WSR 15-03-037

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 12, 2015, 1:47 p.m., effective February 12, 2015]

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

Purpose: The department amended these rules to comply with and be consistent with recently passed state laws: SHB 1629 Home care aides—Credentialing and continuing education; EHB 1677 Adult family homes—Multiple facility operators; SHB 1686 K-12 Schools—High school equivalency certificates; SSB 5077 Statutes—Gender-neutral terms; SB 5510 Vulnerable adults—Abuse; and SSB 5630 Vulnerable adults—Adult family homes. In addition, the department is amending rules to comply with SHB 2056 Assisted living facilities, passed (chapter 10, Laws of 2012) in the 2012 legislative session, which change the terminology of "boarding home" to "assisted living facility." In addition, new WAC 388-76-10532 was added on the standardized disclosure of services form.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10000, 388-76-10125, 388-76-10130, 388-76-10037, 388-76-10146, 388-76-10315, 388-76-10525, 388-76-10535, 388-76-10540, 388-76-10595, 388-76-10615, 388-76-10925, 388-76-10935, 388-76-10960, 388-76-10975, and 388-76-10980.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Adopted under notice filed as WSR 14-21-134 on October 20, 2014.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-76-10535 was changed to correct a contradiction in language caused by a typographical error. Also in WAC 388-76-10535, a grammatical error was corrected to clarify that notice must be provided to residents if a home voluntarily decreases services or if a decrease in services results in the discharge of at least one resident.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 17, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 17, Repealed 0.

Date Adopted: January 12, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident man-

ager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (((~~Boarding homes~~)) Assisted living facilities), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Recurring" or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or ((~~developmentally disabled persons~~)) individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10037 License requirements—Multiple adult family homes—Additional homes. The department will only accept and process an application for an additional license as follows:

(1) For a second home, if the applicant has maintained the first adult family home license for at least twenty-four months with no enforcement actions as listed in RCW 70.128.160(2) related to a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(2) For a third or additional homes((~~, if a minimum of twelve months have passed since the previous adult family home license was granted and no enforcement action was taken against any of the currently licensed homes.~~)) as follows:

(a) When twelve months have passed since the previous adult family home license and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application;

(b) When less than twelve months have passed since the previous adult family home license was granted; and

(i) The applications are due to the change in ownership of existing adult family homes that are currently licensed; and

(ii) No enforcement action was taken against any of the applicant's currently licensed homes during the twelve months prior to application.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10125 License—May be denied. The adult family home license may be denied if the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(1) Has any conviction or pending criminal charge for crime that is not automatically disqualifying under chapter 388-113 WAC, but that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home;

(2) Has abused, neglected, or financially exploited a vulnerable adult, unless denial is required under WAC 388-76-10120.

(3) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed. In connection with the operation of any facility for the care of children or vulnerable adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(19) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(20) Has failed to meet personal financial obligations;

(21) Interfered with a long-term care ((~~ombudsman~~)) ombuds or department staff in the performance of his or her duties;

(22) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; or

(23) The home is currently licensed:

(a) As an assisted living facility; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

(24) Failed to give the department access to all parts of the home as authorized under RCW 70.128.090.

(25) Has demonstrated any other factors that give evidence the individual lacks the appropriate character, competence, and suitability to provide care or services to vulnerable adults.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager. The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

(1) Be twenty-one years of age or older;

(2) Have a United States high school diploma or ((~~general education development~~)) high school equivalency certificate as provided in RCW 28B.50.536, or any English or translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.

(3) Completion of the training requirements that were in effect on the date they were hired or became licensed providers, including the requirements described in chapter 388-112 WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate and able to communicate in the English language, and assure that a person is on staff and available at the home who is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.

(6) Assure that there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as a language line.

(7) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(8) Have completed at least one thousand hours of successful direct care experience in the previous sixty months obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home. Individuals holding one of the following professional licenses are exempt from this requirement:

(a) Physician licensed under chapter 18.71 RCW;

(b) Osteopathic physician licensed under chapter 18.57 RCW;

(c) Osteopathic physician assistant licensed under chapter 18.57A RCW;

(d) Physician assistant licensed under chapter 18.71A RCW;

(e) Registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW.

(9) Have no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC;

(10) Have none of the negative actions listed in WAC 388-76-10180;

(11) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

(12) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10146 Qualifications—Training and home care aide certification. (1) The adult family home must ensure staff persons hired before January 7, 2012 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers hired on or after January 7, 2012, meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) All persons listed in subsection (2) of this section, must obtain the home-care aide certification if required by this section or chapters 246-980 or 388-112 WAC.

(a) Until March 1, 2016, a provisional home-care aide certification may be issued by the department of health to a long-term care worker who is limited English proficient.

(4) Even if an adult family home applicant does not intend to provide direct personal care, the applicant must meet the long-term care worker training and home-care aide certification requirements under chapter 388-112 WAC to the same extent that the requirements would apply if the applicant was a long-term care worker.

(5) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals, including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant programs, are exempt from home-care aide certification and long-term care worker training requirements. This exemption does not apply to continuing education; these individuals must comply with continuing education requirements under chapter 388-112 WAC.

(6) The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

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

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10315 Resident record—Required. The adult family home must:

(1) Create, maintain, and keep records for residents in the home where the resident lives and ensure that the records:

(a) Contain enough information so home can provide the needed care and services to each resident;

(b) Be in a format useful to the home;

(c) Be kept confidential so that only authorized persons see their contents;

(d) Are only released to the following persons:

(i) A health care institution;

(ii) When requested by the law;

(iii) To department representatives; and

(iv) To the resident;

(e) Be protected to prevent loss, alteration or destruction and unauthorized use;

(f) Be kept for three years after the resident leaves the home or death of the resident;

(g) Be available so that department staff may review them when requested; and

(h) Provide access to the resident to review their record and obtain copies of their record at a reasonable cost.

(2) Ensure staff has access to the parts of residents' records needed by staff to provide care and services; and

(3) Allow representatives of the long-term care ((~~ombudsman~~)) ombuds access to a resident record if approved by the resident.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10525 Resident rights—Description. The adult family home must give each resident a written description of resident's rights that includes a:

(1) Description of how the home will protect personal funds;

(2) Posting of names, addresses, and telephone numbers of the:

(a) State survey and certification agency;

(b) State licensing office;

(c) State ((~~ombudsmen~~)) ombuds program; and

(d) Protection and advocacy systems.

(3) Statement informing the resident that he or she may file a complaint with the appropriate state licensing agency concerning alleged abandonment, abuse, neglect, or financial exploitation.

NEW SECTION

WAC 388-76-10532 Resident rights—Standardized disclosure of services form. The adult family home is required to complete the department's standardized disclosure of services form.

(1) The home must:

(a) List on the form the scope of care and services available in the home;

(b) Send the completed form to the department; and

(c) Provide an updated form to the department thirty days prior to changing services, except in emergencies, when the scope of care and services is changing.

(2) The form does not:

(a) Replace the notice of services required when a resident is admitted to the adult family home as directed in chapter 388-76-10530 WAC.

(b) Replace any other form or policy as required in chapter 388-76 WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10535 Resident rights—Notice of change to services. (1) The adult family home must inform each resident:

(a) In writing; and

(b) In advance of changes in the availability of, or the charges for services, items, or activities, or of changes in the home's rules.

(2) The home must ((~~provide notice~~)):

(a) ((~~Thirty days before the change, except in emergencies; or~~

~~(b) Fourteen days before the change, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities~~)) Give residents a thirty day notice prior to the effective date of the change if the home decreases services due to circumstances beyond the home's control; and

(b) Give residents a ninety day notice prior to the effective date of the decrease if the home voluntarily decreases services or if the change results in the discharge of at least one resident.

(3) The home is not required to give notice:

(a) If the home gives each resident written notice of the availability and charges of services, items and activities before admission, when there are changes and every twenty-four months; and

(b) If the resident is provided different or additional services, items or activities from the home.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits. (1) ((~~If the~~)) The adult family home ((~~requires payment of an admission fee, deposit, prepaid charges or any other fees or charges, by or on behalf of a person seeking admission~~)) must complete the disclosure of charges forms as provided by the department and provide a copy of it to each resident who is admitted to the home.

(2)If the adult family home chooses to provide its own disclosure of fees and charges to residents in addition to the form required by the department, the home:

(a) Must give full disclosure in writing;

(b) In a language the resident understands;

(c) Prior to the receipt of any funds.

((~~(2)~~)) (3) The disclosure must include:

(a) A statement of the amount of any admissions fees, security deposits, prepaid charges, minimum stay fees or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, or is transferred or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, minimum stay fees or any other fees or charges that will be refunded to the resident if the resident leaves the home.

((~~(3)~~)) (4) The home must ensure that the receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home. The home must retain a copy of the disclosure and acknowledgement.

((~~(4)~~)) (5) If the home does not provide these disclosures, the home must not keep the security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges.

(((~~(5)~~))) (6) If a resident dies, is hospitalized or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges already paid less the home's per diem rate for the days the resident actually resided, reserved or retained a bed in the home in spite of any minimum stay policy or discharge notice requirements; except that

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges; unless the resident has given advance notice in compliance with the admission agreement;

(c) May not require the resident to obtain a refund from a placement agency or person.

(((~~(6)~~))) (7) The adult family home may not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

(((~~(7)~~))) (8) All adult family homes covered under this section are required to refund any and all refunds due the resident within thirty days from the resident's date of discharge from the home.

(((~~(8)~~))) (9) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(((~~(9)~~))) (10) If the home requires an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are consistent with the requirements of this section, chapters 70.128, 70.129 and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10595 Resident rights—Advocacy access and visitation rights. The adult family home must not interfere with each resident's right to have access to and from:

(1) Any representative of the state;

(2) The resident's own physician;

(3) The state long-term care ((~~ombudsman~~)) ombuds program as established under chapter 43.190 RCW;

(4) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under Part C of the developmental disabilities assistance and bill of rights act;

(5) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;

(6) Immediate family or other relatives of the resident and others who are visiting with the consent of the resident, subject to reasonable limits to protect the rights of others and to the resident's right to deny or withdraw consent at any time;

(7) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law; and

(8) The resident's representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10615 Resident rights—Transfer and discharge. (1) The adult family home must allow each resident to stay in the home, and not transfer or discharge the resident unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home;

(b) The safety or health of individuals in the home is or would otherwise be endangered;

(c) The resident has failed to make the required payment for his or her stay; or

(d) The home ceases to operate.

(2) Before a home transfers or discharges a resident, the home must:

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (5) of this section.

(3) Except as specified in (4) of this section, the home must give notice of the transfer or discharge at least thirty days before the resident is transferred or discharged.

(4) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) A resident has not resided in the home for thirty days.

(5) The home must include the following in the written notice specified in subsection (2) of this section:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ((~~ombudsman~~)) ombuds;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(6) The home must give residents enough preparation and orientation to ensure a safe and orderly transfer or discharge from the home.

(7) If the home discharges a resident in violation of this section, the home must readmit the resident to the home as soon as a gender-appropriate bed becomes available.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10925 Disclosure of inspection and complaint investigation reports. ((~~Upon request, the~~)) (1) The department ((~~must provide~~)) will make copies available to the public ((~~with copies~~)), subject to applicable public disclosure and confidentiality requirements, of:

(((~~(1)~~))) (a) Inspection and complaint investigation reports as soon as they are completed; and

(((~~(2) The home's plan of correction, if a copy is available at the time of the request; and~~

~~(3)~~))) (b) Any final written decision by the department to take an enforcement action.

(2) Upon request, the department will provide the public with copies of the home's plan of correction if a copy is available at the time of the request.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10935 Washington protection and advocacy—Long-term care ombudsman—Official duties—Penalty for interference. The adult family home must not willfully interfere with a representative of the following in the performance of official duties:

(1) Washington protection and advocacy system as defined under RCW 71A.10.080; or

(2) Long-term care ((~~ombudsman~~)) ombuds as defined under chapter 43.190 RCW, the state regulations for the long-term care ombudsman and under federal law.

(3) The department must impose a civil penalty as per WAC 388-76-10975 for any such willful interference with a representative of the long-term care ((~~ombudsman~~)) ombuds program.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10960 Remedies—Department may impose remedies. The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(1) Has been convicted of:

(a) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(b) A crime involving a firearm used in the commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused, or financially exploited a vulnerable adult, unless such decision requires imposition of a remedy under WAC 388-76-10955;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of violations of chapter 70.128 RCW, or any law regulating residential care facilities, that resulted in revocation, suspension, or nonrenewal of a license with the department;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;

(9) Has been the subject of a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented, interfered with, or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition or limit imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or any other applicable laws.

(15) Misappropriated property of a resident, unless such action requires a remedy under WAC 388-76-10955;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intends to deny, suspend, cancel or revoke the license, unless such action requires imposition of a remedy under WAC 388-76-10955;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations and that failure has resulted in a failure to provide necessary care and services to the residents;

(22) Interfered with a long-term care ((~~ombudsman~~)) ombuds or department staff in the performance of his or her duties; or

(23) Failed to relinquish or surrender the license as required.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10975 Remedies—Specific—Civil penalties. (1) The department may impose civil penalties of at least one hundred dollars per day per violation:

(a) Fines up to one thousand dollars can be issued under RCW 70.128.150 for willful interference with a representative of the long-term care ((~~ombudsman~~)) ombuds; and

(b) Fines up to three thousand dollars can be issued under RCW 74.39A.060 for retaliation against a resident, employee, or any other person making a complaint, providing information to, or cooperating with, the ((~~ombudsman~~)) ombuds, the department, the attorney's general office, or a law enforcement agency; and

(c) Fines up to ten thousand dollars may be issued under RCW 70.128.065(2) for a current or former licensed provider who is operating an unlicensed home.

(2) When the adult family home fails to pay a fine under this chapter when due, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from any contract payment due to the provider from the department.

(3) Civil monetary penalties are due twenty-eight days after the adult family home or the owner or operator of an unlicensed adult family home is served with notice of the penalty unless the adult family home requests a hearing in compliance with chapter 34.05 RCW, RCW 43.20A.215, and this chapter. If the hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Thirty days after the department serves the adult family home with notice of the penalty, interest begins to accrue at a rate of one percent per month as authorized by RCW 43.20B.695.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10980 Remedies—Specific—Stop placement—Admissions prohibited. (1) The department may order stop placement and prohibit the admission of residents if the home does not meet the requirements of chapters 70.128, 70.129, 74.32 RCW or this chapter.

(2) Once imposed, the adult family home must not admit any person until the stop placement order is terminated.

(3) If the home requests, the department may approve readmission of a resident to the home from a hospital or nursing home during the stop placement.

(4) The department must end the stop placement ((~~when~~)) only after the department finds the:

(a) Deficiencies necessitating the stop placement have been corrected; and

(b) Home can show it has the capacity to maintain adequate care and service.

WSR 15-03-038
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed January 12, 2015, 1:52 p.m., effective February 12, 2015]

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

Purpose: The department is amending chapter 388-106 WAC to update references to health care authority WAC that have changed.

Changing references to other WAC without changing the effect of the rule is appropriate for expedited rule making under RCW 34.05.353 (1)(c).

Reasons Supporting Proposal: Updating the rule will help clients locate the appropriate WAC references related to long-term care services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0047, 388-106-0210, 388-106-0300, 388-106-0325, 388-106-0330, 388-106-0355, 388-106-0610, 388-106-0625, 388-106-0655, 388-106-0705, 388-106-0905, 388-106-0955, 388-106-1010, 388-106-1020, 388-106-1040, 388-106-1050, and 388-106-1105.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 14-21-132 on October 20, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 17, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 17, Repealed 0.

Date Adopted: January 12, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-070, filed 7/28/06, effective 8/28/06)

WAC 388-106-0047 When can the department terminate or deny long-term care services to me? (1) The department will deny or terminate long-term care services if you are not eligible for long-term care services pursuant to

WAC 388-106-0210, 388-106-0310, ((~~388-106-0410, 388-106-0510,~~)) or 388-106-0610.

(2) The department may deny or terminate long-term care services to you if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, any of the following conditions exist:

(a) After a department representative reviews with you your rights and responsibilities as a client of the department, per WAC 388-106-1300 and 388-106-1303, you refuse to accept those long-term care services identified in your plan of care that are vital to your health, welfare or safety;

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider;

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

(i) Threatening, uncontrolled animals (e.g., dogs);

(ii) The manufacture, sale, or use of illegal drugs;

(iii) The presence of hazardous materials (e.g., exposed sewage, evidence of a methamphetamine lab).

AMENDATORY SECTION (Amending WSR 12-14-064, filed 6/29/12, effective 7/30/12)

WAC 388-106-0210 Am I eligible for MPC-funded services? You are eligible for MPC-funded services when the department assesses your functional ability and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC ((~~388-500-0005~~)) 182-513-1305. Categorically needy medical institutional programs described in chapter ((~~388-513~~)) 182-513 WAC do not meet this criteria.

