatment is not included, unless such activity is authorized in agency policies and procedures and is supervised by a licensed physical therapist in a home health or hospice agency or hospice care center.

(g) "Protective supervision" which means being available to provide safety guidance protection to the patient or client who cannot be left alone due to impaired judgment.

(h) "Toileting" which means helping the patient or client to and from the bathroom, assisting with bedpan routines, using incontinent briefs, cleaning the patient or client after elimination, and assisting the patient or client on and off the toilet.

(i) "Transfer" which means assistance with getting in and out of a bed or wheelchair or on and off the toilet or in and out of the bathtub. Transfer includes supervising or guiding the patient or client when able to transfer, providing steadying, and helping the patient or client when the patient or client assists in own transfer. This does not include transfers when the patient or client is unable to assist in their own transfer or needs assistive devices unless specific training or skills verification has occurred consistent with agency policies and procedures.

(45) "One-time visit" means a single visit by one individual to provide home health, hospice or home care services with no predictable need for continuing visits, not to exceed twenty-four hours.

(46) "On-site" means the location where services are provided.

(47) "Patient" means an individual receiving home health, hospice, or hospice care center services.

(48) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private organization, or the legal successor

thereof that employs or contracts with two or more individuals.

(49) "Personnel" means individuals employed and compensated by the licensee.

(50) "Plan of care" means a written document based on assessment of patient or client needs that identifies services to meet these needs.

(51) "Pressure relationships" of air to adjacent areas means:

(a) Positive (P) pressure is present in a room when the:

(i) Room sustains a minimum of 0.001 inches of H2O pressure differential with the adjacent area, the room doors are closed, and air is flowing out of the room; or

(ii) Sum of the air flow at the supply air outlets (in CFM) exceeds the sum of the air flow at the exhaust/return air outlets by at least 70 CFM with the room doors and windows closed;

(b) Negative (N) pressure is present in a room when the:

(i) Room sustains a minimum of 0.001 inches of H2O pressure differential with the adjacent area, the room doors are closed, and air is flowing into the room; or

(ii) Sum of the air flow at the exhaust/return air outlets (in CFM) exceeds the sum of the air flow at the supply air outlets by at least 70 CFM with the room doors and windows closed;

(c) Equal (E) pressure is present in a room when the:

(i) Room sustains a pressure differential range of plus or minus 0.0002 inches of H2O with the adjacent area, and the room doors are closed; or

(ii) Sum of the air flow at the supply air outlets (in CFM) is within ten percent of the sum of the air flow at the exhaust/return air outlets with the room doors and windows closed.

(52) "Professional medical equipment assessment services" means periodic care provided by a licensed nurse, therapist or dietician, within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

(53) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(54) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(55) "Service area" means the geographic area in which the department has given approval to a licensee to provide in-home services based on criteria in WAC 246-335-055 (1)(a)(vi). Service areas do not apply to hospice care centers.

(56) "Sink" means one of the following:

(a) "Clinic service sink (siphon jet)" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inch diameter.

(b) "Service sink" means a plumbing fixture of adequate size and proper design for filling and emptying mop buckets.

(c) "Handwash sink" means a plumbing fixture of adequate size and proper design to minimize splash and splatter and permit handwashing without touching fixtures with hands, with adjacent soap dispenser with foot control or equivalent and single service hand drying device.

(57) "Social worker" means an individual regulated under chapter 18.19 or 18.225 RCW.

(58) "Spiritual counseling" means services provided or coordinated by an individual with knowledge of theology, pastoral counseling or an allied field.

(59) "Statement of deficiencies" means a written notice of any violation of chapter 70.127 RCW or the rules adopted thereunder which describes the reasons for noncompliance.

(60) "Statement of charges" means a document which initiates enforcement action against a licensee or applicant and which creates the right to an adjudicative proceeding. The department shall prepare a statement of charges in accordance with WAC 246-10-201.

(61) "Supervisor of direct care services" means an individual responsible for services that support the plan of care provided by an in-home services agency licensed to provide home care services.

(62) "Survey" means an inspection or investigation, announced or unannounced, conducted by the department to evaluate and monitor a licensee's compliance with this chapter.

(63) "Therapist" means an individual who is:

(a) A physical therapist, licensed under chapter 18.74 RCW;

(b) A respiratory therapist, licensed under chapter 18.89 RCW;

(c) An occupational therapist, licensed under chapter 18.59 RCW; or

(d) A speech therapist licensed under chapter 18.35 RCW.

(64) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

(65) "Volunteer" means an individual who provides direct care to a patient or client and who:

(a) Is not compensated by the in-home services licensee; and

(b) May be reimbursed for personal mileage incurred to deliver services.

(66) "WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

AMENDATORY SECTION (Amending WSR 02-18-026, filed 8/23/02, effective 10/1/02)

WAC 246-335-175 Pharmaceutical services. The licensee must assure that all pharmaceutical services are provided consistent with chapter 246-865 WAC and the following requirements:

(1) Pharmaceutical services must be available twenty-four hours per day to provide medications and supplies through a licensed pharmacy;

(2) A pharmacist must provide sufficient on-site consultation to ensure that medications are ordered, prepared, disposed, secured, stored, accounted for and administered in accordance with the policies of the center and chapter 246-865 WAC;

(3) Medications must be administered only by individuals authorized to administer medications;

(4) Medications may be self-administered or administered by a designated family member in accordance with WAC 246-865-060 (7)(f);

(5) Drugs for external use must be stored apart from drugs for internal use;

(6) Poisonous or caustic medications and materials including housekeeping and personal grooming supplies must show proper warning or poison labels and must be stored safely and separately from other medications and food supplies;

(7) The hospice care center must maintain an emergency medication kit appropriate to the needs of the center;

(8) Medications brought into the hospice care center by patients to be administered by an appropriate health care professional while in the center must be specifically ordered by an authorizing practitioner and must be identified by a pharmacist or licensed nurse with pharmacist consultation prior to administration;

(9) Drugs requiring refrigeration must be kept in a separate refrigeration unit;

(10) Schedule II - IV controlled substances must be:

(a) Kept in a separate keyed storage unit; and

(b) When heat sensitive, be kept in a locked refrigeration unit;

(11) Schedule II - IV controlled substances no longer needed by the patient must be disposed in compliance with chapter 246-865 WAC;

(12) The hospice care center must provide for continuation of drug therapy for patients when temporarily leaving the center in accordance with WAC 246-865-070;

(13) If planning to use an automated drug distribution device, the hospice care center must first receive ((~~board of~~)) pharmacy quality assurance commission approval; and

(14) If planning to provide pharmacy services beyond the scope of services defined in this section, the hospice care center must comply with the requirements for a licensed pharmacy in chapter 246-869 WAC.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-105 Medication management. The licensee is responsible for the control and use of all medications within the RTF, including:

(1) Ensuring policies and procedures and medication protocols are developed, approved, reviewed and implemented by licensed health care providers, administration and pharmacist (as needed). The policies and procedures must be consistent with the rules of the department and the ((~~department's board of~~)) pharmacy quality assurance commission and address all aspects of medication administration, including the following:

(a) Timely procurement;

(b) Medication administration;

(c) Prescribing;

(d) Proper storage conditions addressing security, safety, sanitation, temperature, light, moisture and ventilation;

(e) Use of nonprescription drugs:

(i) List of drugs available;

(ii) Parameters of use;

(f) Receipt;

(g) Proper labeling;

(h) Disposal;

(i) Medication brought into RTF by a resident;

(j) Accountability;

(k) Starter supply of psychotropic, detoxification and emergency drugs not for a specific resident;

(l) Emergency allergy response kit of prepackaged medications and supplies for the treatment of anaphylactic shock; and

(m) Medications for short term authorized absence (pass) from the RTF, where applicable.

(2) Establishing and maintaining of an organized system that ensures accuracy in receiving, transcribing and implementing policies and procedures for medication administration, including ensuring residents receive the correct medication, dosage, route, time, and reason.

(3) Documentation of all medications administered or self-administered, including the following data:

(a) Name and dosage of medication;

(b) Start/stop date;

(c) Time;

(d) Route;

(e) Staff or resident initials indicating medication was administered, self-administered or issued;

(f) Notation if medication was refused, held, wasted or not administered or self-administered;

(g) Allergies;

(h) Resident response to medication when given as necessary or as needed (PRN);

(i) Medical staff notification of errors, adverse effects, side effects; and

(j) Within established parameters for nonprescription drugs.

(4) Ensuring written orders are signed by an authorized health care provider with prescriptive authority for all legend drugs and vaccines. Verbal orders for legend drugs and vaccines must be signed by the prescriber as soon as possible, but no later than seven days after the verbal order.

(5) Ensuring use of nonprescription drugs that are self-administered are:

(a) Within parameters established for nonprescription drugs; and

(b) According to established list.

(6) Having a current established drug reference resource available for use by RTF staff.

WSR 14-23-040
EXPEDITED RULES
DEPARTMENT OF HEALTH
(Pharmacy Quality Assurance Commission)

[Filed November 12, 2014, 12:24 p.m.]

Title of Rule and Other Identifying Information: Chapter 246-886 WAC, Animal control—Legend drugs and controlled substances and WAC 246-887-220 through 246-887-

290, Uniform Controlled Substances Act—Chemical capture programs. Amend the name of the regulatory authority and move designated rules sections from chapter 246-887 WAC to new sections in chapter 246-886 WAC related to chemical capture programs.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Doreen E. Beebe, Department of Health, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504-7852, AND RECEIVED BY January 19, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend sections of rule to update the name of the regulatory authority from the board of pharmacy to the pharmacy quality assurance commission to implement HB 1609 (2013). The rule is also amended to consolidate WAC 246-887-220 through 246-887-290 as new WAC 246-886-150, 246-886-160, 246-886-170, 246-886-190, 246-886-200, 246-886-210, 246-886-220, and 246-886-230 without material change. Consolidating the requirements under one chapter will simplify access to requirements by those who must comply. WAC 246-887-220 through 246-887-290 are proposed for repeal.

Reasons Supporting Proposal: The rule clarifies requirements for those who must comply and the public by placing standards for legend drugs and controlled substances under one chapter.

The expedited rule-making process is appropriate because the proposed rules incorporate Washington state statue [statute] and administrative rules without material change, per RCW 34.05.353 (1)(b).

Statutory Authority for Adoption: RCW 18.64.005, 69.50.320, and 69.41.080.

Statute Being Implemented: HB 1609 (chapter 19, Laws of 2013), RCW 18.64.005, 69.50.320, and 69.41.080.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Doreen Beebe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4834; Implementation and Enforcement: Chris Humberson, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4853.

November 10, 2014
Chris P. Barry, R.Ph., Chair
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 12-21-118, filed 10/23/12, effective 11/23/12)

WAC 246-886-010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Animal control agency" means any agency authorized by law to euthanize or destroy animals; to sedate animals prior to euthanasia or to engage in chemical capture of animals.

(2) "Approved legend drugs" means any legend drug approved by the ((~~board~~)) commission for use by registered humane societies or animal control agencies for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs.

(3) ((~~"Board" means the Washington state board of pharmacy.~~

~~(4)~~)) "Chemical capture programs" means wildlife management programs registered under RCW 69.50.320 and 69.41.080 to use approved legend drugs and controlled substance for chemical capture. Chemical capture includes immobilization of individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes.

(4) "Commission" means the Washington state pharmacy quality assurance commission.

(5) "Controlled substances" means a drug, substance, or immediate precursor in Schedule I through V of Article II of chapter 69.50 RCW and Schedule I through V of chapter 246-887 WAC.

(6) "Humane society" means a nonprofit organization, association, or corporation, the primary purpose of which is to prevent cruelty to animals, place unwanted animals in homes, provide other services relating to "lost and found" pets, and provide animal care education to the public, as well as sponsoring a neutering program to control the animal population.

(7) "Legend drugs" means any drugs which are required by state law or regulation of the state ((~~board of~~)) pharmacy quality assurance commission to be dispensed on prescription only or are restricted to use by practitioners only.

(8) "Registered entity" means any humane society or animal control agency registered under RCW 69.50.310.

AMENDATORY SECTION (Amending WSR 12-21-118, filed 10/23/12, effective 11/23/12)

WAC 246-886-020 Registration. (1) Humane societies and animal control agencies registered with the ((~~board~~)) commission under RCW 69.50.310 may purchase, possess, and administer sodium pentobarbital and approved legend drugs as provided in RCW 69.41.080.

(2) To apply for registration a humane society or animal control agency shall submit to the ((~~board~~)) commission a completed application for registration on forms provided by the ((~~board~~)) commission.

(3) A registered humane society or animal control agency shall:

(a) Employ at least one individual who has completed a training program described in WAC 246-886-040;

(b) Designate a responsible person as defined in WAC 246-886-060;

(c) Maintain written policies and procedures available for inspection by the ((~~board~~)) commission that includes processes to:

(i) Require completion of approved training as defined in WAC 246-886-040 by each of the agency's agents or personnel who possess, and administer approved legend drugs or sodium pentobarbital, prior to being approved to administer such drugs;

(ii) Establish a system for the secure storage of all drugs to prevent access by unauthorized personnel to guard against theft and diversion;

(iii) Establish a system for accountability of access, use, and stocking of drug inventory;

(iv) Ensure the proper disposal of all drugs in compliance with state and federal laws and rules; and

(v) Establish a method to investigate and report the theft, loss, or diversion of approved legend drugs and sodium pentobarbital, in compliance with state and federal laws and rules.

AMENDATORY SECTION (Amending WSR 12-21-118, filed 10/23/12, effective 11/23/12)

WAC 246-886-040 Training of personnel. (1) Personnel of a registered humane society or animal control agency may administer approved legend drugs and sodium pentobarbital if the individual:

(a) Has been approved by the registered entity to administer these drugs; and

(b) Has completed a ((~~board-approved~~)) commission approved training program or training that is substantially equivalent.

(2) Application for approval of a training program must be submitted to the ((~~board~~)) commission prior to the initiation of training.

(3) A training program must:

(a) Use a manual approved by the ((~~board~~)) commission;

(b) Be at least four hours in length;

(c) Be taught by a licensed veterinarian or by a person who has completed an approved training program taught by a licensed veterinarian;

(d) Require both didactic and practical training in the use of both approved legend drugs and sodium pentobarbital;

(e) Require a passing score of no less than seventy-five percent on a final examination; and

(f) Include, but not be limited to, the following topics:

(i) Anatomy and physiology:

(A) Methods of euthanasia;

(B) Routes of drug administration;

(C) Use of sedatives;

(D) Drug dosing;

(E) Use of restraints; and

(F) Process and verification of death;

(ii) Pharmacology of the drugs;

(iii) Indications, contraindications, and adverse effects;

(iv) Human hazards;

(v) Disposal of medical waste (needles, syringes, etc.);

(vi) Recordkeeping and security requirements; and

(vii) Applicable federal and state laws and rules.

(4) Training programs shall retain a list of persons who have successfully completed the program for a minimum of two years.