(2) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need for assistance with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: ■Application of ointment or lotions; ■Toenails trimmed; ■Dry bandage changes; (■ = if you are over eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/Needs Need: Coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (a) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

; or

(b) You have an unmet or partially met need for assistance or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Physical Help/ part of bathing	One person physical assist
Dressing	Extensive Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Personal Hygiene	Extensive Assistance	One person physical assist
Body care which includes: ■Application of ointment or lotions; ■Toenails trimmed; ■Dry bandage changes; (■ = if you are eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/Needs Need: Coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.		

AMENDATORY SECTION (Amending WSR 12-15-087, filed 7/18/12, effective 8/18/12)

WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of medicaid reimbursed home health services as described in WAC 182-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100.

(8) Specialized durable and nondurable medical equipment and supplies under WAC ((~~388-543-1000~~)) 182-543-1000, if the items are:

(a) Medically necessary under WAC 182-500-0700;

(b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services, when the service:

(a) Provides access to community services and resources to meet your therapeutic goal;

(b) Is not diverting in nature; and

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(14) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility; or

(F) Are not capable of participating safely in a group care setting.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0325 How do I pay for COPES services? Depending on your income and resources, you may be required to pay participation toward the cost of your care, as outlined in WAC ((~~388-515-1505~~)) 182-515-1505. If you have nonexempt income that exceeds the cost of COPES services, you may retain the difference. If you are receiving services in:

(1) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(2) In a residential facility, you must use your income to pay for your room and board and services. You are allowed to keep some of your income for personal needs allowance (PNA). The department determines the amount of PNA that you may keep. The department pays the facility for the difference between what you pay and the department-set rate for the facility. The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the medicaid resident dies in the facility; or

(b) Day of service before the day the medicaid resident is discharged.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0330 Can I be employed and receive COPES? You can be employed and receive COPES, per WAC ((~~388-515-1505~~)) 182-515-1505.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0355 Am I eligible for nursing facility care services? You are eligible for nursing facility care if the department:

(1) Assesses you in CARE and determines that you meet the functional criteria for nursing facility level of care which means one of the following applies:

(a) You require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis;

(b) You have an unmet or partially met need with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Your need for assistance in any activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose in determining your functional eligibility.		

(c) You have an unmet or partially met need with at least two of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Your need for assistance in any of the activities listed in subsection (c) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

or:

(d) You have a cognitive impairment and require supervision due to one or more of the following: Disorientation, memory impairment, impaired decision making, or wandering and have an unmet or partially met need with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Your need for assistance in any of the activities listed in subsection (d) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

(2) Determines that you meet the financial eligibility requirements set through WAC ((~~388-513-1315~~)) 182-513-1315.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0610 Am I eligible for chore-funded services? To be eligible for chore-funded services you must meet all of the following criteria:

(1) Be grandfathered on the chore program before August 1, 2001 and have continued to receive chore without a break in service.

(2) Not be eligible for MPC or COPES.

(3) Be eighteen years of age or older.

(4) Have an unmet or partially met need with at least one of the following activities of daily living, as defined in WAC 388-106-0010.

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: Application of ointment or lotions; Toenails trimmed; Dry bandage changes; or Passive range of motion treatment.	Need	N/A
Your need for assistance in any of the activities listed in this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

(5) Have net household income (as described in WAC 388-450-0005 and 388-450-0040) not exceeding:

(a) The sum of the cost of your chore services; and

(b) One-hundred percent of the federal poverty level (FPL) adjusted for family size.

(6) Have resources, as described in chapter 388-470 WAC, which do not exceed ten thousand dollars for a one-person family or fifteen thousand dollars for a two-person family. (Note: One thousand dollars for each additional family member may be added to these limits.); and

(7) Not transfer assets on or after November 1, 1995 for less than fair market value, as described in WAC ((~~388-513-1365~~)) 182-513-1365.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0625 How do I pay for chore? You may retain an amount equal to one hundred percent of the federal poverty level, adjusted for family size, as the home maintenance allowance and pay the difference between the FPL and your nonexempt income. Exempt income includes:

(1) Income listed in WAC ((~~388-513-1340~~)) 182-513-1340;

(2) Spousal income allocated and actually paid as participation in the cost of the spouse's community options program entry system (COPES) services;

(3) Amounts paid for medical expenses not subject to third party payment;

(4) Health insurance premiums, coinsurance or deductible charges; and

(5) If applicable, those work expense deductions listed in WAC 388-106-0630(2).

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0655 Am I eligible to receive volunteer chore services? You may receive volunteer chore services if you are:

(1) Eighteen years of age or older;

(2) Living at home unless you are moving from a residential facility to home and need assistance moving;

(3) Unable to perform certain personal care tasks due to functional or cognitive impairment;

(4) Financially unable to purchase services from a private provider;

(5) Not receiving services under COPES, ((~~MNIW,~~)) MPC, or chore because you:

(a) Do not meet the eligibility requirements; or

(b) Decline these services.

(6) In need of assistance from volunteer chore in addition to or in substitution of paid services under COPES, ((~~MNIW,~~)) MPC, or chore.

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-106-0705 Am I eligible for PACE services? To qualify for medicaid-funded PACE services, you must apply for an assessment by contacting your local home and community services office. The department will assess and determine whether you:

(1) Are age:

(a) Fifty-five or older, and blind or have a disability, as defined in WAC ((~~388-475-0050~~)) 182-512-0050, SSI-related eligibility requirements; or

(b) Sixty-five or older.

(2) Need nursing facility level of care as defined in WAC 388-106-0355;

(3) Live within the designated service area of the PACE provider;

(4) Meet financial eligibility requirements. This means the department will assess your finances, determine if your income and resources fall within the limits, and determine the amount you may be required to contribute, if any, toward the cost of your care as described in WAC ((~~388-515-1505~~)) 182-515-1505;

(5) Not be enrolled in any other medicare or medicaid prepayment plan or optional benefit; and

(6) Agree to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0905 Am I eligible to receive ((~~GAU-funded~~)) medical care services (MCS) residential care services? You are eligible to receive ((~~GAU~~)) MCS-funded residential care services if:

(1) You meet financial eligibility requirements for ((~~general assistance unemployable (GAU)~~)) medical care services (MCS), described in WAC ((~~388-400-0025~~)) 182-508-0005;

(2) You are not eligible for services under COPES, ((~~MNRW,~~)) or MPC; and

(3) You are assessed in CARE and meet the functional criteria outlined in WAC 388-106-0210(2).

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0955 Am I eligible for residential care discharge allowance? You are eligible for a residential discharge allowance if you:

(1) Receive long-term care services from home and community services;

(2) Are being discharged from a hospital, nursing facility, a licensed assisted living facility, enhanced services facility, or adult family home to your own home;

(3) Do not have other programs, services, or resources to assist you with these costs; and

(4) Have needs beyond what is covered under the community transition service (under COPES ((~~and MNRW~~))).

AMENDATORY SECTION (Amending WSR 11-05-079, filed 2/15/11, effective 3/18/11)

WAC 388-106-1010 Am I eligible for medicaid-funded private duty nursing services? In order to be eligible for medicaid-funded private duty nursing (PDN):

(1) You must be eighteen years of age or older and financially eligible, which means you:

(a) Meet medicaid requirements under the categorically needy program or the medically needy program; and

(b) Use private insurance as first payer, as required by medicaid rules. Private insurance benefits, which cover hospitalization and in-home services, must be ruled out as the first payment source to PDN.

(2) You must be medically eligible, which means:

(a) The department has received the skilled nursing task log or ADSA-approved equivalent completed by a nurse licensed under chapter 18.79 RCW.

(b) You have been assessed by an ADSA community nurse consultant (CNC) or nursing care consultant (NCC) and determined medically eligible for PDN.

(3) The department must assess you using the CARE assessment tool, as provided in chapter 388-106 WAC to determine that you:

(a) Require care in a hospital or meet nursing facility level of care, as defined in WAC 388-106-0310; and

(b) Have unmet skilled nursing needs that cannot be met in a less costly program or less restrictive environment; and

(c) Are not able to have your care tasks provided through nurse delegation, WAC 246-840-910 through 246-840-970; COPES skilled nursing, WAC 182-515-1505; DDD waiver skilled nursing, WAC 388-845-0215 or self-directed care RCW 74.39.050; and

(d) Have a complex medical need that requires four or more hours every day of continuous skilled nursing care that can be safely provided outside a hospital or nursing facility; and

(e) Require skilled nursing care that is medically necessary, per WAC ((~~388-500-0005~~)) 182-500-0070; and

(f) Are able to supervise your care or have a guardian who is authorized and able to supervise your care; and

(g) Have a family member or other appropriate informal support who is responsible for assuming a portion of your care; and

(h) Are medically stable and appropriate for PDN services, as reflected by your primary care provider's:

(i) Orders for medical services; and

(ii) Documentation of approval for the service provider's PDN care plan.

(i) Do not have any other resources or means to obtain PDN services; and

(j) Are dependent upon technology every day with at least one of the following skilled care needs:

(i) Mechanical ventilation which takes over active breathing due to your inability to breathe on your own due to injury or illness. A tracheal tube is in place and is hooked up to a ventilator that pumps air into the lungs; or

(ii) Complex respiratory support, which means that you require two of the following treatment needs:

(A) Postural drainage and chest percussion;

(B) Application of respiratory vests;

(C) Nebulizer treatments with or without medications;

(D) Intermittent positive pressure breathing;

(E) O2 saturation measurement with treatment decisions dependent on the results; or

(F) Tracheal suctioning.

(iii) Intravenous/parenteral administration of multiple medications, and care is occurring on a continuing or frequent basis; or

(iv) Intravenous administration of nutritional substances, and care is occurring on a continuing or frequent basis.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

WAC 388-106-1020 How do I pay for my PDN services? You are not required to pay participation for PDN services, but the cost of services is subject to estate recovery, under chapter ((~~388-527~~)) 182-527 WAC. If you are also receiving other services (e.g. COPES), you may be responsible for paying participation as required under WAC ((~~388-515-1505, 388-515-1540, or 388-515-1550~~)) 182-515-1505. Your financial worker will inform you about your participation requirements for those services.

AMENDATORY SECTION (Amending WSR 11-05-079, filed 2/15/11, effective 3/18/11)

WAC 388-106-1040 What requirements must ((~~a~~)) an RN, or LPN under the supervision of an RN, meet in order to provide and get paid for my PDN services? In order to be paid by the department, a private RN under the supervision of a primary care provider or an LPN under the supervision of an RN, must:

(1) Be licensed and in good standing, as provided in RCW 18.79.030 (1)(3);

(2) Have a contract with the medicaid agency to provide PDN services;

(3) Complete a background check which requires fingerprinting if the RN or LPN has lived in Washington state less than three years;

(4) Have no conviction for a disqualifying crime, as provided in RCW 43.43.830 and 43.43.842 and WAC 388-71-0500 through 388-71-05640 series;

(5) Have no finding of fact and conclusion of law (stipulated or otherwise), agreed order, or final order issued by a disciplining authority, a court of law, or entered into a state registry with a finding of abuse, neglect, abandonment or exploitation of a minor or vulnerable adult;

(6) Provide services according to the care plan under the supervision/direction of the primary care provider;

(7) Document all PDN services provided by the care plan as required by WAC ((~~388-502-0020~~)) 182-502-0020 and 246-840-700;

(8) Meet provider requirements under WAC 388-71-0510, 388-71-0515, 388-71-0540, 388-71-0551, and 388-71-0556;

(9) Complete time sheets on a monthly basis;

(10) Complete the PDN seven-day look back skilled nursing task log and submit it to the CNC or NCC for review for initial eligibility determination, and for ongoing eligibility every six months; and

(11) Submit timely and accurate invoices for payment.

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

AMENDATORY SECTION (Amending WSR 11-05-079, filed 2/15/11, effective 3/18/11)

WAC 388-106-1050 May I receive other long-term care services in addition to PDN? (1) In addition to PDN services, you may be eligible to receive care through community options program entry system (COPES), ((~~the medically needy residential waiver (MNRW), the medically needy in-home waiver (MNIW),~~)) or medicaid personal care (MPC), for unmet personal needs not performed by informal supports.

(2) PDN hours will be deducted from the personal care hours generated by CARE to account for services that meet some of your need for personal care services (i.e., one hour from the available hours for each hour of PDN authorized per WAC 388-106-1030).

(3) Services may not be duplicated. PDN hours may not be scheduled during the same time that personal care hours are being provided by an individual provider or home care agency provider.

(4) The PDN provider is responsible for providing assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) unless there is an informal support that is providing or assisting at the same time.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1105 How do I apply for SCSA-funded services? To receive SCSA-funded services, you or your representative must:

(1) Complete and submit a department application form, providing complete and accurate information; and

(2) Promptly submit a written report of any changes in income or resources. For the definition of income and resources, refer to chapter 182-509 WAC ((~~388-500-0005~~)).

WSR 15-04-001
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 21, 2015, 2:23 p.m., effective February 21, 2015]

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

Purpose: To amend WAC 458-20-17902 Brokered natural gas—Use tax 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.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-17902.

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

Other Authority: RCW 82.12.022 and 82.14.230.

Adopted under notice filed as WSR 14-23-056 on November 17, 2014.

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

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

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

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

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

Date Adopted: January 21, 2015.

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 15-04-002
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 21, 2015, 2:33 p.m., effective February 21, 2015]

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

Purpose: WAC 458-20-268 Annual surveys for certain tax adjustments, is amended to recognize provisions of ESSB 5882 (chapter 13, Laws of 2013); and SSB 6333 (chapter 97, Laws of 2014). 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."

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-268.

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

Other Authority: 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.

Adopted under notice filed as WSR 14-23-058 on November 17, 2014.

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

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

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

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

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

Date Adopted: January 21, 2015.

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 finan-

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

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

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

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

(iii) Jane, vice-president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position 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 15-04-004
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 22, 2015, 8:05 a.m., effective February 22, 2015]

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

Purpose: Amending 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 and 458-20-19404 (Rule 19404) Financial institutions—Income apportionment; and repealing WAC 458-20-19405 (Rule 19405) CPI-U adjust-

ments to minimum nexus thresholds for apportionable activities, to:

- 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; and
- Recognize provisions of SSB 6333 (section 305, chapter 97, Laws of 2014), in Rules 19402 and 19403.

Citation of Existing Rules Affected by this Order: Repealing WAC 458-20-19405; and amending WAC 458-20-19401, 458-20-19402, 458-20-19403, and 458-20-19404.

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

Other Authority: RCW 82.04.067, 82.04.460, and 82.04.462.

Adopted under notice filed as WSR 14-23-059 on November 17, 2014.

Changes Other than Editing from Proposed to Adopted Version: The place holder references to the new ETA that will list the thresholds were replaced with the reference to the new ETA numbered "ETA 3195.2015."

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

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

Date Adopted: January 22, 2015.

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 3195.2015 "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 calendar year, except property does not include ownership of or rights in computer software, including computer software used in providing a digital automated service; master copies of software; and digital goods or digital codes residing on servers located in this state. Refer to RCW 82.04.192 and 82.04.215 for definitions of the terms computer software, digital automated services, digital goods, digital codes, and master copies.

(h) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(i) **"Securities"** includes any intangible property defined as a security under section 2 (a)(1) of the Securities Act of 1933 including, but not limited to, negotiable certificates of deposit and municipal bonds.

(3) **Substantial nexus.**

(a) Substantial nexus exists where a person is:

(i) An individual and is a resident or domiciliary of this state during the calendar year;

(ii) A business entity and is organized or commercially domiciled in this state during the calendar year; or

(iii) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and in any calendar year the person has:

(A) More than fifty thousand dollars of property in this state;

(B) More than fifty thousand dollars of payroll in this state;

(C) More than two hundred fifty thousand dollars of receipts from this state; or

(D) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

Example 1. Company commercially domiciled in Washington. Company C is commercially domiciled in Washington and has one employee in Washington who earns $30,000 per year. Company C has substantial nexus with Washington because it is commercially domiciled in Washington. The minimum nexus thresholds for property, payroll, and receipts do not apply to a business entity commercially domiciled in this state.

(b) The department will adjust the amounts listed in (a) of this subsection based on changes in the consumer price index as required by RCW 82.04.067. (See ((~~WAC 458-20-19405~~)) ETA 3195.2015 "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 Wash-

ington; 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 compen-

sation 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:

$$\text{(Taxable Income)} = \text{(Receipts Factor)} \times \text{(Apportionable receipts - deductions)}$$

Example 40. Calculating apportionable income. Corporation A received $2,000,000 in apportionable receipts from its 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 15-04-014
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed January 23, 2015, 11:30 a.m., effective February 23, 2015]

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

Purpose: Amends WAC 181-79A-128, to adjust period of time a certificate permit is effective while educators complete requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-128.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 14-24-061 on November 25, 2014.