(5) The ((~~board~~)) commission shall maintain a registry of approved training programs and manuals. Interested persons may request a copy of the registry by contacting the ((~~board~~)) commission.

AMENDATORY SECTION (Amending WSR 12-21-118, filed 10/23/12, effective 11/23/12)

WAC 246-886-080 Recordkeeping and reports. (1) A registered humane society or animal control agency must use a bound logbook with consecutively numbered pages to record the receipt, use, and disposition of approved legend drugs and sodium pentobarbital. Only one drug may be recorded on any single page.

(2) The logbook must have sufficient detail to allow an audit of the drug usage to be performed and must include:

(a) Date and time of administration;

(b) Route of administration;

(c) Identification number or other identifier assigned to the animal;

(d) Estimated weight of the animal;

(e) Estimated age and breed of the animal;

(f) Name of drug used;

(g) Dose of drug administered;

(h) Amount of drug wasted; and

(i) Initials of the primary person administering the drug.

(3) The logbook may omit subsections (2)(b), (d), and (e) of this section if the information is recorded in other records cross-referenced by the animal identification number or other assigned identifier.

(4) Personnel of the registered entity shall document any errors or discrepancies in the drug inventory in the logbook. He or she shall report the findings to the responsible supervisor for investigation.

(5) The registered entity shall report any unresolved discrepancies in writing to the ((~~board~~)) commission within seven days, and to the federal Drug Enforcement Administration if the loss includes a controlled substance.

(6) The designated individual, as defined in WAC 246-886-060, shall perform a physical inventory or count of approved legend drugs and sodium pentobarbital every six months. The physical inventory must be reconciled with the logbook.

(7) The supervisor or designated individual shall destroy legend drugs that are unfit for use due to contamination or having passed its expiration date. A second member of the staff shall witness drugs that are destroyed or wasted. The records of the destruction of drugs are documented in the logbook with the date of the event and signatures of the individuals involved.

(8) A registered entity shall return all unwanted or unused sodium pentobarbital to the manufacturer or destroy them in accordance with the rules and requirements of the ((~~board~~)) commission, the federal Drug Enforcement Administration, and the department of ecology.

(9) A registered entity shall maintain a written list of all authorized personnel who have demonstrated the qualifications to possess and administer approved legend drugs, and sodium pentobarbital.

(10) All records of the registered entity must be available for inspection by the ((~~board~~)) commission or any officer who is authorized to enforce this chapter.

(11) The registered entity shall maintain the logbook and other related records for a minimum of two years.

AMENDATORY SECTION (Amending WSR 12-21-118, filed 10/23/12, effective 11/23/12)

WAC 246-886-100 Violations. The ((~~board~~)) commission may suspend or revoke a registration issued under chapter 69.50 RCW if the ((~~board~~)) commission determines that any agent or employee of a registered humane society or animal control agency has purchased, possessed, or administered legend drugs in violation of RCW 69.41.080 or 69.50.310, or this chapter or has otherwise demonstrated inadequate knowledge in the administration of legend drugs. The ((~~board's~~)) commission's revocation or suspension of a registration would restrict the registered entity's ability to use both approved legend drugs and sodium pentobarbital.

NEW SECTION

WAC 246-886-150 Chemical capture programs. Purpose. Wildlife management programs often require the use of controlled substances and legend drugs for chemical capture programs. The purpose of these rules is to set requirements for the use of controlled substances and approved legend drugs in department of fish and wildlife chemical capture programs. Chemical capture includes immobilization of individual animals in order for the animals to be moved, treated, examined, or other legitimate purpose.

NEW SECTION

WAC 246-886-160 Registration requirements. (1) The department of fish and wildlife may apply to the commission for a limited registration under chapter 69.50 RCW (Uniform Controlled Substances Act) to purchase, possess, and administer controlled substances for use in chemical capture programs.

(2) Each department of fish and wildlife field office that stores controlled substances must register with the commission. The department of fish and wildlife shall notify the commission in writing of the names of individuals who are authorized to possess and administer controlled substances.

(3) In addition, the department of fish and wildlife shall designate one individual at each field office who shall be responsible for the ordering, possession, safe storage, and utilization of controlled substances. The department of fish and wildlife shall notify the commission in writing of the name of the designated individual.

(4) Controlled substances obtained under this limited registration shall be for veterinary use only.

NEW SECTION

WAC 246-886-170 Authorized individuals. To be eligible to possess and/or administer controlled substances and approved legend drugs, individuals must successfully complete an approved training program. The following individuals are authorized to possess and administer controlled substances:

(1) Department of fish and wildlife officers;

(2) Department of fish and wildlife biologists; and

(3) Department of fish and wildlife veterinarians.

NEW SECTION

WAC 246-886-190 Controlled substances training. The department of fish and wildlife shall establish written policies and procedures to ensure that officers and biologists who administer controlled substances and approved legend drugs have received sufficient training. The training shall include, at a minimum, the safe handling and administration of controlled substances and the potential hazards. Officers and biologists must be able to demonstrate adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The written policies and procedures shall be approved by the commission. Any amendments or deletions to the policies and procedures must be approved by the commission prior to implementation.

NEW SECTION

WAC 246-886-200 Storage requirements. Each registered location shall store the controlled substances in a securely locked, substantially constructed cabinet. Keys to the storage area shall be restricted to those persons authorized by the department of fish and wildlife to possess and administer the drugs.

Schedule II controlled substances shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

In addition to field offices, the department of fish and wildlife may allow officers, biologists, and veterinarians to possess a supply of controlled substances for use in the field. The field supply shall be stored in a locked metal box securely attached to a vehicle. The designated officer, biologist, or veterinarian shall be responsible to ensure that the controlled substances are accounted for at all times. All receipts and use of controlled substances from the field supply shall be recorded in a bound logbook with sequentially numbered pages.

NEW SECTION

WAC 246-886-210 Controlled substances records and reports. (1) The department of fish and wildlife shall be responsible for maintaining all records and submitting all reports required by federal or state law or regulation.

(2) A bound logbook with sequentially numbered pages shall be kept documenting the receipt and disposition of all controlled substances. In addition, all receipts and invoices shall be maintained for a period of two years.

(3) All records shall be available for inspection by the commission or any officer who is authorized to enforce this chapter.

(4) A physical inventory of approved controlled substances shall be performed, reconciled, and documented every twelve months. The inventory shall be signed and dated by the designated individual.

(5) Any discrepancy in the actual inventory of approved controlled substances shall be documented and reported immediately to the responsible supervisor who shall investigate the discrepancy. Any discrepancy that has not been corrected within seven days shall be reported in writing to the commission and the Drug Enforcement Administration (DEA).

(6) Unwanted or unused controlled substances shall be returned to the manufacturer or destroyed in accordance with the rules and requirements of the commission, the Drug Enforcement Administration, and the department of ecology.

NEW SECTION

WAC 246-886-220 Approved controlled substances. The following controlled substances are approved for use by officers and biologists of the department of fish and wildlife for chemical capture programs:

(1) Butorphanol;

(2) Diazepam (Valium);

(3) Diprenorphine;

(4) Carfentanil (Wildnil);

(5) Fentanyl;

(6) Ketamine;

(7) Midazolam; and

(8) Tiletamine and zolazepam (Telazol).

NEW SECTION

WAC 246-886-230 Controlled substances registration disciplinary actions. In addition to any criminal or civil liabilities that may occur, the commission may suspend or revoke a registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-887-220	Chemical capture programs.
WAC 246-887-230	Registration requirements.
WAC 246-887-240	Authorized individuals.
WAC 246-887-250	Controlled substances training.
WAC 246-887-260	Storage requirements.
WAC 246-887-270	Controlled substances records and reports.
WAC 246-887-280	Approved controlled substances.
WAC 246-887-290	Controlled substances registration disciplinary actions.

WSR 14-23-056
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed November 17, 2014, 12:59 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-17902 (Rule 17902) Brokered natural gas—Use tax.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY Monday, January 19, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend Rule 17902 to:

- Recognize provisions of ESSB 6440, sections 301, 304 and 305, chapter 216, Laws of 2014;
- Update language on filing and paying use tax on brokered natural gas electronically either monthly or quarterly; and
- Clarify language changing "section" to "rule" throughout.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: Recognizes provisions of ESSB 6440, sections 301, 304 and 305, chapter 216, Laws of 2014, updates the administrative procedures regarding electronic filing and paying, and clarifies language.

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

Statute Being Implemented: RCW 82.12.022 and 82.14.230.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

November 17, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-055, filed 12/3/07, effective 1/3/08)

WAC 458-20-17902 Brokered natural gas—Use tax. (1) **Introduction.** RCW 82.12.022 and 82.14.230 impose state and local use taxes on the use of natural gas or manufactured gas by a consumer, including compressed natural gas and liquefied natural gas, if the person who sold the gas to the consumer has not paid public utility tax on that sale. This use tax is imposed only for natural gas delivered to a consumer through a pipeline. The use tax is applied at the same rate as the state and city public utility taxes. This ((~~section~~)) rule explains how this use tax applies and how it is reported to the department.

(2) **Definitions.** For the purpose of this ((~~section~~)) rule:

(a) "Brokered natural gas" means natural gas purchased by a consumer from a source out of the state and delivered to the consumer in this state.

(b) "Value of gas consumed or used" means the purchasing price of the gas to the consumer and generally must include all or part of the transportation charges as explained later.

(3) **Applicability of use tax.** The distribution and sale of natural gas in this state is generally taxed under the state and city public utility taxes. With changing conditions and federal regulations, it is now possible to have natural gas brokered from out of the state and sold directly to the consumer. If this occurs and the public utility taxes have not been paid, RCW 82.12.022 (state) and RCW 82.14.230 (city) impose a use tax on the brokered natural gas at the same rate as the state and city public utility taxes.

(4) **State tax.** When the use tax applies, the rate of tax imposed is equal to the public utility tax on gas distribution business under RCW 82.16.020 ((~~(1)(c)~~)). The rate of tax applies to the value of the gas consumed or used and is imposed upon the consumer.

(5) **City tax.** Cities are given the authority to impose a use tax on brokered natural gas. When imposed and applicable, the rate of tax is equal to the tax on natural gas business under RCW 35.21.870 on the value of gas consumed or used and is imposed on the consumer.

(6) **Transportation charges.**

(a) If all or part of the transportation charges for the delivery of the brokered natural gas are separately subject to the state's and cities' public utility taxes (RCW 82.16.020 (1)(c) and RCW 35.21.870), those transportation charges are excluded from measure of the use tax. The transportation charges not subject to the public utility taxes are included in the value of the gas consumed or used.

(b) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. In actual practice, the tax status of a situation must be determined after a review of all of the facts and circumstances.

(i) Public university purchases natural gas from an out of the state source through a broker. The natural gas is delivered by interstate pipeline to the local gas distribution system who delivers it to the university. The university pays the supplier for the gas, the pipeline for the interstate transportation charge, and the gas distribution system for its local transportation charge. The transportation charge by the pipeline is not subject to public utility tax because it is an interstate transportation charge. The transportation charge paid to the local gas distribution system is subject to the public utility taxes as an intrastate delivery. The value of the gas consumed or used is the purchase price paid to the supplier plus the transportation charge paid to pipeline company.

(ii) The above factual situation applies except that the natural gas is delivered directly by the interstate pipeline to the university. The university pays the supplier for the gas and the pipeline for the transportation charge. As the transportation charge is not subject to the public utility tax, it will be included in the measure of the tax. The value of the gas consumed or used is the purchase price plus the transportation charge paid to the pipeline.

(7) **Credits against the taxes.**

(a) A credit is allowed against the use taxes described in this ((~~section~~)) rule for any use tax paid by the consumer to another state which is similar to this use tax and is applicable to the gas subject to this tax. Any other state's use tax allowed as a credit will be prorated to the state's and cities' portion of the tax based on the relative rates of the two taxes.

(b) A credit is also allowed against the use tax imposed by the state for any gross receipts tax similar that imposed pursuant to RCW 82.16.020 (1)(c) by another state on the seller of the gas with respect to the gas consumed or used.

(c) A credit is allowed against the use tax imposed by the cities for any gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state or political subdivision of the state on the seller of the gas with respect to the gas consumed or used.

(8) **Compressed natural gas and liquefied natural gas sold or used as transportation fuel.**

(a) For the purposes of this subsection, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car.

(b) Effective July 1, 2015, RCW 82.12.022 and 82.14.230 exempt from state and local use taxes:

(i) Compressed natural gas or liquefied natural gas to be sold or used as transportation fuel; or

(ii) Natural gas used to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(c) The buyer must provide and the seller must retain an exemption certificate. See the department's web site dor.wa.gov for the appropriate form. Although the sale and use of natural gas, compressed natural gas, and liquefied natural gas may be exempt from PUT under RCW 82.16.310 and state and local use taxes under RCW 82.12.022 and 82.14.230, other taxes may apply.

(9) **Reporting requirements.** The person who delivers the gas to the consumer must make and submit a report to the local sales and use tax ((~~section~~)) unit of the department's taxpayer account administration division by the fifteenth day of

the month following a calendar quarter. The report must contain the following information:

(a) The name and address of the consumer to whom gas was delivered((,));

(b) The volume of gas delivered to each consumer during the calendar quarter((,)); and((,))

(c) Service address of consumer if different from mailing address.

(((~~(9)~~))) (10) **Collection and administration.** Use tax on brokered natural gas must be filed ((~~with~~)) and paid electronically either monthly or quarterly by consumers to the department ((~~by the consumer on forms and records prescribed by the department. Such forms and records must be accompanied by the remittance of the tax~~)). The department's authority to collect this tax is found in RCW 82.12.020 and 82.14.-050.

WSR 14-23-058
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed November 17, 2014, 3:06 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-268 Annual surveys for certain tax adjustments, this rule describes how taxpayers must file an annual survey with the department of revenue in order to take certain tax credits, deferrals, and exemptions. The annual surveys contain information about business activities and employment. This rule explains the survey requirements for the various tax adjustments, the requirements to file the annual survey, instructions on filing the annual survey, and information that must be included in the annual survey.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY Monday, January 19, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to subsection (2) of this rule explain that every taxpayer must file an annual survey when claiming:

- An exemption from retail sales and use tax for hog fuel used to generate electricity, steam, heat, or biofuel for each facility (subsection (2)(k));
- An exemption from retail sales and use tax for sales to a public research institution of machinery and equipment used greater than fifty percent of the time in research and development operation, including certain charges for labor and services (subsection (2)(l));
- The preferential B&O tax rate for manufacturing or wholesale sales of certain solar energy systems (subsection (2)(m));
- An exemption from retail sales and use tax for sales of gases or chemicals for manufacturing of semiconductor materials, unless the taxpayer claims both the retail sales and use tax exemption and the preferential B&O tax rate that then requires the filing of an annual report (subsection (2)(o)); and
- A new tax preference taking effect after August 1, 2013, that meets the requirement found in RCW 82.32.808(5) (subsection (2)(p)).