Changes Other than Editing from Proposed to Adopted Version: Allows candidate teaching on a permit for one year to satisfy the certification requirement.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: January 15, 2015.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-128 Temporary permits. Temporary permits may be issued by the superintendent of public instruction and designated agents under the following conditions:

(1) Temporary permits may be issued under this section to those persons who have filed an application for a certifi-

cate; who, based on available documentation, including affidavits or other evidence that appears reliable which substantiates the existence of missing documentation, appear to have completed all requirements for certification; and who do not disclose any information which indicates that such applicant fails to meet the character requirement of WAC 181-79A-150(2).

(2) An individual may apply for a permit directly to the superintendent of public instruction or designated agents—i.e., educational service districts or Washington state institutions of higher education.

(3) A permit entitles the holder to serve as a teacher, educational staff associate or administrator consistent with the endorsement(s) on his/her permit.

(4) A permit is valid for a minimum of one ((~~hundred eighty consecutive calendar days~~)) year calculated to the uniform expiration date in WAC 181-79A-117 (1)(a) and/or (b) unless prior to the expiration date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement. In such cases, the temporary permit shall expire on the date notice of cancellation is received by the applicant and/or the employer.

(5) The temporary permit may be reissued only upon demonstration that the applicant has made a good faith effort to secure the missing documentation; provided, that an individual affected by WAC 181-79A-132 may obtain one additional permit to meet additional endorsement requirements.

(6) Issuing authority. The superintendent of public instruction either directly or through a designated agent shall issue all permits and shall provide institutions of higher education and educational service districts with forms and instructions relevant to application for a permit.

WSR 15-04-033
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 13-11—Filed January 27, 2015, 11:39 a.m., effective February 27, 2015]

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

Purpose: The adoption of this new water resources management rule, chapter 173-557 WAC, Water resources management program for the Spokane River and Spokane Valley Rathdrum Prairie (SVRP) Aquifer, is needed to protect instream values within the Spokane River, avoid injury to existing water rights from future appropriations of water, help achieve water resource management objectives of Spokane area watershed plans adopted under chapter 90.82 RCW, and establish and protect Washington state interests in the water resources of the Spokane River. This rule sets instream flows, and requires that new uses of water be interrupted when instream flows are not met, unless impacts to surface water are mitigated. This rule helps the Washington state department of ecology meet statutory obligations to manage waters for public use and for the protection of instream flows.

The amendment to WAC 173-555-010 is needed to clarify the application of chapter 173-555 WAC in the area where the new rule (chapter 173-557 WAC) will overlap with the existing rule (chapter 173-555 WAC, Water resources program in the Little Spokane River Basin, WRIA 55).

Citation of Existing Rules Affected by this Order: Amending WAC 173-555-010.

Statutory Authority for Adoption: Chapters 90.54, 90.22, 90.82, 90.03, 90.44, 18.104, and 43.27A RCW.

Adopted under notice filed as WSR 14-19-114 on September 17, 2014.

Changes Other than Editing from Proposed to Adopted Version: There are a number of changes from the proposed rule and amendment published with the CR-102 and the rule and amendment adopted and published with the CR-103. The changes were made in response to comments. All changes made are for rule clarity to more precisely identify the rule requirements. The changes made do not change the substance or the intent of the rule as proposed.

WAC 173-557-020(2), the word "direct" was deleted from the phrase "direct hydraulic continuity." The phrase "direct hydraulic continuity" is not defined in the rule and the distinction between direct versus indirect hydraulic continuity is imprecise. This change was made in response to a comment.

WAC 173-557-020 (2)(a) and amendment to WAC 173-555-010, language was added to clarify the application of the new rule and the existing rule, chapter 173-555 WAC, in the area where the new and existing rules overlap. The phrase "that is not part of the SVRP aquifer" was added to both the new rule and the amendment to clarify new uses regulated under the existing rule for the Little Spokane River, chapter 173-555 WAC. This clarifying language was added in response to a comment.

WAC 173-557-060(3), the phrase "in a timely and reasonable manner" was added to clarify availability of water from a municipal water supplier. This clarifying language was added in response to a comment.

A final cost-benefit analysis is available by contacting Department of Ecology, Water Resources Program, Publications, P.O. Box 47600, Olympia, WA 90504-7600 [98504-7600], phone (360) 407-6872, fax (360) 407-7162, e-mail WRPublications@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 11, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 1, Repealed 0.

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

Date Adopted: January 27, 2015.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending Order DE 75-24, filed 1/6/76)

WAC 173-555-010 General provision. These rules, including any subsequent additions and amendments, apply to waters within and contributing to the Little Spokane River basin, WRIA-55 (see WAC 173-500-040). Chapter 173-500 WAC, the general rules of the department of ecology for the implementation of the comprehensive water resources program, applies to this chapter 173-555 WAC. In the area where this rule and chapter 173-557 WAC overlap, the application of each rule shall be determined as follows:

(1) New water use from the Little Spokane River, its tributaries, and the shallow aquifer associated with the Little Spokane River and its tributaries that is not part of the SVRP aquifer shall be regulated under this rule (chapter 173-555 WAC).

(2) New water use from the Spokane Valley Rathdrum Prairie aquifer shall be regulated under chapter 173-557 WAC, Water resource management program for the Spokane River and Spokane Valley Rathdrum Prairie (SVRP) aquifer.

Chapter 173-557 WAC

WATER RESOURCES MANAGEMENT PROGRAM FOR THE SPOKANE RIVER AND SPOKANE VALLEY RATHDRUM PRAIRIE (SVRP) AQUIFER

NEW SECTION

WAC 173-557-010 Authority and purpose. (1) The department of ecology (ecology) adopts this rule under the authority of the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Water code (chapter 90.03 RCW), Regulation of public groundwaters (chapter 90.44 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water well construction (chapter 18.104 RCW); RCW 43.21A.064(9) and 43.21A.080; and in accordance with the water resources management program regulation (chapter 173-500 WAC).

(2) The purposes of this rule are to:

(a) Establish instream flow levels necessary to protect wildlife, fish, scenic, aesthetic, recreation, water quality and other environmental values, navigational values, and stock watering requirements;

(b) Meet water resource management objectives of the Spokane area watershed plans adopted under chapter 90.82 RCW;

(c) Protect existing water rights; and

(d) Establish and protect Washington state interests in the water resources of the Spokane River.

(3) In accordance with RCW 90.82.130(4), in developing this chapter ecology refers to the Middle Spokane water resource inventory area (WRIA 57) and Lower Spokane water resource inventory area (WRIA 54) watershed plan recommendations as a consideration in determining the public interest in water resource management for the Spokane River.

The plan recommendations were approved by the Spokane area watershed planning units. The joint watershed plan for the Middle Spokane watershed (WRIA 57) and the Little Spokane watershed (WRIA 55, which is not included in this rule) was adopted by Spokane County, Stevens County, and Pend Oreille County commissioners on January 31, 2006. The Lower Spokane (WRIA 54) watershed plan was adopted by Spokane County, Lincoln County, and Stevens County commissioners on October 22, 2009.

(4) This rule establishes ecology's policies to guide the protection, use, and management of Spokane River basin surface water and the SVRP aquifer within the boundary of the rule area. It protects existing water rights, establishes instream flows, and sets forth a program for the management and administration of future water allocation and use.

NEW SECTION

WAC 173-557-020 Applicability. (1) This rule applies to the mainstem of the Spokane River and all surface water and groundwater within the boundary of the SVRP aquifer, as identified in *U.S. Geological Survey Scientific Investigations Report 2007-5041*. The map provided in WAC 173-557-110 is for informational purposes only. Hydrologic evidence of the SVRP aquifer determines applicability of this rule.

(2) This rule does not supersede the instream flow rule of the Little Spokane River (chapter 173-555 WAC), except where a proposed withdrawal is from waters in hydraulic continuity with the SVRP aquifer as determined by ecology. In the area where this rule and chapter 173-555 WAC overlap, the application of each rule shall be determined as follows:

(a) New water use from the Little Spokane River, its tributaries, and the shallow aquifer associated with the Little Spokane River and its tributaries that is not part of the SVRP aquifer shall be regulated under chapter 173-555 WAC; and

(b) New water use from the SVRP aquifer shall be regulated under chapter 173-557 WAC.

(3) Chapter 173-557 WAC applies to the use and appropriation of surface water and groundwater begun after the effective date of this chapter. This chapter shall not affect:

(a) Existing surface water and groundwater rights established prior to adoption of the state surface water and groundwater codes, or by water right permit authorized under state law, unless otherwise provided for in the conditions of the water right in question;

(b) Groundwater rights established under the groundwater permit-exemption in RCW 90.44.050 where regular beneficial use began before the effective date of this chapter; and

(c) Federal and tribal reserved rights.

(4) Changes to or transfers of existing rights are addressed in WAC 173-557-070.

NEW SECTION

WAC 173-557-030 Definitions. "Appropriation" means the process of legally acquiring the right to use specific amounts of water for beneficial uses, consistent with the ground and surface water codes and other applicable water resource statutes.

"Consumptive use" means use of water that diminishes the volume or quality of the water source.

"Ecology" or **"department"** means the Washington state department of ecology.

"Hydraulically connected" means saturated conditions exist that allow water to move between surface water and groundwater, or between groundwater sources.

"Instream flow" means a stream flow level set in rule to protect and preserve fish, wildlife, scenic, aesthetic, recreational, water quality, and other environmental values; navigational values; and stock watering requirements. The term "instream flow" means "base flow" under chapter 90.54 RCW, "minimum flow" under chapters 90.03 and 90.22 RCW, and "minimum instream flow" under chapter 90.82 RCW.

"Mitigate" or **"mitigated"** means actions taken to offset adverse impacts by new water appropriations on senior water rights, including the instream flow levels set in WAC 173-557-050.

"Municipal water supplier" means an entity that supplies water for municipal water supply purposes as defined in RCW 90.03.015.

"Permit-exempt groundwater withdrawal" means a groundwater withdrawal exempted from ecology water right permitting requirements under RCW 90.44.050, but which is otherwise subject to the groundwater code and other applicable regulations.

"Stream management unit" means a stream segment, reach, or tributary used to describe the area to which a particular use, action, or instream flow level applies. Each of these units contains a control station. A map of the control stations is included in WAC 173-557-110.

"SVRP aquifer" means the Spokane Valley Rathdrum Prairie aquifer.

"*U.S. Geologic Survey Scientific Investigations Report 2007-5041*" refers to the hydrogeologic framework and groundwater budget of the Spokane Valley Rathdrum Prairie aquifer, Spokane County, Washington, and Bonner and Kootenai counties, Idaho; *U.S. Geologic Survey Scientific Investigations Report 2007-5041* by Kahle, S.C., and Bartolino, J.R., 2007.

"Water resource inventory area (WRIA)" means one of the sixty-two areas designated by the state of Washington through chapter 173-500 WAC to delineate area boundaries within the state for water management purposes.

"Withdrawal" means the extraction and beneficial use of groundwater, or the diversion and beneficial use of surface water.

NEW SECTION

WAC 173-557-040 Stream management units. Stream management units, control stations, and their application to surface water and groundwater withdrawals are established as shown in Table 1. Control stations are shown in the map in WAC 173-557-110.

Table 1
Stream Management Unit Information

Stream Management Unit Name and Control Station Gauge #	Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)	Application to Surface Water and Groundwater Withdrawals
Spokane River at Spokane USGS gauge #12422500	RM 72.9; 47.65983N, 117.44911W (NAD 83)	Year-round instream flows for regulating surface water withdrawals from Sullivan Road bridge to Seven Mile bridge, and for regulating groundwater withdrawals within the boundary of the SVRP aquifer in Washington state
Spokane River at Greenacres (Barker Road) USGS gauge #12420500	RM 90.5; 47.67740N, 117.15215W (NAD 83)	June 16 - September 30 instream flows for regulating surface water withdrawals between the Idaho state line and Sullivan Road bridge

NEW SECTION

WAC 173-557-050 Instream flows. (1) The priority date of the instream flows established in this chapter is the effective date of this chapter.

(2) Instream flows, expressed in cubic feet per second (cfs), are shown in Table 2 of this section. Instream flows are monitored at the stream management control stations and apply to the stream management units described in WAC 173-557-040, Table 1.

Table 2
Instream Flows for the Spokane River

Spokane River at Spokane	
October 1 - March 31	1,700 cfs
April 1 - June 15	6,500 cfs
June 16 - September 30	850 cfs
Spokane River at Greenacres (Barker Road)	
June 16 - September 30	500 cfs

NEW SECTION

WAC 173-557-060 Future new uses of water. (1) Instream flows established in this rule are water rights and shall be protected from impairment by:

(a) New water right permits approved by ecology after the effective date of this chapter; or

(b) Permit-exempt withdrawals established within the area regulated under this chapter after the effective date of this chapter.

(2) Based on the hydrogeology of the SVRP aquifer as described in *U.S. Geologic Survey Scientific Investigations Report 2007-5041*, ecology determines that surface water in the Spokane River and groundwater within the SVRP aquifer are hydraulically connected. New appropriations from the SVRP aquifer will be managed to protect the instream flows established in this rule.

(3) Within the area regulated under this rule, municipal water suppliers are the primary sources of water for new uses. If water is not available in a timely and reasonable manner from a municipal water supplier, the consumptive use impacts to surface water from new permit-exempt groundwater withdrawals must be interrupted when stream flow is below the instream flows established in this rule, unless those impacts are mitigated. Mitigation must be achieved through an ecology-approved mitigation plan.

(4) The consumptive use impacts to surface water from water right permits approved by ecology after the effective date of this rule must be interrupted when stream flow is below the instream flows established in this rule, unless those impacts are mitigated. Water right permits approved by ecology after the effective date of this rule shall be conditioned to prohibit impairment of instream flows established in this rule.

NEW SECTION

WAC 173-557-070 Changes and transfers of existing water rights. No changes to, or transfers of, existing surface water and groundwater rights in the area covered under this rule shall hereafter be granted if they conflict with the protection of the instream flow levels established in this chapter. Any change or transfer proposal can be approved only if there is a finding that existing rights, including the instream flows established in this chapter, will not be impaired.

NEW SECTION

WAC 173-557-080 Compliance and enforcement. Ecology shall enforce this rule in accordance with chapters 90.03 and 90.44 RCW, and any other applicable laws and rules.

NEW SECTION

WAC 173-557-090 Appeals. All final written decisions of ecology pertaining to water right permits, regulatory orders, and related water right decisions made pursuant to this rule are subject to appeal to the pollution control hearings board in accordance with chapter 43.21B RCW.

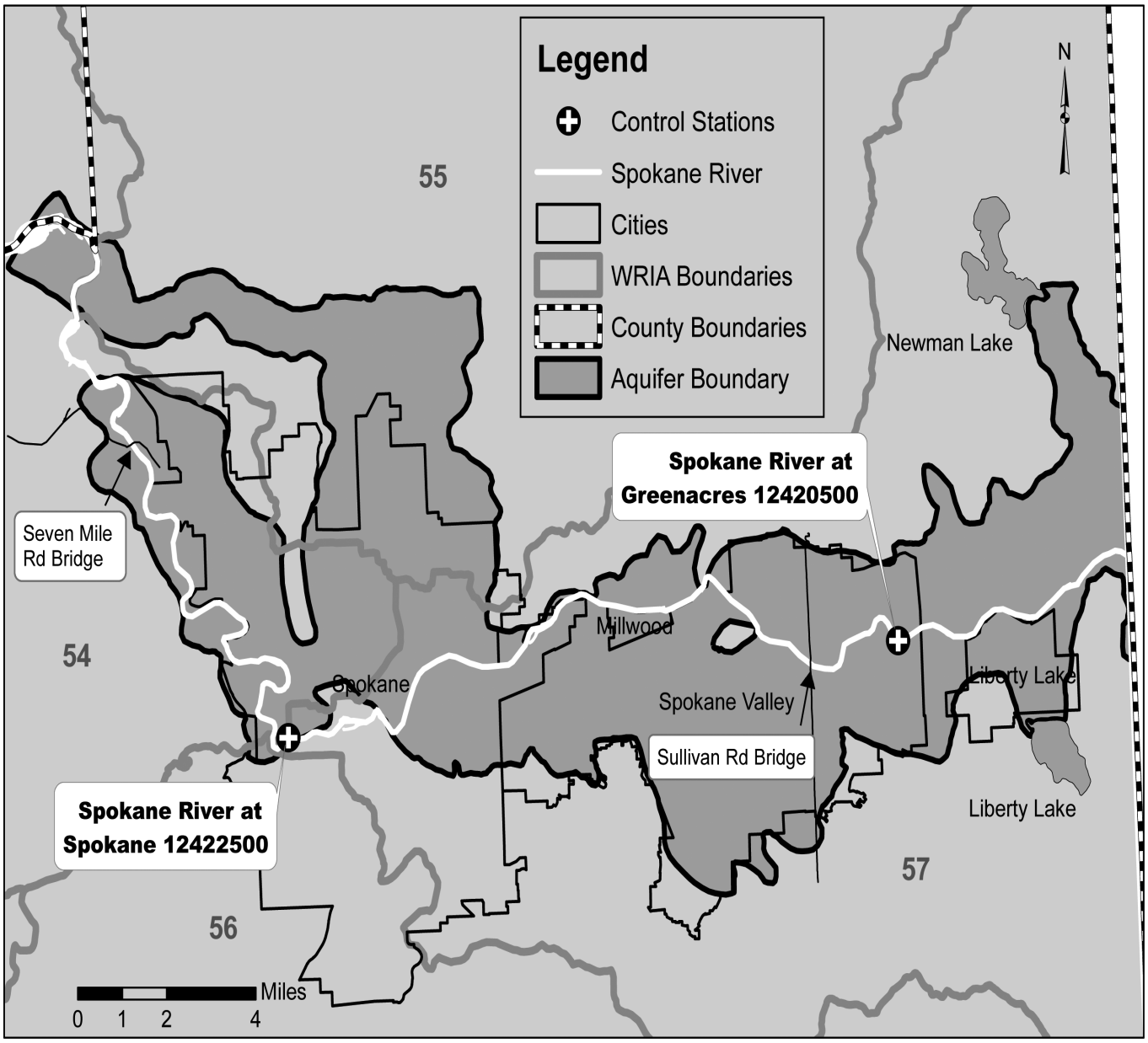
NEW SECTION

WAC 173-557-100 Regulation review. Ecology, after consultation with local, tribal, and state governments, may initiate a review, and if necessary amend this chapter, following the procedures of chapter 34.05 RCW, if: Significant new scientific information becomes available; a significant change in conditions occurs; anadromous fish are reintroduced; a large storage project is proposed in the area affected by this rule; or statutory changes are enacted, that are determined by the department to require review of this rule.

NEW SECTION

WAC 173-557-110 Map of the rule area with control points. In administering this chapter, hydrologic evidence of the SVRP aquifer as defined in WAC 173-557-020(1) determines applicability. The map in Figure 1 of this section, generally reflects the boundary of the SVRP aquifer and is provided for informational purposes only.

Figure 1 - Spokane River and Spokane Valley Rathdrum Prairie Aquifer—Rule Area and Control Stations



WSR 15-04-039

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed January 27, 2015, 3:44 p.m., effective February 27, 2015]

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

Purpose: To amend existing rules to reflect statutory changes adopted between 2011 and 2012. This includes amending two rules to clarify that "critical areas" do not include irrigation and drainage ditches (RCW 36.70A.030); and amending nine rules to reflect new deadlines for counties and cities to comply with required reviews, revisions, and evaluations under the Growth Management Act (RCW 36.70A.130 and 36.70A.215).

Citation of Existing Rules Affected by this Order: Amending WAC 365-190-030, 365-196-200, 365-196-310, 365-196-315, 365-196-325, 365-196-400, 365-196-415, 365-196-425, 365-196-430, 365-196-600, and 365-196-610.

Statutory Authority for Adoption: RCW 36.70A.050 and 36.70A.190.

Adopted under notice filed as WSR 14-22-092 on November 4, 2014.

Changes Other than Editing from Proposed to Adopted Version: In Part IV, subsection (402)(c)(iii)(B), the name of the exemption certificate to use when purchasing natural gas

for transportation fuel has been added. This form can be found on the department's web site.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 11, Repealed 0.

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

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

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

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

Date Adopted: January 27, 2015.

Brian Bonlender
Director

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-030 Definitions. (1) "Agricultural land" is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. These lands are referred to in this chapter as agricultural resource lands to distinguish between formally designated lands, and other lands used for agricultural purposes.

(2) "City" means any city or town, including a code city.

(3) "Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

(4) "Critical areas" include the following:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water, referred to in this chapter as critical aquifer recharge areas;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(5) "Erosion hazard areas" are those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

(6)(a) "Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

(b) "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

(c) "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

(7) "Forest land" is land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

(8) "Frequently flooded areas" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

(9) "Geologically hazardous areas" are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Landslide hazard areas" are areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the twenty-year planning period, if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, comprehensive plan and development regulations, or other laws.

(12) "Mine hazard areas" are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(13) "Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

(14) "Minerals" include gravel, sand, and valuable metallic substances.

(15) "Natural resource lands" means agricultural, forest and mineral resource lands which have long-term commercial significance.

(16) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(17) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) "Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

(19) "Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. Urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Volcanic hazard areas" shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(22) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands, if permitted by the county or city.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-200 Statutory definitions. The following definitions are contained in chapter 36.70A RCW and provided under this section for convenience. Most statutory definitions included in this section are located in RCW 36.70A.030. Other relevant statutory terms defined elsewhere in chapter 36.70A RCW are also included in this section.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

"Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Essential public facilities" includes those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(9) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

(a) The proximity of the land to urban, suburban, and rural settlements;

(b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;

(c) Long-term local economic conditions that affect the ability to manage for timber production; and

(d) The availability of public facilities and services conducive to conversion of forest land to other uses.

(10) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(12) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(13) "Minerals" include gravel, sand, and valuable metallic substances.

(14) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(15) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(16) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(17) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(18) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(19) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(22) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-310 Urban growth areas. (1)(a) Except as provided in (b) of this subsection, counties and cities may

not expand the urban growth area into the one hundred-year flood plain of any river or river segment that:

(i) Is located west of the crest of the Cascade mountains; and

(ii) Has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (1)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a flood plain and lack adjacent buildable areas outside the flood plain;

(ii) Urban growth areas where expansions are precluded outside flood plains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the flood plain; or

(B) Expansions outside the flood plain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the flood plain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the flood plain;

(B) Urban development already exists within a flood plain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects including, but not limited to, habitat enhancement or environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) Under (a)(i) of this subsection, "one hundred-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(2) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, ((~~at least every ten years,~~)) according to the time schedule specified in RCW 36.70A.130(5), periodically its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area (see WAC 365-196-610).

(i) The purpose of the urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding twenty-year planning period.

(ii) This review should be conducted jointly with the affected cities. ((~~The purpose of the ten-year urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding twenty-year planning period.~~))

(iii) In conjunction with this review by the county, each city located within an urban growth area shall review the den-

sities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(3) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the county-wide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or county-wide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations, and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

(4) Recommendations for meeting requirements.

(a) Selecting and allocating county-wide growth forecasts. This process should involve at least the following:

(i) The total county-wide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low twenty-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total county-wide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that twenty-year growth forecasts and designated urban growth areas be updated at a minimum ((~~every ten years~~)) during the periodic review of comprehensive plans and development regulations (WAC 365-196-610). Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the twenty-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the twenty-year forecasts selected.

(iv) Selection of a county-wide employment forecast. Counties, in consultation with cities, should adopt a twenty-year county-wide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The county-wide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties

and cities should use a county-wide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a county-wide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densities must be urban. Outside the urban growth areas, densities must be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the twenty-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the twenty-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and utilities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the twenty-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the twenty-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next twenty years. The urban growth area should be based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a city or county has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas issues. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the one hundred-year flood plain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of one thousand or more cubic feet per second.

(vii) If there is physically no land available into which a city might expand, it may need to revise its proposed urban densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding twenty-year period. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has county-wide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided. Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with county-wide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing county-wide planning policies, resolving regional issues, and adjusting growth boundaries.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-315 Buildable lands review and evaluation. (1) Purpose. The review and evaluation program required by RCW 36.70A.215 is referred to as the "buildable lands program." The buildable lands program is intended to determine if urban densities are being achieved within urban growth areas by comparing local planning goals and assumptions with actual development and determining if actual

development is consistent with the comprehensive plan. It also determines if there is sufficient commercial, industrial and housing capacity within the adopted urban growth area to accommodate the county's twenty-year planning targets. If, through this evaluation, it is determined that there is an inconsistency between planned and built-out densities or there is insufficient development capacity, counties and cities must adopt and implement measures, other than expanding urban growth areas, that are reasonably likely to increase consistency. These measures are referred to as "reasonable measures." Products derived through the program should be used as a technical resource to local policy makers for subsequent comprehensive plan updates.

(2) Required jurisdictions.

(a) The following counties, and the cities located within those counties, must establish and maintain a buildable lands program as required by RCW 36.70A.215:

(i) Clark;

(ii) King;

(iii) Kitsap;

(iv) Pierce;

(v) Snohomish; and

(vi) Thurston.

(b) If another county or city establishes a program containing features of the buildable lands program, they are not obligated to meet the requirements of RCW 36.70A.215.

(3) County-wide planning policies.

(a) Buildable lands programs must be established in county-wide planning policies.

(b) The buildable lands program must contain policies that establish a framework for implementation and continued administration.

(c) The buildable lands program's framework for implementation and administration may be adopted administratively. The program's framework must contain policies or procedures to:

(i) Provide guidance for the collection and analysis of data;

(ii) Provide for the evaluation of the data ((~~every five years~~)) no later than one year prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, commonly referred to as the buildable lands report;

(iii) Provide for the establishment of methods to resolve disputes among jurisdictions regarding inconsistencies in collection and analysis of data; and

(iv) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy inconsistencies identified through the evaluation required by this section, or to bring these policies and plans into compliance with the requirements of the act.

(d) The program's framework for implementation and administration should, in addition to the above, address the following:

(i) Establishment of the lead agency responsible for the overall coordination of the program;

(ii) Establishment of criteria and timelines for each county or city to:

(A) Make a determination as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred;

(B) Adopt and implement reasonable measures, if necessary;

(C) Report on the monitoring of the effectiveness of reasonable measures that have been adopted and implemented. Such reporting could be included in the subsequent ((~~five-year~~)) buildable lands report;

(D) Transmit copies of any actions taken under (d)(ii)(A), (B) and (C) of this subsection to the department.

(iii) Providing opportunities for the public to review and comment on the following:

(A) Refinement of data collection and analysis methods for the review and evaluation elements of the program;

(B) Determinations as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred; and

(C) Adoption of reasonable measures, and reports on the monitoring of their effectiveness.

(iv) Public involvement may be accommodated during review and evaluation of a county or city comprehensive plan in consideration of the buildable land report information. This would generally include public review and comment opportunities before the planning commission or legislative body during the normal local government planning process.

(4) Buildable lands program reporting.

(a) ((~~Every five years~~)) No later than one year prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, the buildable lands program must compile and publish an evaluation, known as the buildable lands report. ((~~The first report was due September 1, 2002, and subsequent reports every five years thereafter.~~)) Each buildable lands report must be submitted to the department upon publication.

(b) The buildable lands reports must compare growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred ((~~during the preceding five years~~)) since the last required buildable lands report. The results of this analysis are intended to aid counties and cities in reviewing and adjusting planning strategies.

(c) The publication, "*Buildable Lands Program Guidelines*," available from the department, may be used as a source for suggested approaches for meeting the requirements of the program.

(5) Criteria for determining consistency or inconsistency.

(a) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3):

(i) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110.

(ii) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and density range for

commercial, industrial and residential land uses with the assumed densities that were envisioned in the applicable county-wide planning policies, and the comprehensive plan.

(iii) Evaluation under RCW 36.70A.215 (3)(c) should determine, based on actual development densities determined in the evaluation under RCW 36.70A.215 (3)(b), the amount of land needed for commercial, industrial and residential uses for the remaining portion of the twenty-year planning period. This evaluation should consider the type and densities of each type of land use as envisioned in the county-wide planning policies, comprehensive plan.

(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation.

(6) Measures to address inconsistencies.

(a) The legislative bodies of counties and cities are responsible for the adoption of reasonable measures requiring legislative action to amend their individual comprehensive plans and development regulations. Counties, in consultation with cities, are responsible for amending the county-wide planning policies reasonably likely to increase consistency. Annual monitoring and reporting is the responsibility of the adopting jurisdiction, but may be carried out by either the adopting jurisdiction or other designated agency or person.

(b) If a county or city determines an inconsistency exists, the county or city should establish a timeline for adopting and implementing measures that are reasonably likely to increase consistency ((~~in the succeeding five years~~)) during the succeeding review and evaluation period. The responsible county or city may utilize its annual review under RCW 36.70A.130(2) to make adjustments to its comprehensive plan and development regulations that are necessary to implement reasonable measures. Information regarding the adoption, implementation, and monitoring of reasonable measures should be made available to the public. Counties and cities may not rely on expansion of the urban growth area as a measure to address the inconsistency.

(i) Each county or city is responsible for implementing reasonable measures within its jurisdiction and must adopt measures that are designed to remedy the inconsistency within the remaining planning horizon of the adopted comprehensive plan;

(ii) Each county or city adopting reasonable measures is responsible for documenting its methodology and expectations for monitoring to provide a basis to evaluate whether the adopted measures have been effective in increasing consistency during the subsequent ((~~five-year~~)) review and evaluation period;

(iii) If the monitoring of reasonable measures fails to show increased consistency relative to adopted policies, plans and development regulations during the subsequent ((~~five-year~~)) review and evaluation period, the county or city should evaluate whether the measures in question should be revised, replaced, supplemented or rescinded;

(iv) If monitoring of reasonable measures demonstrates that such measures have remedied the inconsistency, the adopting county or city may discontinue monitoring;

(v) A copy of any action taken to adopt, amend, or rescind reasonable measures should be submitted to the department.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-325 Providing sufficient land capacity suitable for development. (1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable county-wide planning policies and consistent with the twenty-year population forecast from the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must((~~, at minimum,~~)) complete a land capacity analysis that demonstrates sufficient land for development or redevelopment to meet their adopted growth allocation targets during the ((~~ten-year~~)) review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting required ((~~at least every five years~~)) no later than one year prior to the deadline for periodic review of comprehensive plans and development regulations required by RCW 36.70A.130, and adopt and implement measures that are reasonably likely to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) ((~~Although it is not required, counties and cities may elect to conduct a land capacity analysis during the periodic review and update of comprehensive plans required under RCW 36.70A.130(1).~~

~~(e)~~)) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient capacity of land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element. In order to achieve sufficiency, the development

regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a city or county can meet its obligation to accommodate the growth allocated through the county-wide population allocation process.

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the county-wide population or employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the twenty-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the twenty-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

(e) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) Periodic evaluation. Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the assumed densities established in the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. This ((~~could occur as part of the seven-year review and update required in RCW 36.70A.130 (1)(a). It~~)) evaluation must occur ((~~at a minimum~~)) as part of the ((~~ten-year~~)) urban growth area review required in RCW 36.70A.130 (3)(a) and as part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) Flexible development standards. Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) Evaluation of development capacity impacts of proposed development regulation amendments. Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-400 Mandatory elements. (1) Requirements.

(a) The comprehensive plan must include, at a minimum, a future land use map.

(b) The comprehensive plan must contain descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.

(c) The comprehensive plan must be an internally consistent document and all elements shall be consistent with the future land use map.

(d) Each comprehensive plan must include each of the following:

(i) A land use element;

(ii) A housing element;

(iii) A capital facilities plan element;

(iv) A utilities element;

(v) A transportation element.

(e) Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before the applicable review and update deadline in RCW 36.70A.130((~~(4)~~)) (5). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:

(i) An economic development element; and

(ii) A parks and recreation element.

(f) County comprehensive plans must also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(g) Additionally, each county and city comprehensive plan must contain:

(i) A process for identifying and siting essential public facilities.

(ii) The goals and policies of the shoreline master program adopted by the county or city, either directly in the comprehensive plan, or through incorporation by reference as described in WAC 173-26-191.

(2) Recommendations for overall design of the comprehensive plan.

(a) The planning horizon for the comprehensive plan must be at least the twenty-year period following the adoption of the comprehensive plan.

(b) The comprehensive plan should include or reference the statutory goals and requirements of the act as guiding the

development of the comprehensive plan and should also identify any supplementary goals adopted in the comprehensive plan.

(c) Each county and city comprehensive plan should include, or reference, the county-wide planning policies, along with an explanation of how the county-wide planning policies have been integrated into the comprehensive plan.

(d) Each comprehensive plan must contain a future land use map showing the proposed physical distribution and location of the various land uses during the planning period. This map should provide a graphic display of how and where development is expected to occur.

(e) The comprehensive plan should include a vision for the community at the end of the twenty-year planning period and identify community values derived from the visioning and other citizen participation processes. Goals may be further defined with policies and objectives in each element of the comprehensive plan.

(f) Each county and city should include at the beginning of its comprehensive plan a section which summarizes, with graphics and a minimum amount of text, how the various pieces of the comprehensive plan fit together. A comprehensive plan may include overlay maps and other graphic displays depicting known critical areas, open space corridors, development patterns, phasing of development, neighborhoods or subarea definitions, and other plan features.

(g) Detailed recommendations for preparing each element of the comprehensive plan are provided in WAC 365-196-405 through 365-196-485.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-415 Capital facilities element. (1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities have capacity available for future growth.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, storm water facilities, reclaimed water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(iii) Capital facilities that are needed to support other comprehensive plan elements, such as transportation, the parks and recreation or the utilities elements, may be addressed in the capital facility element or in the specific element.

(iv) Counties and cities should periodically review and update the inventory. At a minimum this review must occur as part of the ((~~seven year~~)) periodic update required by RCW 36.70A.130(1). Counties and cities may also maintain this inventory annually in response to changes in the annual capital budget.