The other clarifying edits throughout the rule are changing references from "section" to "rule" or from "person" to "taxpayer."

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: To recognize provisions of ESSB 5882 (chapter 13, Laws of 2013); and SSB 6333 (chapter 97, Laws of 2014).

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

Statute Being Implemented: RCW 82.32.585, 82.32.605, 82.32.607, 82.32.808, 43.136.057, 43.136.058, 82.04.2404, 82.04.294, 82.08.025651, 82.08.956, 82.08.9651, 82.12.-025651, 82.12.956, and 82.12.9651.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

November 17, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-033, filed 6/24/14, effective 7/25/14)

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

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

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

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

(a) ((~~A person~~)) Every taxpayer claiming the business and occupation (B&O) tax credit provided by RCW 82.04.-4452 for engaging in qualified research and development. A separate annual survey must be filed for each tax reporting account. If the person has assigned its entire B&O tax credit provided by RCW 82.04.4452 to another person, the assignor is not required to file an annual survey. In such an instance, the assignee of the B&O tax credit is required to file an annual survey. If the person has assigned a portion of its B&O tax credit to another person, both the assignor and the assignee are required to file an annual survey. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information ((~~about this tax adjustment~~)).

(b) ((~~A recipient of~~)) Every taxpayer receiving a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in high unemployment counties, except as provided in (((~~f~~))) (g) of this subsection. Refer to WAC 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development activities in high unemployment counties—Applications filed after June 30, 2010) for more specific information about this tax adjustment.

(c) ((~~A recipient of~~)) Every taxpayer receiving a deferral of taxes under chapter 82.63 RCW for sales and use taxes on an eligible investment project in high technology, except as provided in (g) of this subsection. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information about this tax adjustment.

(d) ((~~A recipient of~~)) Every taxpayer receiving a deferral of taxes under chapter 82.74 RCW for sales and use taxes on eligible investment project in certain agricultural or cold storage facilities, except as provided in (g) of this subsection.

(e) ((~~A recipient of~~)) Every taxpayer receiving a deferral of taxes under chapter 82.75 RCW for sales and use taxes on an eligible investment project in biotechnology products, except as provided in (g) of this subsection.

(f) ((~~A recipient of~~)) Every taxpayer receiving a deferral of taxes under chapter 82.82 RCW for sales and use taxes on a corporate headquarters, except as provided in (((~~f~~))) (g) of this subsection (2).

(g) Every taxpayer that is a lessee of an eligible investment project under chapters 82.60, 82.63, 82.74 or 82.82 RCW who receives the economic benefit of the deferral. A lessor, by written contract, must agree to pass the economic benefit of the deferral to its lessee. The economic benefit of the deferral to the lessee must be no less than the amount of tax deferred by the lessor as evidenced by written documentation of any type, whether by payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapters 82.60, 82.63, 82.74 or 82.82 RCW and who meets these requirements is not required to complete and file an annual survey.

(h) ((~~A person~~)) Every taxpayer claiming the B&O tax ((~~exemption~~)) deduction provided by RCW 82.04.4268 for dairy product manufacturers, and persons claiming the exemption provided by RCW 82.04.4269 for seafood product manufacturers, and RCW 82.04.4266 for fruits and vegetable manufacturers.

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

(j) ((~~A person~~)) Every taxpayer claiming the B&O tax rate provided by RCW 82.04.260(((~~11~~))) for timber products, unless the person is a "small harvester" as defined in RCW 84.33.035.

(k) ((~~A person claiming the B&O tax credit provided by RCW 82.04.4483 for new employees created by businesses engaging in computer software manufacturing or programming in rural counties.~~

~~(l) A person claiming the B&O tax credit provided by RCW 82.04.4484 for persons providing information technology help desk services to third parties.~~

~~(m)~~)) Every taxpayer claiming an exemption from retail sales and use tax under RCW 82.08.956 or 82.12.956 for hog fuel used to generate electricity, steam, heat, or biofuel, except that the taxpayer must file a separate survey for each facility owned or operated in the state of Washington.

(l) Every taxpayer claiming an exemption from retail sales and use tax under RCW 82.08.025651 or 82.12.025651 for sales to a public research institution of machinery and equipment used greater than fifty percent of the time in a research and development operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(m) Every taxpayer claiming the preferential B&O tax rate under RCW 82.04.294 for the manufacturing or sales at wholesale of solar energy systems using photovoltaic modules or stirling converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems.

(n) Effective ((~~on~~)) July 1, 2013, ((~~a person~~)) every taxpayer claiming the retail sales or use tax exemption provided by RCW 82.08.962 or 82.12.962 for machinery and equipment used directly in generating electricity from a qualifying renewable energy source.

(o) Effective June 12, 2014, every taxpayer only claiming the retail sales or use tax exemption provided by RCW 82.08.9651 or 82.12.9651 for sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. However, a taxpayer claiming both the retail sales or use tax exemption provided by RCW 82.08.9651 or 82.12.9651 and the preferential B&O tax rate provided by RCW 82.04.2404 does not file an annual survey, but is instead only required to file an annual report described in WAC 458-20-267 (Annual reports for certain tax adjustments).

(p) If a new tax preference taking effect after August 1, 2013, meets the requirement found in RCW 82.32.808(5),

every taxpayer claiming the new preference must complete an annual survey.

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

(a) **Electronic filing.** Surveys must be filed electronically unless the department waives this requirement upon a showing of good cause. A survey is filed electronically when the department receives the survey in an electronic format. A person accesses electronic filing through that person's department "My Account." To file and submit electronically, go to http://dor.wa.gov.TaxIncentiveReporting.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person upon a showing of good cause, then that person must use the annual survey developed by the department unless that person obtains prior written approval from the department to file an annual survey in an alternative format.

(c) **How to obtain the form.** ((~~Persons~~)) Taxpayers who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the survey may obtain the survey from the department's web site (www.dor.wa.gov). It may also be obtained from the department's district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's taxpayer account administration division at:

Attn: Local Finance Team
Department of Revenue
Taxpayer Account Administration
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Due date.**

(i) **For surveys due in 2011 or later.** For ((~~persons~~)) taxpayers claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this ((~~section~~)) rule, the survey must be filed or postmarked by April 30th following any calendar year in which the person becomes eligible to claim the tax credit, tax exemption, or tax rate.

For recipients of any sales tax deferrals listed under subsection (2) of this ((~~section~~)) rule or for lessees required to file the annual survey as provided in subsection (2)(g) of this ((~~section~~)) rule, the survey must be filed or postmarked by April 30th of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(ii) **For surveys due prior to 2011.** For ((~~persons~~)) taxpayers claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this ((~~section~~)) rule, the survey must be filed or postmarked by March 31st following any calendar year in which the taxpayer becomes eligible to claim the tax credit, tax exemption, or tax rate ((~~is claimed~~)).

For recipients of any sales tax deferrals listed under subsection (2) of this ((~~section~~)) rule or for lessees required to file the annual survey as provided in subsection (2)(g) of this ((~~section~~)) rule, the survey must be filed or postmarked by March 31st of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(iii) **Due date extensions.** The department may extend the due date for timely filing annual surveys as provided in subsection (11) of this ((~~section~~)) rule.

(e) **Special requirement for person who did not file an annual survey during the previous calendar year.** If a ((~~person~~)) taxpayer is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the annual survey must include the information described in subsection (4) of this ((~~section~~)) rule for the two calendar years immediately preceding the due date of the survey.

(f) **Examples.**

(i) Advanced Computing, Inc. qualifies for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2010. Advanced Computing, Inc. filed an annual survey in March 2010 for credit claimed under RCW 82.04.4452 in 2009. Advanced Computing, Inc. must electronically file an annual survey with the department by April 30, 2011, for credits taken in calendar year 2010.

(ii) In 2011, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The department certified the investment project as being operationally complete in 2012. Biotechnology, Inc. filed an annual survey on April 30, 2013 for credit claimed under RCW 82.04.4452 in 2012 for the sales and use tax deferral under chapter 82.63 RCW. A survey is due from Biotechnology, Inc. by April 30th each following year, with its last survey due April 30, 2020.

(iii) Advanced Materials, Inc. has been conducting manufacturing activities in a building leased from Property Management Services since 2014. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the department certified the building as operationally complete in 2014. In order to pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials, Inc. $5,000 less in rent each year. Advanced Materials, Inc. is a first-time filer of annual surveys. Advanced Materials, Inc. must file its annual survey with the department covering the 2014 calendar year by April 30, 2015, assuming all the requirements of subsection (2)(f) of this ((~~section~~)) rule are met. A survey is due from Advanced Materials, Inc. by April 30th each following year, with its last survey due by April 30, 2022.

(iv) Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in 2010. Fruit Canning, Inc. is a first-time filer of annual surveys. Fruit Canning, Inc. must file an annual survey with the department by April 30, 2011, covering calendar years 2009 and 2010. If Fruit Canning, Inc. claims the B&O tax exemption during subsequent years, it must file an annual survey for each of those years by April 30th of each following year.

(4) **What information does the annual survey require?** The annual survey requests information about the following:

(a) Amount of tax deferred, the amount of B&O tax exempted, the amount of B&O tax credit taken, or the amount of B&O tax reduced under the preferential rate;

(b) For ((~~persons~~)) taxpayers claiming the tax deferral under chapter 82.60 or 82.63 RCW:

(i) The number of new products or research projects by general classification; and

(ii) The number of trademarks, patents, and copyrights associated with activities at the investment project;

(c) For ((~~persons~~)) taxpayers claiming the B&O tax credit under RCW 82.04.4452:

(i) The qualified research and development expenditures during the calendar year for which the credit was claimed;

(ii) The taxable amount during the calendar year for which the credit was claimed;

(iii) The number of new products or research projects by general classification;

(iv) The number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed; and

(v) Whether the credit has been assigned and who assigned the credit.

(d) The following information for employment positions in Washington:

(i) The total number of employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment. Refer to subsection (7) of this ((~~section~~)) rule for information about full-time, part-time, and temporary employment positions;

(iii) The number of employment positions according to the wage bands of less than $30,000; $30,000 or greater, but less than $60,000; and $60,000 or greater. A wage band containing fewer than three individuals may be combined with the next lowest wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands; and

(e) Additional information the department requests that is necessary to measure the results of, or determine eligibility for the tax adjustments.

(i) The department is required to report to the legislature summary descriptive statistics by category and the effectiveness of certain tax adjustments, such as job creation, company growth, and such other factors as the department selects or as the statutes identify. The department has included questions related to measuring these effects.

(ii) In addition, the department has included questions related to:

(A) The ((~~person's~~)) taxpayer's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.02565 and 82.12.02565; and

(B) The Unified Business Identifier used with the Washington state employment security department and all employment security department reference numbers used on quarterly tax reports that cover the employment positions reported in the annual survey.

(5) **What is total employment in the annual survey?**

(a) The annual survey requires information on all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the survey. Total employment includes persons who are on leaves of absence such as sick leave, vacation, disability leave, jury duty, military leave, and workers compensation leave, regardless of whether those persons are receiving wages. Total employment does not include separation from employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(b) **Examples.** Assume these facts for the following examples. National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield, WA and Kennewick, WA. NCE received a deferral of taxes under chapter 82.60 RCW for sales and use taxes on its new manufacturing site in Kennewick, WA.

(i) NCE employs two hundred workers in Ridgefield manufacturing construction cranes. NCE employs two hundred fifty workers in Kennewick manufacturing bulldozers and other earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax adjustments, NCE's annual survey must report a total of four hundred fifty employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax adjustments.

(ii) On November 20th, NCE lays off seventy-five workers. NCE notifies ten of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The seventy-five employment positions are excluded from NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire ten employees, those employment positions are vacant on December 31st.

(iii) On December 31st, NCE has one hundred employees on vacation leave, five employees on sick leave, two employees on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of employees on vacation, sick leave, and military leave must be included in NCE's annual survey. The one employee scheduled to retire must be included in the annual survey because the employment position is filled on December 31st. The three vacant positions are not included in the annual survey.

(iv) In June, NCE hires two employees from a local college to intern in its engineering department. When the academic year begins in September, one employee ends the internship. The other employee's internship continues until the following June. NCE must report one employment position on the annual survey, representing the one intern employed on December 31st.

(6) **When is an employment position located in Washington state?** The annual survey seeks information about Washington employment positions only. An employment position is located in Washington state if:

(a) The service of the employee is performed entirely within the state;

(b) The service of the employee is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

(c) The service of the employee is performed both within and without the state, and the employee's base of operations is within the state;

(d) The service of the employee is performed both within and without the state, but the service is directed or controlled in this state; or

(e) The service of the employee is performed both within and without the state and the service is not directed or con-

trolled in this state, but the employee's individual residence is in this state.

(f) **Examples.** Assume these facts for the following examples. Acme Computer, Inc. develops computer software and claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Acme Computer, headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee services within Washington state.

(ii) John is an Acme Computer salesperson. John travels throughout Washington, Oregon, and Idaho promoting sales of new Acme Computer products. John's activities are directed by his manager in Acme Computer's Spokane office. John's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) Jane, vice-president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position should not be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Although Jane regularly performs services within Washington state, her activities are directed or controlled in Oregon.

(iv) Roberta, a service technician, travels throughout the United States servicing Acme Computer products. Her activities are directed from Acme Computer's corporate offices in California, but she works from her home office in Tacoma. Roberta's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Roberta performs services both within and without the state and the service is not directed or controlled in this state, but her residence is in Washington state.

(7) **What are full-time, part-time and temporary employment positions?** The survey must separately identify the number of full-time, part-time, and temporary employment positions as a percent of total employment.

(a) **Full-time and part-time employment positions.** A position is considered full-time or part-time if the employer intends for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months, excluding any leaves of absence.

(i) A full-time position is a position that requires the employee to work, excluding overtime hours, thirty-five hours per week for fifty-two consecutive weeks, four hundred fifty-five hours a quarter for four consecutive quarters, or one thousand eight hundred twenty hours during a period of twelve consecutive months.

(ii) A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive their current wage, the position must be reported as a full-time employment position.

(b) **Temporary positions.** There are two types of temporary positions.

(i) **Employees of the person required to complete the survey.** In the case of a temporary employee directly employed by the person required to complete the survey, a temporary position is a position intended to be filled for a period of less than fifty-two consecutive weeks or twelve consecutive months. For example, seasonal employment positions are temporary positions. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this ((~~section~~)) rule.

(ii) **Workers furnished by staffing companies.** A temporary position also includes a position filled by a worker furnished by a staffing company, regardless of the duration of the placement. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this ((~~section~~)) rule. In addition, the person filling out the annual survey must provide the following additional information:

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

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

(C) Average duration of all staffing company employees.

(c) **Examples.** Assume these facts for the following examples. Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices at a facility located in Everett, WA. Worldwide Materials claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Worldwide Materials has one hundred employees.

(i) On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked forty hours a week and were expected to work for fifty-two consecutive weeks. Worldwide Materials must report these employees as being employed in a full-time position. Although the five employees are not currently working, they are on workers' compensation leave and Worldwide Materials had intended for the full-time positions to be filled for at least fifty-two consecutive weeks.

(ii) In September, Worldwide Materials hires two employees on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the position is intended to be filled for a period exceeding twelve consecutive months, Worldwide

Materials must report these positions as two full-time positions.

(iii) Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, fifty-two weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) On November 1st, a Worldwide Materials engineer begins twelve weeks of family and medical leave. The engineer was expected to work forty hours a week for fifty-two consecutive weeks. While the engineer is on leave, Worldwide Materials hires a staffing company to furnish a worker to complete the engineer's projects. Worldwide Materials must report the engineer as a full-time position on the annual survey. Worldwide Materials must also report the worker furnished by the staffing company as a temporary employment position and include the information as required in (b) of this subsection.

(v) Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week, but are expected to work twelve consecutive months. The three research employees are paid a comparable wage as other research employees who are required to work a set schedule of forty hours a week. Although the three research employees may work fewer hours, they are receiving comparable wages as other research employees working forty hours a week. Worldwide Materials must report these positions as full-time employment positions, because each position is equivalent to a full-time employment position.

(vi) Worldwide Materials has a large order to fulfill and hires ten employees for the months of June and July. Five of the employees leave at the end of July. Worldwide Materials decides to have the remaining five employees work on an on-call basis for the remainder of the year. As of December 31st, three of the employees are working for Worldwide Materials on an on-call basis. Worldwide Materials must report three temporary employment positions on the annual survey and include these positions in the information required in subsections (5), (8), and (9) of this ((~~section~~)) rule.

(8) **What are wages?** For the purposes of the annual survey, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, or otherwise as reported on the W-2 forms of employees. Stock options granted as compensation to employees are wages to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer. The compensation of a proprietor or a partner is determined in one of two ways:

(a) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(b) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances is the compensation.

(9) **What are employer-provided benefits?** The annual survey requires persons to report the number of employees that have employer-provided medical, dental, and retirement benefits, by each of the wage bands. An employee has employer-provided medical, dental, and retirement benefits if the employee is currently eligible to participate or receive the benefit. A benefit is "employer-provided" if the medical, dental, and retirement benefit is dependent on the employer's establishment or administration of the benefit. A benefit that is equally available to employees and the general public is not an "employer-provided" benefit.

(a) **What are medical benefits?** "Medical benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical and/or dental care services.

(i) Health plans include any:

(A) "Employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA);

(B) "Health plan" or "health benefit plan" as defined in RCW 48.43.005;

(C) Self-funded multiple employer welfare arrangement as defined in RCW 48.125.010;

(D) "Qualified health insurance" as defined in Section 35 of the Internal Revenue Code;

(E) "Archer MSA" as defined in Section 220 of the Internal Revenue Code;

(F) "Health savings plan" as defined in Section 223 of the Internal Revenue Code;

(G) "Health plan" qualifying under Section 213 of the Internal Revenue Code;

(H) Governmental plans; and

(I) Church plans.

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

(b) **What are dental benefits?** "Dental benefits" means a dental health plan offered by an employer as a benefit to its employees. "Dental health plan" has the same meaning as "health plan" in (a) of this subsection, but is for the purpose of providing for employees or their beneficiaries, through the purchase of insurance or otherwise, dental care services. "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) **What are retirement benefits?** "Retirement benefits" means compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. An employer contribution to the retirement plan is not required for a retirement plan to be employer-provided. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods after employment is terminated. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and

retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **Examples.** Assume these facts for the following examples. Medical Resource, Inc. is a pharmaceutical manufacturer located in Spokane, WA. Medical Resource, Inc. claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. It employs two hundred full-time employees and fifty part-time employees. Medical Resource, Inc. also hires a staffing company to furnish seventy-five workers.

(i) Medical Resource, Inc. offers its employees two different health plans as a medical benefit. Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Plan A until completing thirty days of employment. Plan B costs employees $200 each month. Full-time and part-time employees are eligible for Plan B after six months of employment. One hundred full-time employees are enrolled in Plan A. One hundred full-time and part-time employees are enrolled in Plan B. Forty full-time and part-time employees chose not to enroll in either plan. Ten part-time employees are not yet eligible for either Plan A or Plan B. Medical Resource, Inc. must report two hundred employees as having employer-provided medical benefits, because this is the number of employees enrolled in the health plans it offers.

(ii) Medical Resource, Inc. does not offer medical benefits to the employees of the staffing company. However, twenty-five of these workers have enrolled in a health plan through the staffing company. Medical Resource, Inc. must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) Medical Resource, Inc. does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all employees with a 30% discount on any dental care service. No action, other than Medical Resource, Inc. employment, is required by employees to receive this benefit. Unlike the medical benefit, employees are eligible for the dental benefit as of the first day of employment. This benefit is not provided to the workers furnished by the staffing company. Medical Resource, Inc. must report two hundred and fifty employment positions as having dental benefits, because this is the number of employees enrolled in this dental plan.

(iv) Medical Resource, Inc. offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource, Inc. makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, two hundred and twenty-five workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan. One hundred of these workers receive matching contributions. Medical Resource, Inc. must report two hundred employment positions as having employer-provided retirement benefits, because this is the number of employees enrolled in the 401(k) Plan.

(v) Medical Resource, Inc. coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered to bank customers. Employees who open an IRA with the bank can arrange to have their contributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource, Inc. cannot report that these fifty employees have employer-provided retirement benefits. IRAs are not an employer-provided benefit because the ability to establish the IRA is not dependent on Medical Resource, Inc.'s participation or sponsorship of the benefit.

(10) **Is the annual survey confidential?** The annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax adjustment taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (b) and (c) of this subsection. More confidentiality provisions in regards to the annual surveys are as follows:

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to file a complete annual survey as required by law, then the fact that the taxpayer failed to timely file a complete annual survey and the amount required to be repaid as a result of the taxpayer's failure to file a complete annual survey is not confidential and may be disclosed to the public upon request.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If a taxpayer reports a tax adjustment amount on the annual survey that is different than the amount actually claimed on the taxpayer's tax returns or otherwise allowed by the department, then the amount actually claimed or allowed may be disclosed.

(c) **Tax adjustment is less than ten thousand dollars.** If the tax adjustment is less than ten thousand dollars during the period covered by the annual survey, then the taxpayer may request the department to treat the amount of the tax adjustment as confidential under RCW 82.32.330. The request must be made for each survey in writing, dated and signed by the owner, corporate officer, partner, guardian, executor, receiver, administrator, or trustee of the business, and filed with the department's taxpayer account administration division at the address provided above in subsection (3) of this ((~~section~~)) rule.

(11) **What are the consequences for failing to timely file a complete annual survey?**

(a) **What is a "complete annual survey"?** An annual survey is complete if:

(i) The annual survey is filed on the form required by this ((~~section~~)) rule or in an electronic format as required by law; and

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

Responses such as "varied," "various," or "please contact for information" are not good faith responses to a question.

(b) If a person claims a tax adjustment that requires an annual survey under this ((~~section~~)) rule but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the amount of the tax

adjustment claimed for the previous calendar year becomes immediately due. If the tax adjustment is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit. Interest, but not penalties, will be assessed on these amounts. The interest will be assessed at the rate provided for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax adjustment was claimed, and accrues until the taxes for which the tax adjustment was claimed are repaid.

(c) **Extension for circumstances beyond the control of the taxpayer.** If the department finds that the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the survey. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this ((~~section~~)) rule. The department may grant additional extensions as it deems proper.

In determining whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment ((~~of~~)) or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(d) **One-time only extension.** A taxpayer who fails to file an annual survey required under this ((~~section~~)) rule by the due date of the survey is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) The extension is for ninety days from the original due date of the annual survey.

(iii) No taxpayer may be granted more than one ninety-day extension.

WSR 14-23-059

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed November 17, 2014, 3:07 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-19401 (Rule 19401) Minimum nexus thresholds for apportionable activities, 458-20-19402 (Rule 19402) Single factor receipts apportionment—Generally, 458-20-19403 (Rule 19403) Apportionable royalty receipts attribution, 458-20-19404 (Rule 19404) Financial institutions—Income apportionment, and 458-20-19405 (Rule 19405) CPI-U adjustments to minimum nexus thresholds for apportionable activities.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY Monday, January 19, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend Rules 19401 through 19405 to:

- Recognize provisions of SSB 6333, section 305, chapter 97, Laws of 2014.
- Repeal Rule 19405 and put this language into a new excise tax advisory (ETA).
- Delete multiple references to Rule 19405 in Rules 19401 through 19404.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: The ETA will be easier for taxpayers to use to determine the minimum nexus thresholds for apportionable activities.

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

Statute Being Implemented: RCW 82.04.067, 82.04.460, and 82.04.462.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

November 17, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-22-044, filed 10/31/13, effective 12/1/13)

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.

(((~~(vi)~~)) (v) 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~~)) ETA 3XXX.2014 "Economic Nexus Minimum Thresholds" 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 cal-

endar 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~~)) ETA 3XXX.2014 "Economic Nexus Minimum Thresholds" for the current threshold amounts.)

(c) The minimum nexus thresholds are ((~~determined~~)) applied 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 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 13-22-044, filed 10/31/13, effective 12/1/13)

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.

((~~(f)~~)) (e) 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. When a customer receives the benefit of the taxpayer's services in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state. 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~~)) Theater 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 (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) of this rule. 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:

$$\text{(Receipts factor)} = \frac{\text{(Washington apportionable receipts)}}{\text{((Worldwide apportionable receipts) - (Throw-out income))}}$$

(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 (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 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)~~)) (106) 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:

(Taxable Income)	=	(Receipts Factor)	x	(Apportionable receipts - deductions)

Example 40. Calculating apportionable income. Corporation A received $2,000,000 in apportionable receipts from its 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 13-22-044, filed 10/31/13, effective 12/1/13)

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.

(((~~f~~))) (e) 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. When a customer uses the taxpayer's intangible property in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this 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 13-22-044, filed 10/31/13, effective 12/1/13)

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.

(((~~(vi)~~))) (v) 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-20-19405 CPI-U adjustments to minimum nexus thresholds for apportionable activities.

WSR 14-23-079
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed November 18, 2014, 3:40 p.m.]

Title of Rule and Other Identifying Information: WAC 458-14-056 Petitions—Time limits—Wavier of filing deadline for good cause, 458-19-005 Definitions, 458-19-020 Levy limit—Method of calculation, 458-19-025 Restoration of regular levy, 458-19-030 Levy limit—Consolidation of districts, 458-19-035 Levy limit—Annexation, 458-19-060 Emergency medical services levy, 458-19-065 Levy limit—Protection of future levy capacity, 458-19-085 Refunds—Procedures—Applicable limits, and 458-19-550 State levy—Apportionment between counties.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leslie Mullin, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail LeslieMu@dor.wa.gov, AND RECEIVED BY January 19, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue is proposing to amend these rules to incorporate past legislation.

WAC 458-14-056 incorporates SSB 6333 (2014), which added language to RCW 84.40.038 regarding electronic transmission of value change notices or other notices; and updated an example.

WAC 458-19-005 incorporates SSB 6333 (2014), which clarifies the date in September that the implicit price deflator is published by the federal department of commerce; SHB 1634 (2014), which allows a taxing district's levy limit to be increased due to solar, biomass, and geothermal facilities producing electricity; EHB 1969 (2011), which allows a flood control zone district in certain counties to protect a portion of its levy rate outside of the $5.90 limitation; 2SSB 5433 (2009), which protects the levy rate for county transit-related purposes from prorationing under the $5.90 limitation; SSB 6141 (2006), which allows a taxing district's levy limit to be increased due to wind turbines that generate electricity; clarifies which levy rate to use in the levy limit calculation if the rate is reduced due to prorating or if the rate reflects an error; and incorporates statutory language to various definitions.

WAC 458-19-020, 458-19-025, 458-19-030, 458-19-060, 458-19-085 and 458-19-550, incorporates SHB 1634 (2014), which allows a taxing district's levy limit to be increased due to solar, biomass, and geothermal facilities producing electricity; and SSB 6141 (2006), which allows a taxing district's levy limit to be increased due to wind turbines that generate electricity.

WAC 458-19-035 incorporates SHB 1634 (2014), which allows a taxing district's levy limit to be increased due to solar, biomass, and geothermal facilities producing electricity; SSB 6141 (2006), which allows a taxing district's levy limit to be increased due to wind turbines that generate electricity; clarifies how to calculate the levy rate when an annexation occurs; updated established boundary date; and updated an example.

WAC 458-19-065 incorporates SHB 1634 (2014), which allows a taxing district's levy limit to be increased due to solar, biomass, and geothermal facilities producing electricity; SSB 6141 (2006), which allows a taxing district's levy limit to be increased due to wind turbines that generate electricity; and updated an example.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: To recognize past legislation.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.08.080, 84.48.200, 84.52.0502, 84.55.060.

Statute Being Implemented: RCW 84.09.030, 84.40.038, 84.52.043, 84.55.010, 84.55.015, 84.55.020, 84.55.030, and 84.55.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1589; Implementation and Enforcement: Kathy Beith, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 534-1403.

November 18, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-023, filed 6/23/14, effective 7/24/14)

WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause. (1) The ((~~sole~~)) only method for appealing ((~~an~~)) a county assessor's determination to the county board of equalization, as to valuation of property, or as to any other types of county assessor determinations is by ((~~means of~~)) a properly completed and timely filed taxpayer petition.

(2) A taxpayer's petition for review of the assessed valuation ((~~placed upon~~)) of property by the assessor or for review of any of the types of appeals listed in WAC 458-14-015 must be filed in duplicate with the board. The deadline

for filing ((~~such~~)) the petition with the board ((~~shall~~)) must be the later of:

(a) July 1st of the year of assessment or determination;

(b) Thirty days, or up to sixty days if a longer time period was established by the county legislative authority, from the date ((~~that an~~)) the assessment, value change notice, or other notice ((~~has been~~)) was mailed; or

(c) ((~~Sixty days from the date that an assessment, value change notice, or other notice has been mailed, if a longer time period was established by the county legislative authority. (~~)) Thirty days, or up to sixty days if a longer time period was established by the county legislative authority, from the date the assessor electronically:

(i) Transmitted the assessment, value change notice, or other notice; or

(ii) Notified the owner or person responsible for payment of taxes that the assessment, value change notice, or other notice was available to be accessed by the owner or other person. RCW 84.40.038((~~)~~)).

(3) No late filing of a petition ((~~shall~~)) will be allowed except as specifically provided in this subsection. The board may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. However, the board must waive the filing deadline for the circumstance described under (g) of this subsection if the petition is filed within a reasonable time after the deadline. A petition that is filed after the deadline without a showing of good cause, as described in this subsection, must be dismissed unless, after the taxpayer is notified by the board that the petition will be dismissed because of the late filing, the taxpayer promptly shows good cause for the late filing. The board must decide a taxpayer's claim of good cause without holding a public hearing on the claim and must promptly notify the taxpayer of the decision, in writing. The board's decision regarding a waiver of the filing deadline is final and not appealable to the state board of tax appeals. Good cause may be shown by documentation of one or more of the following events or circumstances:

(a) The taxpayer was unable to file the petition by the filing deadline because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the time for filing. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, domestic partner, child, grandchild, or domestic partner's child or grandchild.