(b) Forecast of future needs.

(i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.

(ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period, including general location and capacity.

(A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

(B) Counties and cities should identify those improvements that are necessary for development.

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for development. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1)((~~, during the review of urban growth areas required by RCW 36.70A.130~~)) and (3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within the jurisdiction or among jurisdictions within the urban growth area to make better use of existing facilities;

(F) Phasing growth or adopting other measures to adjust the timing of development, if public facilities or services are lacking in the short term for a portion of the planning period;

(G) Revising county-wide population forecasts within the allowable range, or revising the county-wide employment forecast.

(3) Relationship between the capital facilities element and the land use element.

(a) Providing adequate public facilities is a component of the affirmative duty created by the act for counties and cities to accommodate the growth that is selected and allocated, to provide sufficient capacity of land suitable for development, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities and intensities to accommodate the population and employment that is selected and allocated. The land uses and assumed densities identified in the land use element determine the location and timing of the need for new or expanded facilities.

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the twenty-year life of the comprehensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(5) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

(i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.

(ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(iii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-840.

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facilities required to ensure adequate water availability, capital facilities necessary to handle wastewater, and capital facilities necessary to manage storm water.

(iii) For capital facilities that are necessary for development, but not identified in subsection (2)(b)(ii)(A) or (B) of this section, counties and cities should set a minimum level of service standard, or provide some other objective basis for assessing the need for new facilities or capacity. This standard must be indicated as the baseline standard, below which the jurisdiction will not allow service to fall. Policies must require periodic analysis to determine if the adopted level of service is being met consistent with this section.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban

growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur ((~~at least every ten years,~~)) along with the ((~~ten-year~~)) urban growth area review required in RCW 36.70A.130 (3)(a). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;

(ii) Fire and police protection;

(iii) Transportation and public transportation; and

(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;

(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that

are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage storm water and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDs may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses

of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(D) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(E) Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDs - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions

that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(d) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-430 Transportation element. (1) Requirements. Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element. The transportation element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's ten-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(v) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(vi) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the ten-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation ele-

ments should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning organization under chapter 47.80 RCW to ensure the transportation element reflects regional guidelines and principles; is consistent with the regional transportation plan; and is consistent with adopted regional growth and transportation strategies. Considering consistency during the development and review of the transportation element will facilitate the certification of transportation elements by the regional transportation planning organization as required by RCW 47.80.023(3).

(iv) Counties and cities should develop their transportation elements using the framework established in countywide planning policies, and where applicable, multicounty planning policies. Using this framework ensures their transportation elements are coordinated and consistent with the comprehensive plans of other counties and cities sharing common borders or related regional issues as required by RCW 36.70A.100 and 36.70A.210.

(v) Counties and cities should refer to the six-year transit plans developed by municipalities or regional transit authorities pursuant to RCW 35.58.2795 to ensure their transportation element is consistent with transit development plans as required by RCW 36.70A.070 (6)(c).

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW 70.94.527(5). Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW 70.94.528.

(b) The transportation element should contain goals and policies to guide the development and implementation of the transportation element. The goals and policies should be consistent with statewide and regional goals and policies. Goals and policies should address the following:

(i) Roadways and roadway design that provides safe access and travel for all users, including motorists, transit vehicles and riders, bicyclists, and pedestrians;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and multimodal access;

(iii) Bicycle and pedestrian travel;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and storm water impacts on state-owned transportation facilities as development occurs.

(c) Inventory and analysis of transportation facilities. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities. The inventory defines existing capital facilities and travel levels as a basis for future planning. The inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries. Counties and cities should identify transportation facilities which are owned or operated by others. For those facilities operated by others, counties and cities should refer to the responsible agencies for information concerning current and projected plans for transportation facilities and services. Counties, cities, and agencies responsible for transportation facilities and services should cooperate in identifying and resolving land use and transportation compatibility issues.

(i) Air transportation facilities.

(A) Where applicable, counties and cities should describe the location of facilities and services provided by any general aviation airport within or adjacent to the county or city, and should reference any relevant airport planning documents including airport master plans, airport layout plans or technical assistance materials made available by the Washington state department of transportation, aviation division.

(B) Counties and cities should identify supporting transportation infrastructure such as roads, rail, and routes for freight, employee, and passenger access, and assess the impact to the local transportation system.

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455.

(ii) Water transportation facilities.

(A) Where applicable, counties and cities should describe or map any ferry facilities and services, including ownership, and should reference any relevant ferry planning documents. The inventory should identify if a ferry route is subject to concurrency under RCW 36.70A.070 (6)(b). A ferry route is subject to concurrency if it serves counties consisting of islands whose only connection to the mainland are state highways or ferry routes.

(B) Counties and cities should identify supporting infrastructure such as parking and transfer facilities, bicycle, pedestrian, and vehicle access to ferry terminals and assess the impact on the local transportation system.

(C) Where applicable, counties and cities should describe marine and inland waterways, and related port facilities and services. Counties and cities should identify supporting transportation infrastructure, and assess the impact to the local transportation system.

(iii) Ground transportation facilities and services.

(A) Roadways. Counties and cities must include a map of roadways owned or operated by city, county, and state governments.

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight cor-

ridor designation, preferred freight routes, scenic and recreational highway designation, and ownership.

(II) For state highways, counties and cities should coordinate with the regional office of the Washington state department of transportation to identify designated high occupancy vehicle or high occupancy toll lanes, access classification, roadside classification, functional classification, and whether the highway is a state-designated highway of statewide significance, or state scenic and recreational highway designated under chapter 47.39 RCW. These designations may impact future development along state highway corridors. If these classifications impact future land use, this information should be included in the comprehensive plan along with reference to any relevant corridor planning documents.

(B) Public transportation and rail facilities and services.

(I) RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of transit alignments. Where applicable, counties and cities must inventory existing public transportation facilities and services. This section should reference transit development plans that provide local services. The inventory should contain a description of regional and intercity rail, and local, regional, and intercity bus service, paratransit, or other services. Counties and cities should include a map of local transit routes. The inventory should also identify locations of passenger rail stations and major public transit transfer stations for appropriate land use.

(II) Where applicable, such as where a major freight transfer facility is located, counties and cities should include a map of existing freight rail lines, and reference any relevant planning documents. Counties and cities should assess the adequacy of supporting transportation infrastructure such as roads, rail, and navigational routes for freight, employee, and passenger access, and the impact on the local transportation system.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the Clean Air Act Amendments of l990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC, and to local air quality agencies and metropolitan planning organizations for assistance.

(e) Level of service standards. Level of service standards serve to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between city, county and state transportation investment programs.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for other locally owned roads or travel modes at their discretion.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all transit routes. To identify level of service standards for public transit services, counties and cities should include the established level of service or performance standards from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes (motor vehicle, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and safety levels for users.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a ten-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the land use element. Counties and cities may forecast travel for the twenty-year planning period. Counties and cities may include bicy-

cle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required ten-year forecasting period. If counties and cities use a twenty-year forecasting period, they should also identify needs for the entire twenty-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle and pedestrian access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state department of transportation's ten-year improvement program. Identified needs must be consistent with regional transportation improvements identified in regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans for new or expanded public transit and be coordinated with local transit providers.

(vi) The identified transportation system needs may include: Considerations for repair, replacement, enhancement, or expansion of vehicular, transit, bicycle, and pedestrian facilities; enhanced or expanded transit services; system management; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays, grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(h) Local impacts to state transportation facilities. RCW 36.70A.070 (6)(a)(ii) requires counties and cities to estimate traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the Washington state department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. Traffic impacts should include the number of motor vehicle, and, as information becomes available, bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period.

(i) Transportation demand management.

(i) RCW 36.70A.070 (6)(a)(vi) requires that the transportation element include transportation demand management strategies. These strategies are designed to encourage the use of alternatives to single occupancy travel and to reduce congestion, especially during peak times.

(ii) Where applicable, counties and cities may include the goals and relevant strategies of employer-based commute trip reduction programs developed under RCW 70.94.521 through 70.94.555. All other counties and cities should consider strategies which may include, but are not limited to ridesharing, vanpooling, promotion of bicycling, walking and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(i) Collaborative efforts may include referencing local, regional, and state pedestrian and bicycle planning documents, if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian and bicycle component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services.

(v) The pedestrian and bicycle component should also review existing pedestrian and bicycle collision data to plan pedestrian facilities that improve pedestrian and bicycle safety.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified transportation facilities and strategies throughout the twenty-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the ten-year investment program developed by the Washington state department of transportation as required by RCW 47.05.030;

(ii) The horizon year for the multiyear plan should be the same as the time period for the travel forecast and identified needs. The financing plan should include cost estimates for new and enhanced locally owned roadway facilities including new or enhanced bicycle and pedestrian facilities to estimate the cost of future facilities and the ability of the local government to fund the improvements.

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

(B) Local funding from taxes, bonds, or other sources.

(C) Developer contributions, which may include:

(I) Impact or mitigation fees assessed according to chapter 82.02 RCW, or the Local Transportation Act (chapter 39.92 RCW).

(II) Contributions or improvements required under SEPA (RCW 43.21C.060).

(III) Concurrency requirements implemented according to RCW 36.70A.070 (6)(b).

(D) Transportation benefit districts established under RCW 35.21.225 and chapter 36.73 RCW.

(iv) RCW 36.70A.070 (6)(a)(iv)(A) requires an analysis of funding capability to judge needs against probable funding resources. When considering the cost of new facilities, counties and cities should consider the cost of maintaining facilities in addition to the cost of their initial construction. Counties and cities should forecast projected funding capacities based on revenues that are reasonably expected to be available, under existing laws and ordinances, to carry out the plan. If the funding strategy relies on new or previously untapped sources of revenue, the financing plan should include a realistic estimate of new funding that will be supplied.

(l) Reassessment if probable funding falls short.

(i) RCW 36.70A.070 (6)(a)(iv)(C) requires reassessment if probable funding falls short of meeting identified needs. Counties and cities must discuss how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met.

(ii) This review must take place, at a minimum, as part of the ((~~seven-year~~)) periodic review and update required in RCW 36.70A.130 (1)((~~, during the review of urban growth areas required by RCW 36.70A.130~~)) and (3), and as major changes are made to the transportation element.

(iii) If probable funding falls short of meeting identified needs, counties and cities have several choices. For example, they may choose to:

(A) Seek additional sources of funding for identified transportation improvements;

(B) Adjust level of service standards to reduce the number and cost of needed facilities;

(C) Revisit identified needs and use of transportation system management or transportation demand management strategies to reduce the need for new facilities; or

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length or to avoid the need for new facilities in undeveloped areas;

(E) If needed, adjustments should be made throughout the comprehensive plan to maintain consistency.

(m) Implementation measures. Counties and cities may include an implementation section that broadly defines regulatory and nonregulatory actions and programs designed to proactively implement the transportation element. Implementation measures may include:

(i) Public works guidelines to reflect multimodal transportation standards for pedestrians, bicycles and transit; or adoption of Washington state department of transportation standards or the American Association of State Highway and Transportation Officials standards for bicycle and pedestrian facilities;

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce vehicle parking requirements and include bicycle parking;

(iv) Commute trip reduction ordinances and transportation demand management programs;

(v) Access management ordinances;

(vi) Nonmotorized transportation funding programs;

(vii) Maintenance procedures and pavement management systems to include bicycle, pedestrians and transit considerations;

(viii) Subdivision standards to reflect multimodal goals; and

(ix) Transit compatibility policies and rules to guide development review procedures to incorporate review of bicycle, pedestrian and transit access to sites.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-600 Public participation. (l) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for

open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

(i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating amendments as part of the docket cycle, conducting the ((~~seven-year~~)) periodic update and reviewing the urban growth boundaries, amending development regulations, and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet web sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or online articles do not substitute for the requirement that jurisdictions publish the action taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official web site;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if necessary, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update ((~~every seven years~~)) on a schedule established in RCW 36.70A.130(((~~4~~))) (5).

(i) Deadlines for completion of periodic review are as follows:

Table WAC 365-196-610.1

Deadlines for Completion of Periodic Review
((~~2010 - 2021~~)) 2015 - 2018

Update must be complete by ((~~December 1~~)) June 30 of:	Affected counties and the cities within:
((~~2014/2021~~)) 2015/2023	((~~Clallam, Clark, Jefferson,~~)) King, ((~~Kitsap,~~)) Pierce, Snohomish, ((~~Thurston, Whatcom~~))
((~~2015/2022~~)) 2016/2024	((~~Cowlitz~~)) Clallam, Clark, Island, ((~~Lewis~~)) Jefferson, Kitsap, Mason, San Juan, Skagit, ((~~Skamania~~)) Thurston, Whatcom
((~~2016/2023~~)) 2017/2025	Benton, Chelan, Cowlitz, Douglas, ((~~Grant,~~)) Kittitas, Lewis, Skamania, Spokane, Yakima
((~~2017/2024~~)) 2018/2026	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend ((~~Orielle~~)) Oreille, Stevens, Wahkiakum, Walla Walla, Whitman

(ii) Certain smaller, slower-growing counties and cities may take up to an additional ((~~three~~)) two years to complete the update.

(A) The eligibility of a county for the ((~~three-year~~)) two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than fifty thousand and a growth rate of less than seventeen percent.

(C) A city is eligible if it has a population of less than five thousand, and either a growth rate of less than seventeen percent or a total population growth of less than one hundred persons.

(D) Growth rates are measured using the ten-year period preceding the due date listed in RCW 36.70A.130((~~(4)~~)) (5).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire ((~~three-year~~)) extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance;

(ii) Analysis of ((~~the population allocated to a city or county from the most recent ten-year~~)) urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the ((~~seven-year~~)) periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive

list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent ((~~ten-year~~)) urban growth area review (see WAC 365-196-310);

(B) Consideration of critical areas and resource lands ordinances;

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ten-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the twenty-year plan, counties and cities should consider updating them as part of the ((~~seven-year~~)) periodic update((~~, or the ten-year urban growth area update~~)) (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the ((~~seven-year~~)) periodic review process. Cities and counties may not conduct the ((~~seven-year~~)) periodic review and a docket of amendments as separate processes in the same year.

(b) ((~~Relationship to the ten-year~~)) Urban growth area (UGA) review. ((~~(i) At least every ten years,~~)) As part of the periodic review, cities and counties must review the areas and densities contained in the urban growth area and, if necessary, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding twenty-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310). ((~~This is referred to in this section as the ten-year urban growth area review.~~

~~(ii) The ten-year urban growth area review and the seven-year periodic update may be combined or may occur separately. The seven-year periodic update requires an assessment of the most recent twenty-year population forecast by the office of financial management, but does not require that land use plans or urban growth areas be updated~~

~~to accommodate existing or future growth forecasts, which must be undertaken as part of the ten-year UGA review. Counties and cities may consider the most recent forecast from the office of financial management, and the adequacy of existing land supplies to meet their existing growth forecast allocations, in determining when to initiate the ten-year urban growth area review.~~))

WSR 15-04-047

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 29, 2015, 8:05 a.m., effective March 1, 2015]

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

Purpose: WAC 458-20-179 (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. The department is amending Rule 179 to include language that explains the PUT 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 from legislation ESSB 6440 (chapter 216, Laws of 2014) and is not effective until July 1, 2015.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-179 Public utility tax.

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

Other Authority: RCW 82.16.310.

Adopted under notice filed as WSR 14-23-087 on November 19, 2014.

Changes Other than Editing from Proposed to Adopted Version: In Part IV, subsection (402)(c)(iii)(B), the name of the exemption certificate to use when purchasing natural gas for transportation fuel has been added. This form can be found on the department's web site.

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

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

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

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

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

Date Adopted: January 29, 2015.

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 exemp-

tion, 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 pub-

lic 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 out-

side 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 "Purchases of Natural Gas for Use as Transportation Fuel" 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.

WSR 15-04-049
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed January 29, 2015, 9:00 a.m., effective January 29, 2015, 9:00 a.m.]

Effective Date of Rule: Immediately [January 29, 2015, 9:00 a.m.].

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule must become effective immediately because of imminent peril to the public health, safety, and welfare, RCW 34.05.380 (3)(c).

Purpose: WAC 246-282-005, the United States Food and Drug Administration requires all shellfish-producing states to follow the most current version of the National Shellfish Sanitation Program (NSSP) Guide in order to place molluscan shellfish into interstate commerce. The rule currently references the 2011 NSSP Guide, leaving the rule out-of-date. This rule making updates the reference to the 2013 version of the NSSP Guide.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-005 Sanitary control of shellfish—Minimum performance standards.

Statutory Authority for Adoption: RCW 60.30.030.

Adopted under notice filed as WSR 14-24-077 on November 26, 2014.

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

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

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

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

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

Date Adopted: January 29, 2015.