(b) The taxpayer was unable to file the petition by the filing deadline because of the occurrence of all of the following:

(i) The taxpayer was absent from his or her home or from the address where the assessment notice or value change notice is normally received by the taxpayer. If the notice is normally mailed by the assessor to a mortgagee or other agent of the taxpayer, the taxpayer must show that the mortgagee or other agent was required, pursuant to written instructions from the taxpayer, to promptly transmit the notice and failed to do so; and

(ii) The taxpayer was absent (as described in (b)(i) of this subsection) for more than fifteen of the days allowed in subsection (2) of this section prior to the filing deadline; and

(iii) The filing deadline is after July 1st of the assessment year.

(c) The taxpayer was unable to file the petition by the filing deadline because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper filing requirements by either a board member or board staff, the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(d) The taxpayer was unable to file the petition by the filing deadline because of a natural disaster such as a flood or earthquake occurring at or shortly before the time for filing.

(e) The taxpayer was unable to file the petition by the filing deadline because of a delay or loss related to the delivery of the petition by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(f) The taxpayer is a business and was unable to file the petition by the filing deadline because the person employed by the business, responsible for dealing with property taxes, was unavailable due to illness or unavoidable absence.

(g) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:

(i) The taxpayer's property value did not change from the previous year; and

(ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year.

(4) If a petition is filed by mail it must be postmarked no later than the filing deadline. If the filing deadline falls upon a Saturday, Sunday or holiday, the petition must be filed on or postmarked no later than the next business day.

(5) A petition is properly completed when all relevant questions on the form provided or approved by the department have been answered and the answers contain sufficient information or statements to apprise the board and the assessor of the reasons for the appeal. A petition which merely states that the assessor's valuation is too high or that property taxes are excessive, or similar ((~~such~~)) types of statements, is not properly completed and must not be considered by the board. If, at the time of filing the petition, the taxpayer does not have all the documentary evidence available which he or she intends to present at the hearing, the petition will be deemed to be properly completed for purposes of preserving the taxpayer's right of appeal, if it is otherwise fully and properly filled out. However, any comparable sales, valuation evidence, or other documentary evidence not submitted at the time the petition is filed must be provided by the taxpayer to the assessor and the board at least seven business days, excluding legal holidays, prior to the board hearing. A copy of the completed petition must be provided to the assessor by the clerk of the board. Any petition not fully and properly completed ((~~must not~~)) cannot be considered by the board (RCW 84.40.038) and a notice of the board's rejection of the petition must be promptly mailed to the taxpayer. See: WAC 458-14-066 Requests for valuation information—Duty to exchange documentary information—Time limits, for an explanation of the availability, use and exchange of valuation and other documentary information prior to the hearing before the board.

(6) Whenever the taxpayer has an appeal pending with the board, the state board of tax appeals or with a court of law, and the assessor notifies the taxpayer of a change in property valuation, the taxpayer is required to file a timely petition with the board in order to preserve the right to appeal the change in valuation. For example, if a taxpayer has appealed a decision of the board to the board of tax appeals regarding an assessed value for the year ((~~2005~~)) 2013, and that appeal is pending when the assessor issues a value change notice for the ((~~2006~~)) 2014 assessment year, the taxpayer must still file a timely petition appealing the valuation for the ((~~2006~~)) 2014 assessment year in order to preserve his or her right to appeal ((~~from that 2006~~)) the 2014 assessed value.

(7) Petition forms shall be available from the clerk of the board and from the assessor's office.

AMENDATORY SECTION (Amending WSR 06-02-008, filed 12/22/05, effective 1/22/06)

WAC 458-19-005 Definitions. (1) **Introduction.** This rule contains definitions of the terms used throughout chapters 84.52 and 84.55 RCW and chapter 458-19 WAC in the administration of the system used to levy property taxes on taxable property within the state of Washington.

(2) Unless the context clearly requires otherwise, the following definitions apply:

(a) "Annexation" means one taxing district is adding territory or another dissimilar taxing district from outside the annexing taxing district's boundary and includes a merger of a portion of a fire protection district under chapter 52.06 RCW with another fire protection district.

(b) "Assessed value" means the value of taxable property placed on the assessment rolls. The term is often abbreviated with the initials "A.V."

(c) "Certified property tax levy rate" means the tax rate calculated by the county assessor in accordance with law to produce the lawful amount of the certified property tax levy.

(d) "Consolidated levy rate" means:

(i) For purposes of the statutory aggregate dollar rate levy limit, the sum of all regular levy rates set for collection exclusive of rates set for the state levy, port ((~~and~~)), public utility districts, financing affordable housing for very low-income households under RCW 84.52.105, acquiring conservation futures under RCW 84.34.230, criminal justice purposes under RCW 84.52.135, emergency medical care or emergency medical services under RCW 84.52.069, county ferry districts under RCW 36.54.130, the portion of the fire protection levies protected under RCW 84.52.125, ((~~and~~)) the portion of metropolitan park district levies protected under RCW 84.52.120, transit-related purposes under RCW 84.52.140, and the protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county; and

(ii) For purposes of the constitutional one percent limit, the sum of all regular levy rates set for collection exclusive of rates set for port and public utility districts.

(e) "Consolidation" means the act of combining two or more similar taxing districts into one taxing district; for example, the combination of two fire protection districts into one fire protection district.

(f) "Constitutional one percent limit" means the levy limit established by Article VII, section 2 of the state Constitution, which prohibits the aggregate of all tax levies on real and personal property from exceeding one percent ($10 per $1,000) of the true and fair value of property. This limit does not apply to excess levies, levies by port districts, and levies by public utility districts. This limit is also set forth in RCW 84.52.050.

(g) "Department" means the department of revenue of the state of Washington.

(h) "Excess property tax levy" or "excess levy" means a voter-approved property tax levy by or for a taxing district, other than a port or public utility district, that is subject to neither the statutory aggregate dollar rate limit set forth in RCW 84.52.043 nor the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and in RCW 84.52.050. It does not include regular levies allowed to exceed the levy limit with voter approval.

(i) "Improvement" means any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property.

(j) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce ((~~in~~)) by September 25th of the year before the taxes are payable; see RCW 84.55.005.

(k) "Joint taxing district" means a taxing district that exists in two or more counties; the term does not include the state nor does it include an intercounty rural library district.

(l) "Junior taxing district" means a taxing district other than the state, a county, a county road district, a city, a town, a port district, or a public utility district.

(m) "Levy limit" means:

(i) The statutorily established limit that prohibits a taxing district, other than the state, from levying regular property taxes for a particular year that exceed the limit factor multiplied by the highest amount of regular property taxes that could have been lawfully levied in the taxing district in any year since 1985, plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year, or the last year the taxing district levied taxes, by the increase ((~~during the current year of the~~)) in assessed value in the taxing district ((~~due to~~)) resulting from:

(A) New construction((~~,~~));

(B) Improvements to property((~~, and the~~));

(C) Increases in the assessed value of state assessed property ((~~by the levy rate of that district for the preceding year, or the last year the taxing district levied taxes.~~

~~(i)~~)); and

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(ii) For purposes of the levy limit, the phrase "highest amount of regular property taxes that could have been lawfully levied" means the maximum amount that could have been levied by a taxing district under the limitation set forth in chapter 84.55 RCW unless the highest amount that could have been levied was actually restricted by the taxing district's statutory dollar rate limit. If the taxing district's levy was restricted by the statutory dollar rate limit, the highest amount that could have been lawfully levied is the amount produced by multiplying the assessed value of the taxing district by the statutory dollar rate.

((~~(ii)~~)) (iii) For purposes of the levy limit, the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, may reflect a reduced rate due to the $5.90 statutory aggregate limitation and/or the constitutional one percent limitation, if prorating occurred in the district.

The regular property tax levy rate of the district for the preceding year may also reflect a levy error or a levy error correction. If this occurs, the rate used will be the rate had the levy error or levy error correction not occurred. RCW 84.52.-085.

(iv) The levy limit for the state is the limit factor multiplied by the highest amount of regular property taxes lawfully levied in the three most recent years, plus an additional dollar amount ((~~attributable to new construction, improvements to property, and any increase in the assessed value of state assessed property~~)) calculated by multiplying the state levy rate for the preceding year by the increase in assessed value in the state resulting from:

(A) New construction;

(B) Improvements to property;

(C) Increases in the assessed value of state assessed property; and

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(n) "Levy rate" means the dollar amount per thousand dollars of assessed value applied to taxable property within a taxing district and is calculated by dividing the total amount of a statutorily authorized levy of a taxing district by the total assessed value of that district and is expressed in dollars and cents per thousand dollars of assessed value.

(o) "Limit factor" means:

(i) For taxing districts with a population of less than ten thousand in the calendar year immediately prior to the assessment year, one hundred one percent;

(ii) For taxing districts, other than the state, having made a finding of substantial need in accordance with RCW 84.55.0101, the lesser of the substantial need factor or one hundred one percent; or

(iii) For all other taxing districts, including the state, the lesser of one hundred one percent or one hundred percent plus inflation.

(p) "New construction" means the construction or alteration of any property for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits, which results in an increase in the value of the property.

(q) "Regular property tax levy" or "regular levy" means a property tax levy by or for a taxing district that is subject to the statutory aggregate dollar rate limit set forth in RCW 84.52.043, the constitutional one percent limit set forth in RCW 84.52.050, or is a levy imposed by or for a port district or a public utility district.

(r) "Regular property taxes" means those taxes resulting from regular property tax levies.

(s) "Senior taxing district" means the state (for support of common schools), a county, a county road district, a city, or a town.

(t) "Statutory aggregate dollar rate limit" or "statutory aggregate limit" means the maximum aggregate regular property tax levy rate within a county established by law for senior and junior taxing districts, other than the state. The current limit is $5.90 per $1,000 of assessed valuation. See RCW 84.52.043 and WAC 458-19-070 ((~~for the current limit~~)).

(u) "Substantial need limit factor" means a limit factor approved by a taxing district's legislative authority that exceeds one hundred percent plus inflation. This limit cannot exceed one hundred one percent.

(v) "Statutory dollar rate limit" means the maximum regular property tax levy rate established by law for a particular ((~~class~~)) type of taxing district.

(w) "Super majority" means a majority of at least three-fifths of the registered voters of a taxing district approving a proposition authorizing a levy, at which election the number of persons voting "yes" on the proposition constitutes three-fifths of a number equal to forty percent of the total votes cast in the taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters of the taxing district voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total votes cast in the taxing district in the last preceding general election.

(x) "Tax code area" means a geographical area made up of ((~~a unique mix of~~)) one or more taxing districts, which is established for the purpose of properly calculating, collecting, and distributing taxes. Only one tax code area will have the same combination of taxing districts, with limited exceptions.

(y) "Taxing district" means the state and any county, city, town, port district, school district, road district, metropolitan park district, water-sewer district, or other municipal corporation, ((~~now or hereafter existing,~~)) having the power or legal authority to impose burdens upon property within the district on an ad valorem basis, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed for public purposes, ((~~upon~~)) on property in proportion to the increase in benefits ((~~accruing thereto~~)) received.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-020 Levy limit—Method of calculation. (1) **Introduction.** This rule explains the general method used to calculate the levy limit for the state and all other taxing districts in accordance with RCW 84.55.010 ((~~and~~)), 84.55.092, 84.55.120. Except for the state levy, the same method is generally used to calculate the amount of regular property taxes that can be levied by a taxing district in any year. This rule also describes what occurs when a taxing district makes a finding of substantial need in accordance with RCW 84.55.-0101 to use a limit factor in excess of one hundred percent plus inflation. This rule does not attempt to include all special circumstances that may affect the applicable limit under chapter 84.55 RCW.

(2) **Increase in tax revenues - Ordinance or resolution required.** The following describes the ordinance or resolution required by taxing districts when requesting increases in tax revenues.

(a) Except by holding a public hearing and adopting an ordinance or resolution, no taxing district, other than the state, may authorize an increase in property tax revenue, other than one resulting from an increase in assessed value of the district attributable to:

(i) New construction((~~,~~));

(ii) Improvements to property((~~, or any~~));

(iii) Increases in the assessed value of state assessed property ((~~except by holding a public hearing and adopting an ordinance or resolution.~~)); and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(b) The ordinance or resolution may cover a period of up to two years, but the ordinance or resolution must specifically state for each year the dollar increase and percentage change in the levy from the previous year. The dollar increase and percentage change should reflect everything included in the levy limit and should not reflect anything excluded under chapter 84.55 RCW (such as, but not limited to, a levy for property tax refunds paid under the provisions of chapter 84.68 or 84.69 RCW).

((~~(a)~~)) (c) A majority of the legislative authority of a taxing district must approve ((~~an~~)) the ordinance or resolution authorizing an increase in the taxing district's levy as calculated in subsection (3) of this rule.

((~~(b)~~)) (d) Upon making a finding of substantial need to increase its levy by an amount greater than the rate of inflation, the legislative authority of a taxing district may adopt a second ordinance or resolution establishing a limit factor greater than one hundred percent plus inflation. But the substantial need limit factor can never exceed one hundred one percent.

(i) In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

(ii) In districts with more than four members, a majority plus one must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

(3) **Calculation of levy limit for all taxing districts other than the state.** The amount of regular property taxes that can be levied by a taxing district, other than the state, in any year is limited to an amount that will not exceed the amount resulting from the following calculation, except as otherwise provided by statute:

(a) The highest amount that could have been lawfully levied by the taxing district in any year since 1985 for 1986 collection, multiplied by the limit factor; plus

(b) A dollar ((~~component~~)) amount calculated by multiplying the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, by the increase in assessed value of the district ((~~from the previous year attributable to~~)) resulting from:

(i) New construction((~~,~~));

(ii) Improvements to property((~~, and any~~));

(iii) Increases in the assessed value of state assessed property((~~, by the actual regular property tax levy rate of that district for the preceding year, or the last year the taxing district levied taxes~~)); and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(4) **Calculation of levy limit for the state levy.** The levy limit for the state is calculated in the same manner as for other taxing districts except that the limit factor is multiplied by the highest amount that was lawfully levied by the state in the three most recent years in which such taxes were levied.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-025 Restoration of regular levy. (1) **Introduction.** This rule explains how a taxing district restores a regular property tax levy if it has not levied since 1985 and it elects to restore a regular property tax levy in accordance with RCW 84.55.015.