Dennis Worsham
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 14-09-003, filed 4/3/14, effective 5/4/14)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (((~~2011~~)) 2013) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state

department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

WSR 15-04-051
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 13-13—Filed January 29, 2015, 1:38 p.m., effective March 1, 2015]

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

Purpose: The Washington state department of ecology (ecology) amended chapter 173-441 WAC, Reporting of emissions of greenhouse gases, in order to maintain consistency with the United States Environmental Protection Agency's (EPA) greenhouse gas reporting program, as required by RCW 70.94.151. The following are examples of the amendments:

- Revising the global warming potentials in WAC 173-441-040.
- Updating calculation and monitoring methods.
- Making minor streamlining revisions to reporting requirements.
- Correcting minor errors and improving readability.

Ecology did not change requirements established in chapter 173-441 WAC for transportation fuel suppliers or the following elements pertaining to facilities: Reporting threshold, confidential business information, or fees.

Citation of Existing Rules Affected by this Order: Amending chapter 173-441 WAC, Reporting of emissions of greenhouse gases.

Statutory Authority for Adoption: Chapter 70.235 RCW, Limiting greenhouse gas emissions and chapter 70.94 RCW, Washington Clean Air Act.

Adopted under notice filed as WSR 14-21-135 on October 20, 2014.

Changes Other than Editing from Proposed to Adopted Version: Updated incorporation by reference dates throughout the rule; and modified Table A-1 based on EPA's finalization of amendments to subpart A of the federal greenhouse gas reporting regulation.

A final cost-benefit analysis is available by contacting Kasia Patora, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail Kasia.Patora@ecy.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

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

Date Adopted: January 29, 2015.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-010 Scope. This rule establishes mandatory greenhouse gas (GHG) reporting requirements for owners and operators of certain facilities that directly emit GHG as well as for certain suppliers of liquid motor vehicle fuel, special fuel, or aircraft fuel. For suppliers, the GHGs reported are the quantity that would be emitted from the complete combustion or oxidation of the products supplied.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **Definitions specific to this chapter:**

(a) "Biomass" means non-fossilized and biodegradable organic material originating from plants, animals, or microorganisms, including products, by-products, residues((,)) and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material.

(b) "Carbon dioxide equivalent((s))" or "CO_2e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(c) "Department of licensing" or "DOL" means the Washington state department of licensing.

(d) "Director" means the director of the department of ecology.

(e) "Ecology" means the Washington state department of ecology.

(f) "Facility" unless otherwise specified in any subpart of 40 C.F.R. Part 98 as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015, means any physical property,

plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

(g) "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Beginning on January 1, 2012, "greenhouse gas" also includes any other gas or gases designated by ecology by rule in Table A-1 in WAC 173-441-040.

(h) "Person" includes:

(i) An owner or operator, as those terms are defined by the United States Environmental Protection Agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015; and

(ii) A supplier.

(i) "Supplier" means any person who is:

(i) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in RCW 82.36.010;

(ii) A special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; or

(iii) A distributor of aircraft fuel, as the term is defined in RCW 82.42.010.

(2) **Definitions specific to suppliers.** Suppliers must use the definitions found in the following regulations unless the definition is in conflict with a definition found in subsection (1) of this section. These definitions do not apply to facilities.

(a) WAC 308-72-800;

(b) WAC 308-77-005; and

(c) WAC 308-78-010.

(3) **Definitions from 40 C.F.R. Part 98.** For those terms not listed in subsection (1) or (2) of this section, the definitions found in 40 C.F.R. § 98.6 or a subpart as adopted in WAC 173-441-120, as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015, are adopted by reference as modified in WAC 173-441-120(2).

(4) **Definitions from chapter 173-400 WAC.** If no definition is provided in subsections (1) through (3) in this section, use the definition found in chapter 173-400 WAC.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-030 Applicability. The GHG reporting requirements and related monitoring, recordkeeping, and reporting requirements of this chapter apply to the owners and operators of any facility that meets the requirements of subsection (1) of this section; and any supplier that meets the requirements of subsection (2) of this section. In determining whether reporting is required, the requirements of subsection (1) must be applied independently of the requirements of subsection (2). Research and development activities are not considered to be part of any source category defined in this chapter.

(1) **Facility reporting.** Reporting is mandatory for an owner or operator of any facility located in Washington state with total GHG emissions that exceeds the reporting threshold defined in (a) of this subsection. GHG emissions from all applicable source categories listed in WAC 173-441-120 at the facility must be included when determining whether emissions from the facility meet the reporting threshold.

(a) **Facility reporting threshold.** Any facility that emits ten thousand metric tons CO_2e or more per calendar year in total GHG emissions from all applicable source categories listed in WAC 173-441-120 exceeds the reporting threshold.

(b) **Calculating facility emissions for comparison to the threshold.** To calculate GHG emissions for comparison to the reporting threshold, the owner or operator must:

(i) Calculate the total annual emissions of each GHG in metric tons from all applicable source categories that are listed and defined in WAC 173-441-120. The GHG emissions must be calculated using the calculation methodologies specified in WAC 173-441-120 and available company records.

(ii) Include emissions of all GHGs that are listed in Table A-1 of WAC 173-441-040, including all GHG emissions from the combustion of biomass and all fugitive releases of GHG emissions from biomass, calculated as provided in the calculation methods referenced in Table 120-1.

(iii) Sum the emissions estimates for each GHG and calculate metric tons of CO_2e using Equation A-1 of this subsection.

((

$$CO_2e = \sum_{i=1}^{n} GHG_i \times GWP_i \quad (Eq. A-1)$$

))

$$CO2e = \sum_{i=1}^{n} GHGi \times GWPi \qquad (Eq.\ A-1)$$

Where:

CO_2e	=	Carbon dioxide equivalent, metric tons/year.
GHG_i	=	Mass emissions of each greenhouse gas listed in Table A-1 of WAC 173-441-040, metric tons/year.
GWP_i	=	Global warming potential for each greenhouse gas from Table A-1 of WAC 173-441-040.
n	=	The number of greenhouse gases emitted.

(iv) Include in the emissions calculation any CO_2 that is captured for transfer ((~~off-site~~)) off site.

(((~~(v) Research and development activities are not considered to be part of any source category defined in this chapter.~~)))

(2) **Suppliers.** Reporting is mandatory for any supplier required to file periodic tax reports to DOL and has total carbon dioxide emissions that exceed the reporting threshold defined in (a) of this subsection.

(a) **Supplier reporting threshold.** Any supplier that supplies applicable fuels that are reported to DOL as sold in Washington state of which the complete combustion or oxidation would result in total calendar year emissions of ten thousand metric tons or more of carbon dioxide exceeds the reporting threshold.

(b) **Calculating supplier emissions for comparison to the threshold.** To calculate CO_2 emissions for comparison to the reporting threshold, a supplier must:

(i) Base its emissions on the applicable fuel quantities as established in WAC 173-441-130(1) and reported to DOL. A supplier must apply the mass in metric tons per year of CO_2 that would result from the complete combustion or oxidation of these fuels towards the reporting threshold.

(ii) Calculate the total annual carbon dioxide emissions in metric tons from all applicable fuel quantities and fuel types as established in WAC 173-441-130(1) and reported to DOL. The CO_2 emissions must be calculated using the calculation methodologies specified in WAC 173-441-130 and data reported to DOL.

(iii) Only include emissions of carbon dioxide associated with the complete combustion or oxidation of the applicable fuels. Include all CO_2 emissions from the combustion of biomass fuels.

(((~~(iv) Research and development activities are not considered to be part of any source category defined in this chapter.~~)))

(3) **Applicability over time.** A person that does not meet the applicability requirements of either subsection (1) or (2) of this section is not subject to this rule. Such a person would become subject to the rule and the reporting requirements of this chapter if they exceed the applicability requirements of subsection (1) or (2) of this section at a later time. Thus, persons should reevaluate the applicability to this chapter (including the revising of any relevant emissions calculations or other calculations) whenever there is any change that could cause a facility or supplier to meet the applicability requirements of subsection (1) or (2) of this section. Such changes include, but are not limited to, process modifications, increases in operating hours, increases in production, changes in fuel or raw material use, addition of equipment, facility expansion, and changes to this chapter.

(4) **Voluntary reporting.** A person may choose to voluntarily report to ecology GHG emissions that are not required to be reported under subsection (1) or (2) of this section. Persons voluntarily reporting GHG emissions must use the methods established in WAC 173-441-120(3) and 173-441-130 to calculate any voluntarily reported GHG emissions.

(5) **Reporting requirements when emissions of greenhouse gases fall below reporting thresholds.** Except as provided in this subsection, once a facility or supplier is subject to the requirements of this chapter, the person must continue for each year thereafter to comply with all requirements of this chapter, including the requirement to submit annual GHG reports (annual GHG reports, GHG report, emissions report, annual report), even if the facility or supplier does not meet the applicability requirements in subsection (1) or (2) of this section in a future year.

(a) If reported emissions are less than ten thousand metric tons CO_2e per year for five consecutive years, then the person may discontinue reporting as required by this chapter provided that the person submits a notification to ecology that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification ((~~shall~~)) must be submitted no later than ((~~March 31st~~)) the report submission due date, specified in WAC 173-441-050(2), of the year immediately following the fifth consecutive year of emissions less than ten thousand tons CO_2e per year. The person must maintain the corresponding records required under WAC 173-441-050(6) for each of the five consecutive years and retain such records for three years following the year that reporting was discontinued. The person must resume reporting if annual emissions in any future calendar year increase above the thresholds in subsection (1) or (2) of this section.

(b) If reported emissions are less than five thousand metric tons CO_2e per year for three consecutive years, then the person may discontinue reporting as required by this chapter provided that the person submits a notification to ecology that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification ((~~shall~~)) must be submitted no later than ((~~March 31st~~)) the report submission due date, specified in WAC 173-441-050(2), of the year immediately following the third consecutive year of emissions less than five thousand tons CO_2e per year. The person must maintain the corresponding records required under WAC 173-441-050(6) for each of the three consecutive years and retain such records for three years following the year that reporting was discontinued. The person must resume reporting if annual emissions in any future calendar year increase above the thresholds in subsection (1) or (2) of this section.

(c) If the operations of a facility or supplier are changed such that all applicable GHG-emitting processes and operations listed in WAC 173-441-120 and 173-441-130 cease to operate, then the person is exempt from reporting in the years following the year in which cessation of such operations occurs, provided that the person submits a notification to ecology that announces the cessation of reporting and certifies to the closure of all GHG-emitting processes and operations no later than the report submission due date, specified in WAC 173-441-050(2), of the year following such changes. This provision does not apply to seasonal or other temporary cessation of operations. This provision does not apply to facilities with municipal solid waste landfills, industrial waste landfills, or to underground coal mines. The person must resume reporting for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-040 Greenhouse gases. (1) **Greenhouse gases.** Table A-1 of this section lists the GHGs regulated under this chapter and their global warming potentials.

(2) **CO_2e conversion.** Use Equation A-1 of WAC 173-441-030 (1)(b)(iii) and the global warming potentials (GWP) listed in Table A-1 of this section to convert emissions into CO_2e.

Table A-1:
Global Warming Potentials (100-Year Time Horizon)

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
Carbon dioxide	124-38-9	CO_2	1	1
Methane	74-82-8	CH_4	21	25
Nitrous oxide	10024-97-2	N_2O	310	298
((~~HFC-23~~	~~75-46-7~~	~~CHF_3~~	~~11,700~~	
~~HFC-32~~	~~75-10-5~~	~~CH_2F_2~~	~~650~~	
~~HFC-41~~	~~593-53-3~~	~~CH_3F~~	~~150~~	
~~HFC-125~~	~~354-33-6~~	~~C_2HF_5~~	~~2,800~~	
~~HFC-134~~	~~359-35-3~~	~~$C_2H_2F_4$~~	~~1,000~~	
~~HFC-134a~~	~~811-97-2~~	~~CH_2FCF_3~~	~~1,300~~	
~~HFC-143~~	~~430-66-0~~	~~$C_2H_3F_3$~~	~~300~~	
~~HFC-143a~~	~~420-46-2~~	~~$C_2H_3F_3$~~	~~3,800~~	
~~HFC-152~~	~~624-72-6~~	~~CH_2FCH_2F~~	~~53~~	
~~HFC-152a~~	~~75-37-6~~	~~CH_3CHF_2~~	~~140~~	
~~HFC-161~~	~~353-36-6~~	~~CH_3CH_2F~~	~~12~~	
~~HFC-227ea~~	~~431-89-0~~	~~C_3HF_7~~	~~2,900~~	
~~HFC-236cb~~	~~677-56-5~~	~~$CH_2FCF_2CF_3$~~	~~1,340~~	
~~HFC-236ea~~	~~431-63-0~~	~~CHF_2CHFCF_3~~	~~1,370~~	
~~HFC-236fa~~	~~690-39-1~~	~~$C_3H_2F_6$~~	~~6,300~~	
~~HFC-245ea~~	~~679-86-7~~	~~$C_3H_3F_5$~~	~~560~~	
~~HFC-245fa~~	~~460-73-1~~	~~$CHF_2CH_2CF_3$~~	~~1,030~~	
~~HFC-365mfc~~	~~406-58-6~~	~~$CH_3CF_2CH_2CF_3$~~	~~794~~	
~~HFC-43-10mee~~	~~138495-42-8~~	~~$CF_3CFHCFHCF_2CF_3$~~	~~1,300~~	
~~All other HFCs~~	~~NA~~	~~NA~~	~~Contact ecology~~	
~~Sulfur hexafluoride~~	~~2551-62-4~~	~~SF_6~~	~~23,900~~	
~~Trifluoromethyl sulphur pentafluoride~~	~~373-80-8~~	~~SF_5CF_3~~	~~17,700~~	
~~Nitrogen trifluoride~~	~~7783-54-2~~	~~NF_3~~	~~17,200~~	
~~PFC-14 (Perfluoromethane)~~	~~75-73-0~~	~~CF_4~~	~~6,500~~	
~~PFC-116 (Perfluoroethane)~~	~~76-16-4~~	~~C_2F_6~~	~~9,200~~	
~~PFC-218 (Perfluoropropane)~~	~~76-19-7~~	~~C_3F_8~~	~~7,000~~	
~~Perfluorocyclopropane~~	~~931-91-9~~	~~C-C_3F_6~~	~~17,340~~	

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
~~PFC-3-1-10 (Perfluorobutane)~~	~~355-25-9~~	~~C_4F_{10}~~	~~7,000~~	
~~Perfluorocyclobutane~~	~~115-25-3~~	~~c-C_4F_8~~	~~8,700~~	
~~PFC-4-1-12 (Perfluoropentane)~~	~~678-26-2~~	~~C_5F_{12}~~	~~7,500~~	
~~PFC-5-1-14 (Perfluorohexane)~~	~~355-42-0~~	~~C_6F_{14}~~	~~7,400~~	
~~PFC-9-1-18~~	~~306-94-5~~	~~$C_{10}F_{18}$~~	~~7,500~~	
~~All other PFCs~~	~~NA~~	~~NA~~	~~Contact ecology~~	
~~HCFE-235da2 (Isoflurane)~~	~~26675-46-7~~	~~$CHF_2OCHClCF_3$~~	~~350~~	
~~HFE-43-10pcee (H-Galden 1040x)~~	~~E1730133~~	~~$CHF_2OCF_2OC_2F_4OCHF_2$~~	~~1,870~~	
~~HFE-125~~	~~3822-68-2~~	~~CHF_2OCF_3~~	~~14,900~~	
~~HFE-134~~	~~1691-17-4~~	~~CHF_2OCHF_2~~	~~6,320~~	
~~HFE-143a~~	~~421-14-7~~	~~CH_3OCF_3~~	~~756~~	
~~HFE-227ea~~	~~2356-62-9~~	~~$CF_3CHFOCF_3$~~	~~1,540~~	
~~HFE-236ca12 (HG-10)~~	~~78522-47-1~~	~~$CHF_2OCF_2OCHF_2$~~	~~2,800~~	
~~HFE-236ea2 (Desflurane)~~	~~57041-67-5~~	~~$CHF_2OCHFCF_3$~~	~~989~~	
~~HFE-236fa~~	~~20193-67-3~~	~~$CF_3CH_2OCF_3$~~	~~487~~	
~~HFE-245cb2~~	~~22410-44-2~~	~~$CH_3OCF_2CF_3$~~	~~708~~	
~~HFE-245fa1~~	~~84011-15-4~~	~~$CHF_2CH_2OCF_3$~~	~~286~~	
~~HFE-245fa2~~	~~1885-48-9~~	~~$CHF_2OCH_2CF_3$~~	~~659~~	
~~HFE-254cb2~~	~~425-88-7~~	~~$CH_3OCF_2CHF_2$~~	~~359~~	
~~HFE-263fb2~~	~~460-43-5~~	~~$CF_3CH_2OCH_3$~~	~~11~~	
~~HFE-329mcc2~~	~~67490-36-2~~	~~$CF_3CF_2OCF_2CHF_2$~~	~~919~~	
~~HFE-338mcf2~~	~~156053-88-2~~	~~$CF_3CF_2OCH_2CF_3$~~	~~552~~	
~~HFE-338pcc13 (HG-01)~~	~~188690-78-0~~	~~$CHF_2OCF_2CF_2OCHF_2$~~	~~1,500~~	
~~HFE-347mcc3~~	~~28523-86-6~~	~~$CH_3OCF_2CF_2CF_3$~~	~~575~~	
~~HFE-347mcf2~~	~~E1730135~~	~~$CF_3CF_2OCH_2CHF_2$~~	~~374~~	
~~HFE-347pcf2~~	~~406-78-0~~	~~$CHF_2CF_2OCH_2CF_3$~~	~~580~~	
~~HFE-356mcc3~~	~~382-34-3~~	~~$CH_3OCF_2CHFCF_3$~~	~~101~~	
~~HFE-356pcc3~~	~~160620-20-2~~	~~$CH_3OCF_2CF_2CHF_2$~~	~~110~~	
~~HFE-356pcf2~~	~~E1730137~~	~~$CHF_2CH_2OCF_2CHF_2$~~	~~265~~	
~~HFE-356pcf3~~	~~35042-99-0~~	~~$CHF_2OCH_2CF_2CHF_2$~~	~~502~~	
~~HFE-365mcf3~~	~~378-16-5~~	~~$CF_3CF_2CH_2OCH_3$~~	~~11~~	
~~HFE-374pc2~~	~~512-51-6~~	~~$CH_3CH_2OCF_2CHF_2$~~	~~557~~	
~~HFE-449sl (HFE-7100) Chemical blend~~	~~163702-07-6~~ ~~163702-08-7~~	~~$C_4F_9OCH_3$~~ ~~$(CF_3)_2CFCF_2OCH_3$~~	~~297~~	