(2) **Calculation of restored regular levy.** If a taxing district has not levied since 1985 and it elects to restore a regular property tax levy, the first regular property tax payable as a result of the restored levy cannot exceed the lesser of:

(a) The combination of the following:

(i) The amount last levied plus,

(ii) A dollar ((~~component~~)) amount calculated by multiplying the ((~~increase in assessed value of property in the district attributable to new construction and improvements to property since the last levy through the current year by the levy rate that~~)) property tax levy rate which is proposed to be restored, by the increase in assessed value in the district since the last levy resulting from:

(A) New construction;

(B) Improvements to property;

(C) Increases in the assessed value of state assessed property; and

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

The levy rate that is proposed to be restored is determined by dividing the total dollar amount that was last levied by the district by the current year's assessed value after deducting the accumulated assessed values attributable to ((~~new construction and improvements to property since the last levy~~)) (A) through (D) of this subsection; or

(b) The maximum amount which could be lawfully levied by that district in the year the restored levy is proposed, subject to the statutory dollar rate limit contained in the taxing district's authorizing statute, without considering the calculation used in subsection (2)(a) of this rule.

(3) **Example.** Taxing district "A" has not levied a regular levy since 1985 when it levied $10,000 based upon 1985 assessed values and all lawful limitations at that time. The total increase since the 1985 assessment year in assessed value of property in the district as a result of new construction ((~~and~~)), improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities beginning in 1986 through the current assessment year is $3,000,000. The assessed value of taxing district "A" for the current year is $15,000,000. The calculation for subsection (2)(a) of this ((~~subsection~~)) rule is as follows:

Current year A.V. -	$15,000,000
Minus increases in new construction ((~~and~~)), improvements to property, etc., since 1985 -	- 3,000,000
	$12,000,000
Amount levied in 1985 -	$10,000
Current year A.V. less increases in new construction ((~~and~~)), improvements to property, etc., -	÷ $12,000,000
Levy rate proposed to be restored -	.000833
Increases in new construction ((~~and~~)), improvements to property, etc., -	x $3,000,000
Calculated dollar amount -	$2,500
Allowable 1985 levy -	+ 10,000
Allowable levy for current year (under subsection (2)(a) of this rule) -	$12,500

The amount calculated under subsection (2)(a) of this ((~~subsection~~)) rule must be compared to the amount determined under subsection (2)(b) of this ((~~subsection~~)) rule and the lesser of the two amounts is the maximum amount that can be levied.

(4) **Assessor to maintain taxing district records.** Records of value increases attributable to new construction ((~~and~~)), improvements to property, ((~~and~~)) increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities are to be maintained each year by the county assessor for each taxing district whether or not the district imposes a regular property tax levy.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-030 Levy limit—Consolidation of districts. (1) **Introduction.** This rule describes the method used to calculate the first levy for a taxing district created by the consolidation of similar taxing districts in accordance with RCW 84.55.020.

(2) **Calculation of the first levy of a consolidated taxing district.** The first regular property tax levy made by a taxing district, created by the consolidation of two or more similar taxing districts, cannot exceed:

(a) The sum of the product of the limit factor multiplied by the highest amount of regular property taxes lawfully levied by each of the component districts during the three most recent years in which taxes were levied; plus

(b) The sum of each of the amounts calculated by multiplying the ((~~increase in assessed value of property attributable to new construction and improvements to property in~~)) regular property tax levy rate of each of the component districts ((~~since~~)) for the preceding year by the ((~~regular property tax rate of~~)) increase in assessed value in each component district ((~~in the preceding year~~)) resulting from:

(i) New construction;

(ii) Improvements to property;

(iii) Increases in the assessed value of state assessed property; and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(3) **Example.** Taxing district "A" and taxing district "B" consolidate, becoming one taxing district. The highest amount of regular property taxes lawfully levied by district "A" during the three most recent years is $100,000. The highest amount of regular property taxes lawfully levied by district "B" during the three most recent years is $150,000. The increase in assessed value due to new construction ((~~and~~)), improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities in district "A" since the year prior to consolidation was $600,000. The increase in assessed value due to new construction ((~~and~~)), improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities in district "B" since the year prior to consolidation was $900,000. The regular property tax rate for district "A" in the year prior to consolidation was $((~~.50~~)) 0.50 per $1,000 of assessed value. The regular property tax rate for district "B" in the year prior to consolidation was $((~~.45~~)) 0.45 per $1,000 of assessed value. Assume the limit factor for this example is 101% because it is

the lesser of one hundred one percent and one hundred percent plus the rate of inflation. The maximum amount of regular property taxes that can be levied in the year of consolidation, for taxes payable the following year, by the new consolidated taxing district is calculated as follows:

	Highest regular levy	
District "A" -	$100,000	
District "B" -	150,000	
Total -	$250,000	x 1.01 = $252,500

Increases in assessed value multiplied by levy rate:

District "A" - $600,000 x $((~~.50~~)) 0.50 ÷ $1,000	= $300
District "B" - $900,000 x $((~~.45~~)) 0.45 ÷ $1,000	= $405
	$705

Maximum regular property taxes that can be levied in the year of consolidation, payable in the year following consolidation:

$252,500 + $705 = $253,205

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-035 Levy limit—Annexation. (1) **Introduction.** One taxing district may annex territory or another dissimilar taxing district from outside the annexing taxing district's boundary. This rule sets forth the method used to calculate the first regular property tax levy made after a taxing district has annexed territory or a dissimilar taxing district in accordance with RCW 84.55.030 and 84.55.110. This rule also explains what occurs when the department of natural resources (DNR) discontinues forest fire patrol assessments on parcels of forest land.

(2) **Increase in territory due to annexation.** The first regular property tax levy of a taxing district after it annexes territory or a dissimilar taxing district cannot exceed the amount calculated as follows:

(a) Multiply the highest amount of regular property taxes that could have been lawfully levied since 1985 for 1986 collection, of the annexing district as though no annexation had occurred, by the limit factor as defined in RCW 84.55.005 and WAC 458-19-005;

(b) Multiply the ((~~increase in assessed value in~~)) regular property tax levy rate of the annexing district ((~~since~~)) for the preceding year ((~~attributable to new construction, improvements to property, and~~)) by the increase in assessed value ((~~of state assessed property by the regular property tax levy rate of the annexing district for the preceding year~~)) in the annexing district resulting from:

(i) New construction;

(ii) Improvements to property;

(iii) Increases in the assessed value of state assessed property; and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property; and

(c) Multiply the current year assessed value of the annexed territory or district by the levy rate that would have been used for the current year by the annexing district had there been no annexation. To calculate the levy rate that would have been used for the current year by the annexing district, divide the regular levy limit of the annexing district by the current assessed value of the annexing district, excluding the annexed area.

(d) Add together the result of each of the calculations set forth in subsection (2)(a), (b), and (c) of this rule to determine the maximum amount of the first regular levy of a taxing district after annexation.

(3) **Example.** Following is an example of the calculations prescribed in subsection (2) of this rule. Taxing district "A" annexes a portion of taxing district "B" that takes effect before ((~~March~~)) August 1st in ((~~2002~~)) 2014. The highest amount of regular property taxes that could have been levied by district "A" since 1985 for 1986 collection is $100,000. The increase in assessed value from ((~~2001 to 2002~~)) 2013 to 2014 in district "A" due to new construction, improvements to property, ((~~and~~)) increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities is $700,000. The levy rate for district "A" for ((~~2001~~)) 2013 was $((~~.50~~)) 0.50 per $1,000 of assessed value. The ((~~2002~~)) 2014 levy rate for district "A," had there been no annexation, would have been $((~~.48~~)) 0.48 per $1,000 of assessed value. The ((~~2002~~)) 2014 assessed value of the portion of taxing district "B" that was annexed by taxing district "A" is $5,000,000, which includes the value of new construction ((~~and~~)), improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities. Assume the levy limit for this example is 101% because it is the lesser of one hundred one percent and one hundred percent plus the rate of inflation. The first regular levy by taxing district "A" after annexation cannot exceed the amount calculated as follows:

District "A" highest levy since 1985 -	$100,000
	x 1.01
	$101,000
A.V. of new construction* in district "A" -	$700,000
District "A" levy rate for ((~~2001~~)) 2013 -	x ((~~.50~~)) 0.50
	$350,000
Divide by $1,000 -	÷ 1,000
Levy amount for new construction -	$350
((~~2002~~)) 2014 A.V. of annexed portion of district "B" -	$5,000,000
District "A" levy rate that would have been used in ((~~2002~~)) 2014, absent annexation -	x ((~~.48~~)) 0.48
	$2,400,000
Divide by $1,000 -	÷ 1,000
Levy amount for annexed part of district "B" -	$2,400

	$101,000
	350
	+ 2,400
Maximum levy amount for district "A" after annexation -	$103,750

* For purposes of this example, "new construction" also includes improvements to property ((~~and~~)), increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities.

(4) **Loss of territory due to annexation.** When a taxing district loses a portion of its territory as a result of annexation to another district, the levy limit for the taxing district that loses part of its territory is calculated by multiplying the highest amount that could have been lawfully levied by that taxing district since 1985 for 1986 collection by the limit factor as defined in RCW 84.55.005 and WAC 458-19-005. However, only the increase in assessed value from the preceding year, attributable to new construction, improvements to property, ((~~and~~)) increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities that ((~~is actually situated~~)) occurred in the remaining territory of the taxing district is added to the amount ((~~thus~~)) determined, to calculate the levy limit. ((~~In no case, absent~~)) Except for voter approval of an excess levy, ((~~can~~)) the levy rate cannot exceed the statutory dollar rate limit for that ((~~class~~)) type of taxing district.

(5) **Forest fire patrol protection assessments discontinued by DNR - Effect.** If an owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, DNR will provide this protection and impose an annual assessment on each parcel of forest land in accordance with RCW 76.04.610. When DNR discontinues the forest fire patrol assessment by dissolving the forest protection assessment areas and an existing fire district assumes protection services and property tax levying authority for this unimproved land within its existing boundaries, the assessed value of the fire district will increase and effectively be an annexation for property tax purposes. In order to be included in the assessed value of the fire district, all details of the dissolution and annexation must be completed and the county assessor's office must receive formal notice from the fire district and DNR prior to ((~~March~~)) August 1st of the assessment year. This notice must specify the forest fire patrol assessment areas being dissolved, the fire district(s) assuming the levying and fire protection responsibilities, and the forest land impacted by the change.

AMENDATORY SECTION (Amending WSR 14-14-023, filed 6/23/14, effective 7/24/14)

WAC 458-19-060 Emergency medical service levy. (1) **Introduction.** This rule explains the criteria contained in RCW 84.52.069 relative to a taxing district imposing a limited or permanent regular levy for emergency medical care or emergency medical services. It describes the permitted duration of this levy, the ballot title and measure that must be presented to and approved by the voters, the maximum rate for this levy, and the applicable limits.

(2) **Purpose - Voter approval required - Who may levy.** An emergency medical service (EMS) levy is a regular voter approved levy. Any taxes collected as a result of this levy can only be used to provide emergency medical care or emergency medical services, including related personnel costs, training for such personnel and related equipment, supplies, vehicles, and structures needed to provide this care or service. A permanent EMS levy, or the initial imposition of a six-year or ten-year EMS levy must be approved by a super majority of registered voters at a general or special election. However, the uninterrupted continuation of a six-year or ten-year EMS levy only requires the authorization of a majority of the registered voters at a general or special election. For purposes of this ((~~section~~)) rule, an "uninterrupted continuation of a six-year or ten-year EMS levy" means the continuation of both the levy itself and its maximum levy rate. Only a county, emergency medical service district, city, town, public hospital district, urban emergency medical service district, regional fire protection service area, or fire protection district is authorized to impose an EMS levy.

(3) **Duration - Maximum rate.** An EMS levy is imposed each year for six consecutive years, each year for ten consecutive years, or permanently. Except as provided in subsection (10) of this ((~~section~~)) rule, a taxing district may impose a regular property tax levy in an amount that cannot exceed fifty cents per thousand dollars of assessed value of the property of the taxing district.

(4) **Contents of ballot title and measure.** Any ballot title and measure seeking authorization of an EMS levy must conform to the requirements of RCW 29A.36.210. A taxing district cannot submit to the voters at the same election multiple propositions to impose a levy under RCW 84.52.069. If the approved ballot title and measure did not authorize the maximum allowable levy rate (fifty cents) for the EMS levy, any future proposition to increase the rate up to the maximum allowable must be specifically authorized by voters at a general or special election. That is, a taxing district may impose a levy rate up to, but no greater than, the rate contained in the approved ballot measure without obtaining additional voter approval. The ballot title and measure authorizing a taxing district to impose:

(a) An EMS levy for a limited duration must state the name of the taxing district, the maximum rate per thousand dollars of assessed value to be imposed, and the maximum number of years the levy is to be allowed; or

(b) A permanent EMS levy must state the name of the taxing district and the maximum rate per thousand dollars of assessed value to be permanently imposed. A ballot title for this type of levy must include wording to indicate that it is a permanent EMS levy. A taxing district that seeks to impose a permanent levy must also provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. The detailed specifics of this procedure are set forth in RCW 84.52.069(4).

(5) **County-wide EMS levy.** A county-wide EMS levy cannot be placed on the ballot without first obtaining the approval of the legislative authority of any city within the

county having a population exceeding fifty thousand. No other taxing district within the county may hold an election on a proposed EMS levy at the same time as the election on a proposed county-wide EMS levy. To the extent feasible, emergency medical care and services must be provided throughout the county whenever the county levies an EMS levy. In addition, if a county levies an EMS levy, the following conditions apply:

(a) Any other taxing district within the county, authorized to levy an EMS levy may do so, but only if the taxing district's EMS levy rate does not exceed the difference between the county's EMS levy rate and fifty cents per thousand dollars of assessed value of the property of the taxing district; and

(b) When a taxing district within the county levies an EMS levy and the voters of the county subsequently approve a county-wide EMS levy, the taxing district must then reduce its EMS levy rate so that the combined EMS levy rate of the county and the taxing district does not exceed fifty cents per thousand dollars of assessed value in the taxing district; and

(c) An EMS levy of limited duration of a taxing district within the county, authorized by the voters subsequent to a county-wide EMS levy of limited duration, will expire concurrently with the county EMS levy; and

(d) A fire protection district that has annexed an area described in subsection (10) of this ((~~section~~)) rule may levy the maximum amount of tax that would otherwise be allowed, notwithstanding any limitations in this subsection.

(6) **EMS levy of taxing district other than county.** Once a taxing district that has the authority to levy an EMS levy has done so within the county, only the county may concurrently levy an EMS levy within the boundaries of that taxing district; all other taxing districts are prohibited from levying an EMS levy within that taxing district's boundaries while it collects an EMS levy.

(a) If a regional fire protection service authority imposes a tax under this ((~~section~~)) rule, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this ((~~section~~)) rule.

(b) For purposes of this subsection, "participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.

(7) **Constitutional one percent limit is applicable.** An EMS levy is subject to the constitutional one percent limit for regular property taxes. If a reduction of the rate of an EMS levy is required because this limit is exceeded, it is to be reduced in the manner set forth in RCW 84.52.010(((~~1~~))) and WAC 458-19-075.

(8) **Statutory aggregate dollar rate limit is not applicable.** An EMS levy is not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value (see RCW 84.52.043).

(9) **Applicability of limit factor to EMS levy.** The first year an EMS levy is made following voter approval, the levy limit set forth in RCW 84.55.010 does not apply. However, after the first year any EMS levy made is subject to this limit. In other words, beginning the second year this levy is made it cannot exceed the limit factor multiplied by the highest amount of regular property taxes that could have lawfully been levied since the voters last approved such a levy plus an additional dollar amount calculated by multiplying the regular property tax levy rate of the district for the preceding year by the increase in assessed value in ((~~that~~)) the district resulting from:

(a) New construction((~~,~~));

(b) Improvements to property((~~, and any~~));

(c) Increases in the assessed value of ((~~state-assessed~~)) state assessed property ((~~by the regular property tax rate for the district in the preceding year~~)); and

(d) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property. The EMS levy is calculated separately from any other levies made by the taxing district for purposes of calculating the levy limit.

(10) For purposes of imposing the tax authorized under this ((~~section~~)) rule, the boundary of a county with a population greater than one million five hundred thousand does not include the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county having a population greater than one million five hundred thousand is less than two hundred fifty million dollars.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-065 Levy limit—Protection of future levy capacity. (1) **Introduction.** This rule explains what occurs when a taxing district levies taxes in an amount less than the maximum allowed under the levy limit for any year and how future levies of the district will be calculated.

(2) **Use of maximum lawful levy amount.** In any year when a taxing district, other than the state, levies taxes in an amount less than the maximum amount allowed by the levy limit, whether voluntarily or as a result of the operation of the statutory aggregate dollar rate limit or constitutional one percent limit reducing or eliminating the taxing district's levy rate, the levy limit for succeeding years after 1985 will be calculated as though the maximum lawful levy amount allowed by the levy limit or the taxing district's statutory dollar rate limit had been levied.

(3) **Examples.** These examples do not include any amounts for new construction, improvements to property, ((~~or~~)) increases in the assessed value of state assessed property, or increases in the assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities.

(a) In ((~~2001~~)) 2013, the highest amount of regular property taxes that could have been lawfully levied by taxing district "A" as restricted by the levy limit was $100,000. But in ((~~2001~~)) 2013 taxing district "A" ((~~is~~)) was otherwise limited by the statutory aggregate dollar rate limit to a maximum levy of $95,000. The levy limit for the ((~~2002~~)) 2014 levy will be calculated on the basis of what could have been the highest levy amount since 1985, that is $100,000 multiplied by the

limit factor. The amount actually levied in ((~~2001~~)) 2013 is not controlling.

(b) Using the same basic facts from the previous example, if the levy amount of district "A" had been limited by the statutory dollar rate limit in ((~~2001~~)) 2013 to $95,000, and $95,000 was the highest amount of regular property taxes that could have been lawfully levied since 1985, then the levy limit for ((~~2002~~)) 2014 will be calculated on the basis of $95,000, that is $95,000 multiplied by the limit factor.

AMENDATORY SECTION (Amending WSR 14-14-023, filed 6/23/14, effective 7/24/14)

WAC 458-19-085 Refunds—Procedures—Applicable limits. (1) **Introduction.** Chapters 84.68 and 84.69 RCW both set out procedures and conditions under which property taxes are refunded. This rule explains the differences between the types of refunds authorized under each chapter, the procedures related to the refunds, and the effect the refunds have on levy limits and the levy setting process in general.

(2) **Court ordered refunds under chapter 84.68 RCW - County tax refund fund levy.** Any person who believes that the taxes levied against their property are unlawful or excessive may pay the taxes under protest, setting forth all the grounds upon which the tax is claimed to be unlawful or excessive, and bring an action in superior court or in any federal court of competent jurisdiction against the state, county, or municipality. RCW 84.68.020. If the court determines that the taxes were indeed unlawful or excessive, it will enter a judgment in favor of the taxpayer who paid the tax under protest and determine the amount to be refunded to the taxpayer. When such a judgment is entered, the law provides a specific procedure for refunding the money to the taxpayer in RCW 84.68.030 and for taxing districts to generate the moneys to be refunded in RCW 84.68.040. Any and all taxing districts that were levying taxes against the property at the time for which a refund is directed by court order under RCW 84.68.-020 must levy, or have levied for them, an amount for the county tax refund fund. The county tax refund fund levy is a regular levy that is subject to all the applicable levy limitations provided in law for regular levies. However, the law specifically exempts a refund fund levy from the levy limit set forth in RCW 84.55.010.

(a) Method used to make refunds. When a court judgment is entered in favor of a taxpayer, RCW 84.68.030 states that the refund is to be paid via warrants drawn against the "county tax refund fund." If, at the time the judgment is entered, there are no moneys in that fund, then the warrants bear interest and are "callable under such conditions as are provided by law for county warrants."

(b) Process used to generate funds for the county tax refund fund. RCW 84.68.040 provides that as part of the annual levying of taxes for county purposes, the county is required to make and enter a tax levy or levies for the county tax refund fund. The purpose of the refund fund levy is to produce moneys to be deposited into a fund from which a taxpayer, who paid taxes that were later adjudged to be unlawful or excessive, can be repaid, without unduly affecting the operating funds of the taxing districts. This levy has precedence over all other tax levies for county and/or taxing district purposes.

(c) Who makes and enters the tax levies for the refund fund levy? Officers of local taxing districts, the county legislative authority, the county assessor, and any other person or entity that would normally be involved in the levy making process are required to make and enter the refund fund levy. However, if a taxing district is required to levy for the county tax refund fund and fails to do so, or if a taxing district is required to levy for the county tax refund fund and does not have a regular nonvoted levy, then the county legislative authority levies the tax for or on behalf of the district, the assessor sets the rate, and the treasurer collects the tax.

(d) What limitations apply to the county tax refund fund levy? There are four basic levy limitations that need to be taken into consideration: The levy limit set forth in RCW 84.55.010; the constitutional (Article VII, section 2) and statutory (RCW 84.52.010) one percent limit; the statutory dollar rate limit for the various taxing districts; and the aggregate dollar rate limit contained in RCW 84.52.043.

(i) The levy limit set forth in RCW 84.55.010 does not apply to the county tax refund fund levy, regardless of which taxing district is involved (see RCW 84.55.070). Therefore, a taxing district(s) can levy the amount to be refunded even if that amount will cause the total levy of the taxing district to exceed the levy limit. For example, a court orders County A to refund $10,000 to a Taxpayer. The proper county officials in County A must determine what portion of the $10,000 is attributable to Taxing District No. 1. For purposes of this example, Taxing District No. 1 owes the Taxpayer $1,000. Taxing District No. 1's levy last year was $30,000. Without considering new construction, improvements to property, ((~~and~~)) increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, the levy for this year under the levy limit would be $30,300. However, Taxing District No. 1's levy for this year, including the refund fund levy, can be $31,300.

(ii) The constitutional one percent limit, the statutory dollar rate limit, and the aggregate dollar rate limit apply to any refund fund levy. Consequently, any refund fund levy must be contained within the maximum dollar rate authorized by law for any taxing district. For example, if under the levy limit, the county current expense levy rate is $1.80/$1,000 and the refund fund levy rate is $((~~.10/$1,000~~)) 0.10/$1,000 A.V., then only $1.70 may go to the current expense fund. Similarly, if the current expense levy rate, as limited by the levy limit, is $1.50/$1,000 A.V., then the $((~~.10/$1,000~~)) 0.10/$1,000 is added to the $1.50 making a levy rate that is $1.60/$1,000 A.V. Any combination is possible as long as the total of the two does not exceed the statutory dollar rate maximum of $1.80/$1,000 A.V. for levies made for county purposes. All moneys levied for the county tax refund fund levy are allocated first, without consideration of any delinquency, and then whatever balance is remaining goes to the district's operating fund.

(e) Refund fund's relationship to excess levies. Because the refund fund levy is the direct result of a court ordered judgment in a specific amount, it does not matter whether the judgment amount is derived from taxes paid on regular,

excess, or bond levies, or any combination of these levies. The refund fund levy is separate and independent of the levies from which it arose. The levy includes an additional amount deemed necessary to meet the obligations of the county tax refund fund, taking into consideration the probable portions of the taxes that will not be collected or collectible during the year in which they are due and payable, as well as any unobligated cash in hand in this fund.

(f) Applicability to school district levies and state school levy. All taxing districts for which, and within which, taxes were collected unlawfully are required to levy for the refund fund. A refund fund for the school district would not be limited by a dollar rate limit. However, the school district refund fund levy would be subject to the constitutional one percent limit because the refund fund is a regular levy subject to all applicable limits. The state school levy will include a refund fund levy, which will be calculated by the department at the time it levies the state school levy. The state, as a taxing district itself, follows the same procedures that apply to any other taxing district, to the extent that those procedures are applicable.

(g) Separate account in county treasury. The county treasurer must keep a separate account for each district for which a refund fund is created and can only disburse money from that account to the taxpayer(s) entitled to receive a court ordered refund.

(3) **Administrative refunds under chapter 84.69 RCW.** Property taxes may be refunded on the order of the county treasurer before or after delinquency if the property taxes were paid under one of the circumstances listed in RCW 84.69.020. These circumstances include errors, changes in valuation or status by a county board of equalization or the state board of tax appeals, and delays in applying for a senior citizen exemption or deferral.

(a) The levy limit set forth in RCW 84.55.010 does not apply. RCW 84.55.070 states that the limitations contained in chapter 84.55 RCW do not apply to property tax refunds paid or to be paid under the provisions of RCW 84.69.180. Therefore, an amount necessary to fund any refund paid in accordance with RCW 84.69.020 may be added to the levy for a taxing district without regard to the levy limit. A refund ((~~fund~~)) levy is not subject to the levy limit. However, the statutory dollar rate limit still applies to each taxing district, as well as the five dollar and ninety cent limit set forth in RCW 84.52.043 and the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and RCW 84.52.050.

(b) Refunds include interest. Refunds authorized under RCW 84.69.020 must include interest that is payable from the time the taxes were paid. The rate of interest is calculated in accordance with RCW 84.69.100, established annually by the department, and published in WAC 458-18-220.

(c) Taxing districts, other than the state, may levy a tax upon all the taxable property within the district for the purpose of:

(i) Funding refunds paid or to be paid under this chapter, except for refunds due to taxes paid more than once, RCW 84.69.020(1), including interest, as ordered by the county treasurer or county legislative authority within the preceding twelve months; and

(ii) Taxes that have been abated or canceled, offset by any supplemental taxes collected under Title 84 RCW other than amounts collected due to highly valued disputed property, RCW 84.52.018, within the preceding twelve months can be levied by taxing districts other than the state.

(iii) This subsection (3)(c)(ii) only applies to abatements and cancellations that do not require a refund under chapter 84.69 RCW. Cancellations that require a refund are included within the scope of (c)(i) of this subsection.

(d) Example 1. This example demonstrates net refunds, cancellations, and supplements that occurred within the past twelve months and the refund levy that can be requested by the taxing district:

Refunds		$8,000
Cancellations	$10,000	
Abatements	$ 1,000	
Supplements	$ 7,000	
Net cancellations and abatements offset by supplements		$4,000
Net amount eligible for a refund levy		$12,000

(e) Example 2. This example assumes that the base for computing the allowable levy is $10,000 and refers to the county current expense levy rate that may not exceed one dollar and eighty cents per thousand dollars of assessed value in accordance with RCW 84.52.043.

(i) Statutory rate requested does not exceed the dollar rate allowable:

The allowable levy for the county current expense fund	$10,000
Refunds paid or to be paid	$2,000
Total amount of levy	$12,000
Assessed value	$7,000,000
Levy rate	$1.714/$1,000
The levy rate is within the statutory rate limit of $1.80/$1,000	

(ii) Statutory rate requested exceeds the dollar rate allowable:

Allowable levy	$10,000
Refunds paid or to be paid	$2,000
Total amount of levy	$12,000
Assessed value	$6,500,000
Levy rate	$1.846/$1,000
The dollar rate cannot exceed $1.80/ $1,000; therefore, the maximum that can be levied is $6,500,000 x $1.80/$1,000	$11,700
Amount to be refunded	$2,000
Amount to be credited to current expense	$9,700

(f) The base for computing the following year's levy limit does not include the refund levy amount. In the preceding example, the base for the following year's levy limit calculation is $10,000. However, when calculating the additional levy amount based on the value of new construction, improvements to property ((~~and any~~)), increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, the actual regular levy rate (including the refund levy) is used.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-550 State levy—Apportionment between counties. (1) **Introduction.** The department is charged with levying the state taxes authorized by law. As part of this task, the department apportions the amount of tax levied for state purposes among the counties in proportion to the value of taxable property in each county for the year to ensure that each county pays its due and just share of the state tax. This rule explains how the state property tax levy rate is determined, how the department adjusts the previous year's apportionment because of changes and errors in taxable values reported to the department after October 1 of the preceding year, and how the limit factor set forth in RCW 84.55.010 is applied to the state levy.

(2) **Calculation of state levy rate.** The levy rate for the state property tax levy is the lesser of:

(a) $3.60 per thousand dollars of the ((~~full~~)) true and fair value of the taxable property in the state; or

(b) The rate that, when applied to the valuation figures specified in subsection (3) of this rule, will produce a total amount equal to the levy limit set forth in RCW 84.55.010. This levy limit equals the limit factor multiplied by the highest state property tax levy of the most recent three annual state levies, plus an amount calculated by multiplying ((~~increases in value due to~~)) the state levy rate for the preceding year by the increase in assessed value in the state resulting from:

(i) New construction((~~,~~));

(ii) Improvements to ((~~real~~)) property((~~, and the~~));

(iii) Increases in the assessed value of ((~~state-assessed~~)) state assessed property ((~~by the state levy rate applicable in the year prior to the current year for which the tax levy is being computed~~)); and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(3) **Apportionment between the counties - Adjustment for changes or errors.** When determining the amount of the state levy using the calculations set forth in subsection (2)(b) ((~~above~~)) of this rule, the dollar amount apportioned to each county is based upon the valuation figures reported to the department by each county by October 1 of the levy year. If use of the counties' certified assessed values for state levy purposes causes an erroneous apportionment among the counties because of later changes or later-identified errors in valuation within a county, the department will adjust the following year's levy apportionment to reflect these changes and ((~~the~~)) corrections ((~~for these errors~~)).

(a) For purposes of this rule, a change in taxable value includes any final adjustment made by a reviewing body (county board of equalization, state board of tax appeals, or court of competent jurisdiction) and may also include additions of omitted property, other additions to or deletions from the assessment or tax rolls, any assessment return submitted by a county to the department subsequent to December 1st, or a change in the indicated ratio of a county.

(b) Errors requiring adjustments under this rule include errors corrected by a final reviewing body or any other error that may have come to the department's attention and would otherwise be a subject for correction in the exercise of its supervisory powers.