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
~~HFE-569sf2 (HFE-7200) Chemical blend~~	~~163702-05-4 163702-06-5~~	~~$C_4F_9OC_2H_5$ $(CF_3)_2CFCF_2OC_2H_5$~~	~~59~~	
~~Sevoflurane~~	~~28523-86-6~~	~~$CH_2FOCH(CF_3)_2$~~	~~345~~	
~~HFE-356mm1~~	~~13171-18-1~~	~~$(CF_3)_2CHOCH_3$~~	~~27~~	
~~HFE-338mmz1~~	~~26103-08-2~~	~~$CHF_2OCH(CF_3)_2$~~	~~380~~	
~~(Octafluorotetramethy-lene) hydroxymethyl group~~	~~NA~~	~~X-$(CF_2)_4$CH(OH)-X~~	~~73~~	
~~HFE-347mmy1~~	~~22052-84-2~~	~~$CH_3OCF(CF_3)_2$~~	~~343~~	
~~Bis(trifluoromethyl)-methanol~~	~~920-66-1~~	~~$(CF_3)_2CHOH$~~	~~195~~	
~~2,2,3,3,3 pentafluoropropanol~~	~~422-05-9~~	~~$CF_3CF_2CH_2OH$~~	~~42~~	
~~PFPMIE~~	~~NA~~	~~$CF_3OCF(CF_3)CF_2OCF_2OCF_3$~~	~~10,300~~))	
Fully Fluorinated GHGs				
Sulfur hexafluoride	2551-62-4	SF_6	23,900	22,800
Trifluoromethyl sulphur pentafluoride	373-80-8	SF_5CF_3	17,700	17,700
Nitrogen trifluoride	7783-54-2	NF_3	17,200	17,200
PFC-14 (Perfluoromethane)	75-73-0	CF_4	6,500	7,390
PFC-116 (Perfluoroethane)	76-16-4	C_2F_6	9,200	12,200
PFC-218 (Perfluoropropane)	76-19-7	C_3F_8	7,000	8,830
Perfluorocyclopropane	931-91-9	C-C_3F_6	17,340	17,340
PFC-3-1-10 (Perfluorobutane)	355-25-9	C_4F_{10}	7,000	8,860
PFC-318 (Perfluorocyclobutane)	115-25-3	C-C_4F_8	8,700	10,300
PFC-4-1-12 (Perfluoropentane)	678-26-2	C_5F_{12}	7,500	9,160
PFC-5-1-14 (Perfluorohexane, FC-72)	355-42-0	C_6F_{14}	7,400	9,300
PFC-6-1-12 (Hexadecafluoroheptane)	335-57-9	C_7F_{16}; $CF_3(CF_2)_5CF_3$	7,820	7,820
PFC-7-1-18 (Octadecafluorooctane)	307-34-6	C_8F_{18}; $CF_3(CF_2)_6CF_3$	7,620	7,620
PFC-9-1-18	306-94-5	$C_{10}F_{18}$	7,500	7,500
PFPMIE (HT-70)	NA	$CF_3OCF(CF_3)CF_2OCF_2OCF_3$	10,300	10,300
Perfluorodecalin (cis)	60433-11-6	Z-$C_{10}F_{18}$	7,236	7,236
Perfluorodecalin (trans)	60433-12-7	E-$C_{10}F_{18}$	6,288	6,288
Saturated Hydrofluorocarbons (HFCs) with Two or Fewer Carbon-Hydrogen Bonds				
HFC-23	75-46-7	CHF_3	11,700	14,800
HFC-32	75-10-5	CH_2F_2	650	675
HFC-125	354-33-6	C_2HF_5	2,800	3,500
HFC-134	359-35-3	$C_2H_2F_4$	1,000	1,100

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
HFC-134a	811-97-2	CH_2FCF_3	1,300	1,430
HFC-227ca (1,1,1,2,2,3,3-Heptafluoropropane)	2252-84-8	$CF_3CF_2CHF_2$	2,640	2,640
HFC-227ea	431-89-0	C_3HF_7	2,900	3,220
HFC-236cb	677-56-5	$CH_2FCF_2CF_3$	1,340	1,340
HFC-236ea	431-63-0	CHF_2CHFCF_3	1,370	1,370
HFC-236fa	690-39-1	$C_3H_2F_6$	6,300	9,810
HFC-329p (1,1,1,2,2,3,3,4,4-Nonafluorobutane)	375-17-7	$CHF_2CF_2CF_2CF_3$	2,360	2,360
HFC-43-10mee	138495-42-8	$CF_3CFHCFHCF_2CF_3$	1,300	1,640
Saturated Hydrofluorocarbons (HFCs) with Three or More Carbon-Hydrogen Bonds				
HFC-41	593-53-3	CH_3F	150	92
HFC-143	430-66-0	$C_2H_3F_3$	300	353
HFC-143a	420-46-2	$C_2H_3F_3$	3,800	4,470
HFC-152	624-72-6	CH_2FCH_2F	53	53
HFC-152a	75-37-6	CH_3CHF_2	140	124
HFC-161	353-36-6	CH_3CH_2F	12	12
HFC-245ca	679-86-7	$C_3H_3F_5$	560	693
HFC-245cb (1,1,1,2,2-Pentafluoropropane)	1814-88-6	$CF_3CF_2CH_3$	4,620	4,620
HFC-245ea (1,1,2,3,3-Pentafluoropropane)	24270-66-4	$CHF_2CHFCHF_2$	235	235
HFC-245eb (1,1,1,2,3-Pentafluoropropane)	431-31-2	$CH_2FCHFCF_3$	290	290
HFC-245fa	460-73-1	$CHF_2CH_2CF_3$	1,030	1,030
HFC-263fb (1,1,1-Trifluoropropane)	421-07-8	$CH_3CH_2CF_3$	76	76
HFC-272ca (2,2-Difluoropropane)	420-45-1	$CH_3CF_2CH_3$	144	144
HFC-365mfc	406-58-6	$CH_3CF_2CH_2CF_3$	794	794
Saturated Hydrofluoroethers (HFEs) and Hydrochlorofluoroethers (HCFEs) with One Carbon-Hydrogen Bond				
HFE-125	3822-68-2	CHF_2OCF_3	14,900	14,900
HFE-227ea	2356-62-9	$CF_3CHFOCF_3$	1,540	1,540
HFE-329mcc2	134769-21-4	$CF_3CF_2OCF_2CHF_2$	919	919
HFE-329me3 (1,1,1,2,3,3-Hexafluoro-3-(trifluoromethoxy)propane)	428454-68-6	$CF_3CFHCF_2OCF_3$	NA	4,550*
1,1,1,2,2,3,3-Heptafluoro-3-(1,2,2,2-tetrafluoroethoxy)-propane	3330-15-2	$CF_3CF_2CF_2OCHFCF_3$	NA	6,490*

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
Saturated HFEs and HCFEs with Two Carbon-Hydrogen Bonds				
HFE-134 (HG-00)	1691-17-4	CHF_2OCHF_2	6,320	6,320
HFE-236ca (1-(Difluoromethoxy)-1,1,2,2-tetrafluoroethane)	32778-11-3	$CHF_2OCF_2CHF_2$	NA	4,240*
HFE-236ca12 (HG-10)	78522-47-1	$CHF_2OCF_2OCHF_2$	2,800	2,800
HFE-236ea2 (Desflurane)	57041-67-5	$CHF_2OCHFCF_3$	989	989
HFE-236fa	20193-67-3	$CF_3CH_2OCF_3$	487	487
HFE-338mcf2	156053-88-2	$CF_3CF_2OCH_2CF_3$	552	552
HFE-338mmz1	26103-08-2	$CHF_2OCH(CF_3)_2$	380	380
HFE-338pcc13 (HG-01)	188690-78-0	$CHF_2OCF_2CF_2OCHF_2$	1,500	1,500
HFE-43-10pccc (H-Galden 1040x, HG-11)	E1730133	$CHF_2OCF_2OC_2F_4OCHF_2$	1,870	1,870
HCFE-235ca2 (Enflurane) (2-Chloro-1-(difluoromethoxy)-1,1,2-trifluoroethane)	13838-16-9	CHF_2OCF_2CHFCl	NA	583*
HCFE-235da2 (Isoflurane)	26675-46-7	$CHF_2OCHClCF_3$	350	350
HG-02 (1-(Difluoromethoxy)-2-(2-(difluoromethoxy)-1,1,2,2-tetrafluoroethoxy)-1,1,2,2-tetrafluoroethane)	205367-61-9	$HF_2C\text{-}(OCF_2CF_2)_2\text{-}OCF_2H$	NA	3,825*
HG-03 (1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12-Hexadecafluoro-2,5,8,11-tetra-oxadodecane)	173350-37-3	$HF_2C\text{-}(OCF_2CF_2)_3\text{-}OCF_2H$	NA	3,670*
HG-20 ((Difluoromethoxy) ((difluoromethoxy) difluorome-thoxy) difluoromethane)	249932-25-0	$HF_2C\text{-}(OCF_2)_2\text{-}OCF_2H$	NA	5,300*
HG-21 (1,1,3,3,5,5,7,7,8,8,10,10-Dodecafluoro-2,4,6,9-tetraoxade-cane)	249932-26-1	$HF_2C\text{-}OCF_2CF_2OCF_2OCF_2O\text{-}CF_2H$	NA	3,890*
HG-30 (1,1,3,3,5,5,7,7,9,9-Deca-fluoro-2,4,6,8-tetraoxanonane)	188690-77-9	$HF_2C\text{-}(OCF_2)_3\text{-}OCF_2H$	NA	7,330*
1,1,3,3,4,4,6,6,7,7,9,9,10,10,12,12,13,13,15,15-eicosafluoro-2,5,8,11,14-Pentaoxapentadecane	173350-38-4	$HCF_2O(CF_2CF_2O)_4CF_2H$	NA	3,630*
1,1,2-Trifluoro-2-(trifluoromethoxy)-ethane	84011-06-3	$CHF_2CHFOCF_3$	NA	1,240*
Trifluoro (fluoromethoxy) meth-ane	2261-01-0	CH_2FOCF_3	NA	751*
Saturated HFEs and HCFEs with Three or More Carbon-Hydrogen Bonds				
HFE-143a	421-14-7	CH_3OCF_3	756	756
HFE-245cb2	22410-44-2	$CH_3OCF_2CF_3$	708	708

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
HFE-245fa1	84011-15-4	$CHF_2CH_2OCF_3$	286	286
HFE-245fa2	1885-48-9	$CHF_2OCH_2CF_3$	659	659
HFE-254cb2	425-88-7	$CH_3OCF_2CHF_2$	359	359
HFE-263fb2	460-43-5	$CF_3CH_2OCH_3$	11	11
HFE-263m1; R-E-143a (1,1,2,2-Tetrafluoro-1-(trifluoromethoxy)ethane)	690-22-2	$CF_3OCH_2CH_3$	NA	29*
HFE-347mcc3 (HFE-7000)	375-03-1	$CH_3OCF_2CF_2CF_3$	575	575
HFE-347mcf2	171182-95-9	$CF_3CF_2OCH_2CHF_2$	374	374
HFE-347mmy1	22052-84-2	$CH_3OCF(CF_3)_2$	343	343
HFE-347mmz1; Sevoflurane (2-(Difluoromethoxy)-1,1,1,3,3,3-hexafluoropropane)	28523-86-6	$(CF_3)_2CHOCHF_2$	NA	216*
HFE-347pcf2	406-78-0	$CHF_2CF_2OCH_2CF_3$	580	580
HFE-356mec3	382-34-3	$CH_3OCF_2CHFCF_3$	101	101
HFE-356mff2 (bis(2,2,2-trifluoroethyl) ether)	333-36-8	$CF_3CH_2OCH_2CF_3$	NA	17*
HFE-356mmz1	13171-18-1	$(CF_3)_2CHOCH_3$	27	27
HFE-356pcc3	160620-20-2	$CH_3OCF_2CF_2CHF_2$	110	110
HFE-356pcf2	50807-77-7	$CHF_2CH_2OCF_2CHF_2$	265	265
HFE-356pcf3	35042-99-0	$CHF_2OCH_2CF_2CHF_2$	502	502
HFE-365mcf2 (1-Ethoxy-1,1,2,2,2-pentafluoroethane)	22052-81-9	$CF_3CF_2OCH_2CH_3$	NA	58*
HFE-365mcf3	378-16-5	$CF_3CF_2CH_2OCH_3$	11	11
HFE-374pc2	512-51-6	$CH_3CH_2OCF_2CHF_2$	557	557
HFE-449sl (HFE-7100) Chemical blend	163702-07-6 163702-08-7	$C_4F_9OCH_3$ $(CF_3)_2CFCF_2OCH_3$	297	297
HFE-569sf2 (HFE-7200) Chemical blend	163702-05-4 163702-06-5	$C_4F_9OC_2H_5$ $(CF_3)_2CFCF_2OC_2H_5$	59	59
HG'-01 (1,1,2,2-Tetrafluoro-1,2-dimethoxyethane)	73287-23-7	$CH_3OCF_2CF_2OCH_3$	NA	222*
HG'-02 (1,1,2,2-Tetrafluoro-1-methoxy-2-(1,1,2,2-tetrafluoro-2-methoxyethoxy)ethane)	485399-46-0	$CH_3O(CF_2CF_2O)_2CH_3$	NA	236*
HG'-03 (3,3,4,4,6,6,7,7,9,9,10,10-Dodecafluoro-2,5,8,11-tetraoxa-dodecane)	485399-48-2	$CH_3O(CF_2CF_2O)_3CH_3$	NA	221*
Difluoro(methoxy)methane	359-15-9	CH_3OCHF_2	NA	144*
2-Chloro-1,1,2-trifluoro-1-methoxyethane	425-87-6	CH_3OCF_2CHFCl	NA	122*

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
1-Ethoxy-1,1,2,2,3,3,3-heptafluoropropane	22052-86-4	$CF_3CF_2CF_2OCH_2CH_3$	NA	61*
2-Ethoxy-3,3,4,4,5-pentafluorotetrahydro-2,5-bis [1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-furan	920979-28-8	$C_{12}H_5F_{19}O_2$	NA	56*
1-Ethoxy-1,1,2,3,3,3-hexafluoropropane	380-34-7	$CF_3CHFCF_2OCH_2CH_3$	NA	23*
Fluoro(methoxy)methane	460-22-0	CH_3OCH_2F	NA	13*
1,1,2,2-Tetrafluoro-3-methoxypropane; Methyl 2,2,3,3-tetrafluoropropyl ether	60598-17-6	$CHF_2CF_2CH_2OCH_3$	NA	0.5*
1,1,2,2-Tetrafluoro-1-(fluoromethoxy) ethane	37031-31-5	$CH_2FOCF_2CF_2H$	NA	871*
Difluoro (fluoromethoxy) methane	461-63-2	CH_2FOCHF_2	NA	617*
Fluoro (fluoromethoxy) methane	462-51-1	CH_2FOCH_2F	NA	130*
Fluorinated Formates				
Trifluoromethyl formate	85358-65-2	$HCOOCF_3$	NA	588*
Perfluoroethyl formate	313064-40-3	$HCOOCF_2CF_3$	NA	580*
1,2,2,2-Tetrafluoroethyl formate	481631-19-0	$HCOOCHFCF_3$	NA	470*
Perfluorobutyl formate	197218-56-7	$HCOOCF_2CF_2CF_2CF_3$	NA	392*
Perfluoropropyl formate	271257-42-2	$HCOOCF_2CF_2CF_3$	NA	376*
1,1,1,3,3,3-Hexafluoropropan-2-yl formate	856766-70-6	$HCOOCH(CF_3)_2$	NA	333*
2,2,2-Trifluoroethyl formate	32042-38-9	$HCOOCH_2CF_3$	NA	33*
3,3,3-Trifluoropropyl formate	1344118-09-7	$HCOOCH_2CH_2CF_3$	NA	17*
Fluorinated Acetates				
Methyl 2,2,2-trifluoroacetate	431-47-0	CF_3COOCH_3	NA	52*
1,1-Difluoroethyl 2,2,2-trifluoroacetate	1344118-13-3	$CF_3COOCF_2CH_3$	NA	31*
Difluoromethyl 2,2,2-trifluoroacetate	2024-86-4	$CF_3COOCHF_2$	NA	27*
2,2,2-Trifluoroethyl 2,2,2-trifluoroacetate	407-38-5	$CF_3COOCH_2CF_3$	NA	7*
Methyl 2,2-difluoroacetate	433-53-4	HCF_2COOCH_3	NA	3*
Perfluoroethyl acetate	343269-97-6	$CH_3COOCF_2CF_3$	NA	2.1*
Trifluoromethyl acetate	74123-20-9	CH_3COOCF_3	NA	2.0*
Perfluoropropyl acetate	1344118-10-0	$CH_3COOCF_2CF_2CF_3$	NA	1.8*
Perfluorobutyl acetate	209597-28-4	$CH_3COOCF_2CF_2CF_2CF_3$	NA	1.6*
Ethyl 2,2,2-trifluoroacetate	383-63-1	$CF_3COOCH_2CH_3$	NA	1.3*