(4) **Changes or errors in current levy - Adjust apportionment for the following year's levy.** If there are any changes or errors relating to the values used in apportioning the current levy, the apportionment for the following year's levy will be adjusted. For purposes of this apportionment, the department will recalculate the previous year's levy and the apportionment thereof to correct any changes or errors in taxable values reported to the department after October 1 of the preceding year. The department will adjust the apportioned amount of the current year's state levy for each county by the difference between the dollar amounts of state levy due from each county as shown by the original and revised levy computations for the previous year.

(5) **County required to correct any error upon discovery.** Nothing in this rule relieves a county from its obligation to correct any error immediately upon discovery when the correction may be timely made to avoid distortion in the true apportionment of the state levy between counties.

WSR 14-23-087
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed November 19, 2014, 10:07 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-179 (Rule 179) Public utility tax. Rule 179 explains the public utility tax (PUT) imposed by chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within the state.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Depart-

ment of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, AND RECEIVED BY Monday, January 19, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to revise Rule 179 to include language explaining the public utility tax exemption for income from sales by a gas distribution business of natural gas, compressed natural gas, and liquefied natural gas used for transportation purposes. This exemption is not available until July 1, 2015.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: Chapter 216, Laws of 2014 (ESSB 6440).

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

Statute Being Implemented: RCW 82.16.310.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

November 19, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-14-121, filed 7/3/13, effective 8/3/13)

WAC 458-20-179 Public utility tax. Introduction. This rule explains the public utility tax (PUT) imposed by chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within this state.

The department of revenue (department) adopted other rules that relate to the application of PUT. Readers may want to refer to the following list of rules:

(1) WAC 458-20-104, Small business tax relief based on income of business;

(2) WAC 458-20-121, Sales of heat or steam—Including production by cogeneration;

(3) WAC 458-20-175, Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(4) WAC 458-20-180, Motor carriers;

(5) WAC 458-20-192, Indians—Indian country;

(6) WAC 458-20-193D, Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and

(7) WAC 458-20-251, Sewerage collection and other related activities.

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

Part I - General Information

(101) **Persons subject to the public utility tax.** The PUT is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, vessels under sixty-five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

(a) **Hauling by watercraft.** Income from hauling persons or property for hire by watercraft between points in Washington is subject to one of two PUT classifications, depending on the nature of the service. Income from:

• Operating tugboats of any size, and the sale of transportation services by vessels sixty-five feet and over, is subject to tax under the "other public service business" PUT classification.

• The sale of transportation services using vessels under sixty-five feet, other than tugboats, is subject to tax under the "vessels under sixty-five feet" public utility tax classification.

These classifications do not include sightseeing tours, fishing charters, or activities which are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258, Travel agents and tour operators.

(b) **Other businesses subject to the public utility tax.** The PUT also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, unless the activity is subject to tax under chapter 82.04 RCW, Business and occupation (B&O) tax.

(i) The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered. Examples of other public service businesses include, but are not limited to: Airplane transportation, boom, dock, ferry, pipeline, toll bridge, water transportation, and wharf businesses. RCW 82.16.010.

(ii) Persons engaged in the same business activities as the businesses described above are subject to the PUT even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial. For example, an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly owned subsidiary, is subject to the PUT as a water distribution business on its sales of water.

(c) **Are amounts derived from interest and penalties taxable?** Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services. Incidental services include for example meter installation or other activities which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local improvement district assessment is not subject to public utility or B&O taxes.

(102) **Tax rates and measure of tax.** The rates of tax for each business activity subject to the PUT are imposed under RCW 82.16.020 and set forth on appropriate lines of the state public utility tax addendum for the excise tax return. The measure of the PUT is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(3).

(103) **Persons subject to public utility tax may also be subject to B&O tax.** The B&O tax does not apply to any business activities for which PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the PUT are also engaged in other business activities subject to B&O tax.

For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances. The gas distribution company is subject to the PUT on its distribution of natural gas to consumers. However, it is also subject to retailing B&O tax and must collect and remit retail sales tax on its retail sales of gas appliances. Repairs of customer owned appliances would also be considered a retailing activity and subject to retail sales tax.

In distinguishing gross income taxable under the PUT from gross income taxable under the B&O tax, the department is guided by the uniform system of accounts established for the specific type of utility concerned. Because of differences in the uniform systems of accounts established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(104) **Charges for service connections, line extensions, and other similar services.**

(a) For existing customers, amounts derived from services that are incidental to a public utility activity are subject to PUT. Thus, amounts received for the following are subject to PUT:

(i) Service connection, start-up, and testing fees;

(ii) Charges for line extensions, repairs, raisings, and/or drops;

(iii) Meter or pole replacement;

(iv) Meter reading or load factor charges; and

(v) Connecting or disconnecting.

(b) For new customers, amounts received for any of the services noted above in Part (104)(a) of this rule are subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received the utility service at the location. For example, a customer of a water distribution company who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any meter installation services performed at the new residence, until the customer actually receives water at that location. It is immaterial that this customer may be receiving water at the old residence. The charge for installing the meter for this customer at the new location is subject to service and other activities B&O tax.

(105) **Contributions of equipment or facilities.** Contributions to a utility business in the form of equipment or facilities are not considered income to the utility business, if the contribution is a condition of receiving service.

(a) **Example 1.** An industrial customer purchases and pays sales tax on transformers it installs. The customer then provides the transformers to a public utility district as a condition of receiving future service. The public utility district is not subject to the PUT or B&O tax on the receipt of the transformers. Use tax is not owed by the utility district as the customer paid sales tax at the time of purchase.

(b) **Example 2.** For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items provided by a developer for purposes of servicing the developed area is likewise not subject to PUT or B&O tax.

Part II - Exemptions, Deductions, and Nontaxable Receipts

(201) **Exemptions.** This subsection describes PUT exemptions. Also see subsections in this rule that discuss specific utilities.

(a) **Income exemption.** Persons subject to the PUT are exempt from the payment of the tax if their taxable income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed information about this exemption, refer to WAC 458-20-104, Small business tax relief based on income of business.

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261, Commute trip reduction incentives.

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(202) **Deductions.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050 does provide for limited deductions. This subsection describes a number of PUT deductions. The deductible amounts should be included in the gross income reported on the state public utility tax addendum for the excise tax return and then deducted on the deduction detail page to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page may be disallowed. Also see Parts III and IV of this rule, which identify additional deductions available to power and light, gas distribution, and water distribution businesses.

(a) **Cash discounts.** The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) **Credit losses.** The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050

(5). For additional information regarding credit losses see WAC 458-20-196, Bad debts.

(c) **Taxes.** Amounts derived by municipally owned or operated public service businesses directly from taxes levied for their support are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) **Prohibitions imposed by federal law or the state or federal constitutions.** Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6).

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller for resale within this state are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example, income from the sale of natural gas by a gas distributing company to natural gas companies located in Washington, who resell the gas to their customers, is deductible from the gas distributing company's gross income.

(f) **Services furnished jointly.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050(3) allows a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. The services must be furnished jointly by both the taxpayer and another person taxable under the PUT.

Example 1. Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and XYZ. See WAC 458-20-180 for additional information on motor carriers.

Example 2. Dakota Electricity Generator (DEG) sells electricity to Mod Industrial Firm (MIF). DEG hires Wheeler #1 to transmit the electricity from DEG to MIF. Wheeler #1 subcontracts a portion of the transmission service to Wheeler #2.

• Wheeler #1 and Wheeler #2 are jointly furnishing transmission services to DEG. Assuming all other requirements of the deduction are met, Wheeler #1 may claim a "services jointly provided" deduction in the amount paid to Wheeler #2.

• DEG may not claim a "services jointly provided" deduction for the amount DEG paid Wheeler #1. DEG and Wheeler #1 are ***not*** jointly furnishing a service to MIF. DEG is selling electricity to MIF, and Wheeler #1 is selling transmission services to DEG.

Example 3. City A's water department purchases water from City B's water department. City A sells the water to its customers. City A may not take a deduction for its payment to City B's water department as "services jointly provided." The sale of water by City A to its customers is not a service jointly provided to City A's customers by both City A and City B.

City B, however, may take a deduction under RCW 82.16.050(2) for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state.

(203) **Nontaxable amounts.** The following amounts are not considered taxable income.

(a) **Insurance claim amounts.** Amounts received from insurance companies in payment of losses, which are distinguishable from amounts received to settle contract payment disagreements.

(b) **Payment of damages.** Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(c) **Amounts from eminent domain proceedings or governmental action.** Amounts received as compensation for compensatory or involuntary taking of facilities of a public utility, by the exercise of eminent domain or governmental action, are considered liquidated damages.

Part III - Light and Power Business

(301) **Light and power business.** Public utility tax is imposed by RCW 82.16.020 on gross income from providing light and power services. Light and power business means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale. RCW 82.16.010.

(302) **Requirements for light and power businesses.** RCW 82.16.090 requires that customer billings issued by light and power businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied upon the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(303) **Wheeling of electricity.** "Wheeling of electricity" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Income from wheeling electricity is subject to the PUT.

(304) **Exchanges of electricity by light and power businesses.** There is no specific exemption that applies to an "exchange" of electrical energy or its rights. However,

exchanges of electrical energy between light and power businesses do qualify for deduction in computing the PUT as being sales of power to another light and power business for resale. RCW 82.16.050(11). An exchange is a transaction that is considered to be a sale and involves a delivery or transfer of energy or its rights by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the BPA pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. Sec. 839c. In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. These subsidies are considered a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(305) **Exemptions.** The following exemptions are available for sales of electricity, and are in addition to the general exemptions found in Part II of this rule.

(a) **Sales of electricity to an electrolytic processor.** RCW 82.16.0421 provides an exemption for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process. This exemption, which is scheduled to expire June 30, 2019, applies to sales of electricity made by December 31, 2018.

The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(i) **Exemption certificate required.** ((~~In order~~)) To claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. RCW 82.16.0421. A certificate can be obtained from the department's ((~~internet~~)) web site at ((~~http://dor.wa.gov~~)): dor.wa.gov.

(ii) **Annual report requirement.** RCW 82.16.0421 requires taxpayers receiving the benefit of this tax preference to file an annual report by April 30th of the year following any calendar year in which a taxpayer becomes eligible to claim the tax preference. RCW 82.32.534.

(iii) **Qualification requirements.** To qualify all the following requirements must be met:

(A) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(B) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(C) Disallowance of all or part of the exemption is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business is the amount of the tax exemption disallowed.

(b) **Sales of electricity to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity to an aluminum smelter specifies that the price charged for the electricity will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(c) **BPA credits or funds.** Effective June 10, 2010, RCW 82.04.310 exempts from the B&O tax credits or payments received by persons from the BPA, for the purpose of implementing energy conservation programs or demand-side management programs. This exemption is scheduled to expire June 30, 2015.

(306) **Deductions.** The following deductions are available for sales of electricity, and are in addition to the general deductions found in Part II of this rule.

(a) **Sales of electricity for resale or for consumption outside Washington.** Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(11). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(b) **Low density light and power businesses.** RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate. The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction can be found via the department's ((~~internet~~)) web site at ((~~http://dor.wa.gov~~)): dor.wa.gov.

(c) **Conservation - Electrical energy and gas.** RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable resources, and for measures to improve the efficiency of energy end-use.

(i) **Restrictions.** The below mentioned deductions are subject to the following restrictions:

(A) They apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end-use on which construction or installation was begun after June 12, 1980, and before January 1, 1990;

(B) The measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to

the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources that utilize nuclear energy or fossil fuels and that the gas or electric utility could acquire to meet energy demand in the same time period; and

(C) They may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project that originally authorized the deduction under RCW 82.16.055.

(ii) **What can be deducted.** The following may be deducted from a taxpayer's gross income:

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.08.02565;

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat;

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer;

(D) Amounts received by a utility as a contribution for the installation of service, and later refunded to the customer, are deductible from gross income at the time the amounts are refunded;

(E) Production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility.

(307) **Credits.** Credit is available to light and power businesses that make contributions to an electric utility rural economic development revolving fund. The credit is equal to fifty percent of contributions made during a fiscal year to an electric utility rural economic development revolving fund.

(a) Light and power businesses may take a credit up to twenty-five thousand dollars, not to exceed the PUT that would normally be due, against their public utility tax liability each fiscal year for contributions made.

(b) Expenditures from the electric utility rural economic development revolving fund must be made solely on qualifying projects, in a designated qualifying rural area. For additional information see RCW 82.16.0491.

(c) The total amount of credits available statewide on a fiscal year basis for all qualified businesses is three hundred fifty thousand dollars. The department will allow earned credits on a first-come, first-served basis. The right to earn these tax credits expired June 30, 2011. Unused earned credits may be carried forward to subsequent years provided the department has given prior approval.

Part IV - Gas and Water Distribution Businesses

(401) **Gas distribution.** Gross income received for the distribution of gas is taxable under PUT as provided by RCW 82.16.020. Gas distribution business means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural. RCW 82.16.010. See Part II for general exemptions and deductions that may apply to gas distribution.

(402) **Requirements for gas distribution businesses.** RCW 82.16.090 requires that customer billings issued by gas distribution businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied upon the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(c) In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(i) **Sales of natural or manufactured gas to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit for sales of natural or manufactured gas to aluminum smelters. The credit is allowed if the contract for sale of gas to an aluminum smelter specifies that the price charged for the gas will be reduced by an amount equal to the credit. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(ii) **Conservation - Energy from gas.** RCW 82.16.055 provides deductions for the production or generation of energy from cogeneration or renewable resources and for measures to improve the efficiency of energy end-use. See subsection (306)(c) of this rule.

(iii) **Compressed natural gas and liquefied natural gas used as transportation fuel.**

(A) Effective July 1, 2015, RCW 82.16.310 exempts from PUT income from sales by a gas distribution business of natural gas, compressed natural gas, and liquefied natural gas if the:

(I) Compressed natural gas or liquefied natural gas is sold or used as transportation fuel; or

(II) Buyer uses natural gas to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(B) The buyer must provide and the seller must retain an exemption certificate. See the department's web site at: dor.wa.gov for the appropriate form. RCW 82.16.310.

(C) Although sales of natural gas, compressed natural gas, and liquefied natural gas may be exempt under RCW 82.16.310, the income from such sales may be subject to other taxes such as business and occupation tax and retail sales tax.

(D) For the purpose of this subsection, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car.

(403) **Water distribution.** PUT is imposed on amounts derived from the distribution of water under RCW 82.16.020. Water distribution business means the business of operating a plant or system for the distribution of water for hire or sale. RCW 82.16.010. In addition to the general exemptions and

deductions noted in Part II of this rule, the law provides the following:

(a) **Water distribution by a nonprofit water association.** Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(12).

(b) **Distribution of irrigation water.** Amounts derived from the distribution of water through an irrigation system, for irrigation purposes, are deductible under RCW 82.16.050 (7). The phrase "for irrigation purposes" means water that is used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied irrigation water may be deducted from gross income subject to PUT.

((~~In order~~)) To meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.