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
Carbonofluoridates				
Methyl carbonofluoridate	1538-06-3	$FCOOCH_3$	NA	95*
1,1-Difluoroethyl carbonofluoridate	1344118-11-1	$FCOOCF_2CH_3$	NA	27*
Fluorinated Alcohols other than Fluorotelomer Alcohols				
Bis(trifluoromethyl)-methanol	920-66-1	$(CF_3)_2CHOH$	195	195
(Octafluorotetramethy-lene) hydroxymethyl group	NA	$X\text{-}(CF_2)_4CH(OH)\text{-}X$	73	73
2,2,3,3,3-pentafluoropropanol	422-05-9	$CF_3CF_2CH_2OH$	42	42
2,2,3,3,4,4,4-Heptafluorobutan-1-ol	375-01-9	$C_3F_7CH_2OH$	NA	25*
2,2,2-Trifluoroethanol	75-89-8	CF_3CH_2OH	NA	20*
2,2,3,4,4,4-Hexafluoro-1-butanol	382-31-0	$CF_3CHFCF_2CH_2OH$	NA	17*
2,2,3,3-Tetrafluoro-1-propanol	76-37-9	$CHF_2CF_2CH_2OH$	NA	13*
2,2-Difluoroethanol	359-13-7	CHF_2CH_2OH	NA	3*
2-Fluoroethanol	371-62-0	CH_2FCH_2OH	NA	1.1*
4,4,4-Trifluorobutan-1-ol	461-18-7	$CF_3(CH_2)_2CH_2OH$	NA	0.05*
Unsaturated Perfluorocarbons (PFCs)				
PFC-1114; TFE (tetrafluoroethylene (TFE); Perfluoroethene)	116-14-3	$CF_2=CF_2$; C_2F_4	0.04	0.004
PFC-1216; Dyneon HFP (hexafluoropropylene (HFP); Perfluoropropene)	116-15-4	C_3F_6; $CF_3CF=CF_2$	0.05	0.05
PFC C-1418 (Perfluorocyclopentene; Octafluorocyclopentene)	559-40-0	$c\text{-}C_5F_8$	1.97	1.97
Perfluorobut-2-ene	360-89-4	$CF_3CF=CFCF_3$	1.82	1.82
Perfluorobut-1-ene	357-26-6	$CF_3CF_2CF=CF_2$	0.10	0.10
Perfluorobuta-1,3-diene	685-63-2	$CF_2=CFCF=CF_2$	0	0.003
Unsaturated Hydrofluorocarbons (HFCs) and Hydrochlorofluorocarbons (HCFCs)				
HFC-1132a; VF2 (vinylidiene fluoride)	75-38-7	$C_2H_2F_2$, $CF_2=CH_2$	0.04	0.04
HFC-1141; VF (vinyl fluoride)	75-02-5	C_2H_3F, $CH_2=CHF$	0.02	0.02
(E)-HFC-1225ye ((E)-1,2,3,3,3-Pentafluoroprop-1-ene)	5595-10-8	$CF_3CF=CHF(E)$	0.06	0.06
(Z)-HFC-1225ye ((Z)-1,2,3,3,3-Pentafluoroprop-1-ene)	5528-43-8	$CF_3CF=CHF(Z)$	0.22	0.22
Solstice 1233zd(E) (trans-1-chloro-3,3,3-trifluoroprop-1-ene)	102687-65-0	$C_3H_2ClF_3$; $CHCl=CHCF_3$	NA	1.34*
HFC-1234yf; HFO-1234yf (2,3,3,3-Tetrafluoroprop-1-ene)	754-12-1	$C_3H_2F_4$; $CF_3CF=CH_2$	0.31	0.31

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
HFC-1234ze(E) ((E)-1,3,3,3-Tetrafluoroprop-1-ene)	1645-83-6	$C_3H_2F_4$; trans-$CF_3CH=CHF$	0.97	0.97
HFC-1234ze(Z) ((Z)-1,3,3,3-Tetrafluoroprop-1-ene)	29118-25-0	$C_3H_2F_4$; cis-$CF_3CH=CHF$; $CF_3CH=CHF$	0.29	0.29
HFC-1243zf; TFP (trifluoro propene (TFP); 3,3,3-Trifluoroprop-1-ene)	677-21-4	$C_3H_3F_3$,$CF_3CH=CH_2$	0.12	0.12
(Z)-HFC-1336 ((Z)-1,1,1,4,4,4-Hexafluorobut-2-ene)	692-49-9	$CF_3CH=CHCF_3$(Z)	1.58	1.58
HFC-1345zfc (3,3,4,4,4-Pentafluorobut-1-ene)	374-27-6	$C_2F_5CH=CH_2$	0.09	0.09
Capstone 42-U (perfluorobutyl ethene (42-U); 3,3,4,4,5,5,6,6,6-Nonafluorohex-1-ene)	19430-93-4	$C_6H_3F_9$,$CF_3(CF_2)_3CH=CH_2$	0.16	0.16
Capstone 62-U (perfluorohexyl ethene (62-U); 3,3,4,4,5,5,6,6,7,7,8,8,8-Tridecafluorooct-1-ene)	25291-17-2	$C_8H_3F_{13}$,$CF_3(CF_2)_5CH=CH_2$	0.11	0.11
Capstone 82-U (perfluorooctyl ethene (82-U); 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-Heptadecafluorodec-1-ene)	21652-58-4	$C_{10}H_3F_{17}$,$CF_3(CF_2)_7CH=CH_2$	0.09	0.09
Unsaturated Halogenated Ethers				
PMVE; HFE-216 (perfluoromethyl vinyl ether (PMVE))	1187-93-5	$CF_3OCF=CF_2$	NA	0.17*
Fluoroxene ((2,2,2-Trifluoroethoxy) ethene)	406-90-6	$CF_3CH_2OCH=CH_2$	NA	0.05*
Fluorinated Aldehydes				
3,3,3-Trifluoro-propanal	460-40-2	CF_3CH_2CHO	NA	0.01*
Fluorinated Ketones				
Novec 1230 (FK-5-1-12 Perfluoroketone; FK-5-1-12myy2; perfluoro (2-methyl-3-pentanone))	756-13-8	$CF_3CF_2C(O)CF(CF_3)_2$	NA	0.1*
Fluorotelomer Alcohols				
3,3,4,4,5,5,6,6,7,7,7-Undecafluoroheptan-1-ol	185689-57-0	$CF_3(CF_2)_4CH_2CH_2OH$	NA	0.43*
3,3,3-Trifluoropropan-1-ol	2240-88-2	$CF_3CH_2CH_2OH$	NA	0.35*
3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-Pentadecafluorononan-1-ol	755-02-2	$CF_3(CF_2)_6CH_2CH_2OH$	NA	0.33*
3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,11-Nonadecafluoroundecan-1-ol	87017-97-8	$CF_3(CF_2)_8CH_2CH_2OH$	NA	0.19*
Fluorinated GHGs with Carbon-Iodine Bond(s)				
Trifluoroiodomethane	2314-97-8	CF_3I	NA	0.4*

Name	CAS No.	Chemical Formula	((~~Global Warming Potential (100 yr.)~~)) GWP (100 yr.)[1,2]	
			2012-2013	≥ 2014[3,4]
Other Fluorinated Compounds				
Dibromodifluoromethane (Halon 1202)	75-61-6	CBr_2F_2	NA	231*
2-Bromo-2-chloro-1,1,1-trifluoroethane (Halon-2311/Halothane)	151-67-7	$CHBrClCF_3$	NA	41*
Default GWPs for which Chemical-Specific GWPs are not Listed Above				
Saturated PFCs			10,000	10,000
Saturated HFCs with 2 or fewer carbon-hydrogen bonds			3,700	3,700
Saturated HFCs with 3 or more carbon-hydrogen bonds			930	930
Unsaturated PFCs and unsaturated HFCs			1	1

NA = not available.

[1] = **Determining applicability for emissions years 2013 and 2014.** For emissions year 2013 (reported in 2014) and emissions year 2014 (reported in 2015), facilities may use the GWPs in either column when calculating GHG emissions for comparison to the reporting threshold under WAC 173-441-030(1).

[2] = **Calculating annual GHG emissions for emissions year 2013.** For emissions year 2013 (reported in 2014), facilities may use the GWPs in either column when calculating GHG emissions for the annual GHG report.

[3] = **Determining applicability for emissions year 2015+.** For emissions year 2015 (reported in 2016) and subsequent years, facilities must use the GWPs in this column when calculating GHG emissions for comparison to the reporting threshold under WAC 173-441-030(1).

[4] = **Calculating annual GHG emissions for emissions year 2014+.** For emissions year 2014 (reported in 2015) and subsequent years, facilities must use the GWPs in this column when calculating GHG emissions for the annual GHG report.

* = Requirements to include emissions of this compound when calculating GHG emissions for comparison to the reporting threshold under WAC 173-441-030(1) and when calculating GHG emissions for the annual GHG report become effective beginning with emissions year 2016 (reported in 2017).

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

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-050 General monitoring, reporting, recordkeeping and verification requirements. Persons subject to the requirements of this chapter must submit GHG reports to ecology, as specified in this section.

(1) **General.** Follow the procedures for emission calculation, monitoring, quality assurance, missing data, recordkeeping, and reporting that are specified in each relevant section of this chapter.

(2) **Schedule.** The annual GHG report must be submitted as follows:

(a) Report submission due date:

(i) A person required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than March 31st of each calendar year for GHG emissions in the previous calendar year.

(ii) A person not required to report GHG emissions to the United States Environmental Protection Agency under 40 C.F.R. Part 98 must submit the report required under this chapter to ecology no later than October 31st of each calendar year for GHG emissions in the previous calendar year.

(iii) Unless otherwise stated, if the final day of any time period falls on a weekend or a state holiday, the time period shall be extended to the next business day.

(b) Reporting requirements begin:

(i) For an existing facility or supplier that began operation before January 1, 2012, report emissions for calendar year 2012 and each subsequent calendar year.

(ii) For a new facility or supplier that begins operation on or after January 1, 2012, and becomes subject to the rule in the year that it becomes operational, report emissions beginning with the first operating month and ending on December 31st of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(iii) For any facility or supplier that becomes subject to this rule because of a physical or operational change that is made after January 1, 2012, report emissions for the first calendar year in which the change occurs.

(A) Facilities begin reporting with the first month of the change and ending on December 31st of that year. For a facility that becomes subject to this rule solely because of an increase in hours of operation or level of production, the first month of the change is the month in which the increased hours of operation or level of production, if maintained for the remainder of the year, would cause the facility or supplier to exceed the applicable threshold.

(B) Suppliers begin reporting January 1st and ending on December 31st the year of the change.

(C) For both facilities and suppliers, each subsequent annual report must cover emissions for the calendar year, beginning on January 1st and ending on December 31st.

(3) **Content of the annual report.** Each annual GHG report ((~~shall~~)) must contain the following information:

(a) Facility name or supplier name (as appropriate), facility or supplier ID number, and physical street address of the facility or supplier, including the city, state, and zip code. If the facility does not have a physical street address, then the facility must provide the latitude and longitude representing the geographic centroid or center point of facility operations in decimal degree format. This must be provided in a comma-delimited "latitude, longitude" coordinate pair reported in decimal degrees to at least four digits to the right of the decimal point.

(b) Year and months covered by the report.

(c) Date of submittal.

(d) For facilities, report annual emissions of each GHG (as defined in WAC 173-441-020) and each fluorinated heat transfer fluid, as follows:

(i) Annual emissions (including biogenic CO_2) aggregated for all GHGs from all applicable source categories in WAC 173-441-120 and expressed in metric tons of CO_2e calculated using Equation A-1 of WAC 173-441-030 (1)(b)(iii).

(ii) Annual emissions of biogenic CO_2 aggregated for all applicable source categories in WAC 173-441-120, expressed in metric tons.

(iii) Annual emissions from each applicable source category in WAC 173-441-120, expressed in metric tons of each applicable GHG listed in subsections (3)(d)(iii)(A) through ((~~(E)~~)) (F) of this section.

(A) Biogenic CO_2.

(B) CO_2 (including biogenic CO_2).

(C) CH_4.

(D) N_2O.

(E) Each fluorinated GHG.

(F) For electronics manufacturing each fluorinated heat transfer fluid that is not also a fluorinated GHG as specified under WAC 173-441-040.

(iv) Emissions and other data for individual units, processes, activities, and operations as specified in the "data reporting requirements" section of each applicable source category referenced in WAC 173-441-120.

(v) Indicate (yes or no) whether reported emissions include emissions from a cogeneration unit located at the facility.

(vi) When applying subsection (3)(d)(i) of this section to fluorinated GHGs and fluorinated heat transfer fluids, calculate and report CO_2e for only those fluorinated GHGs and fluorinated heat transfer fluids listed in WAC 173-441-040.

(vii) For reporting year 2014 and thereafter, you must enter into verification software specified by the director the data specified in the verification software records provision in each applicable recordkeeping section. For each data element entered into the verification software, if the software produces a warning message for the data value and you elect not to revise the data value, you may provide an explanation in the verification software of why the data value is not being revised. Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

(e) For suppliers, report the following information:

(i) Annual emissions of CO_2, expressed in metric tons of CO_2, as required in subsections (3)(e)(i)(A) and (B) of this section that would be emitted from the complete combustion or oxidation of the fuels reported to DOL as sold in Washington state during the calendar year.

(A) Aggregate biogenic CO_2.

(B) Aggregate CO_2 (including nonbiogenic and biogenic CO_2).

(ii) All contact information reported to DOL not included in (a) of this subsection.

(f) A written explanation, as required under subsection (4) of this section, if you change emission calculation methodologies during the reporting period.

(g) Each data element for which a missing data procedure was used according to the procedures of an applicable subpart referenced in WAC 173-441-120 and the total number of hours in the year that a missing data procedure was used for each data element.

(h) A signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of WAC 173-441-060 (5)(a).

(i) NAICS code(s) that apply to the ((~~reporting entity~~)) facility or supplier.

(i) Primary NAICS code. Report the NAICS code that most accurately describes the ((~~reporting entity's~~)) facility or supplier's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the ((~~reporting entity. A reporting entity~~)) facility or supplier. A facility or supplier that has two distinct products/activities/services providing comparable revenue may report a second primary NAICS code.

(ii) Additional NAICS code(s). Report all additional NAICS codes that describe all product(s)/activity(s)/service(s) at the ((~~reporting entity~~)) facility or supplier that are not related to the principal source of revenue. ((~~If more than one additional NAICS code applies, list the additional NAICS codes in the order of the largest revenue to the smallest.~~))

(j) Legal name(s) and physical address(es) of the highest-level United States parent company(s) of the ((~~reporting entity~~)) owners (or operators) of the facility or supplier and the percentage of ownership interest for each listed parent company as of December 31st of the year for which data are being reported according to the following instructions:

(i) If the ((~~reporting entity~~)) facility or supplier is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report one hundred percent ownership.

(ii) If the ((~~reporting entity~~)) facility or supplier is entirely owned by a single United States company that is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hierarchy as the United States parent company and report one hundred percent ownership.

(iii) If the ((~~reporting entity~~)) facility or supplier is owned by more than one United States company (e.g., com-

pany A owns forty percent, company B owns thirty-five percent, and company C owns twenty-five percent), provide the legal names and physical addresses of all the highest-level companies with an ownership interest as the United States parent companies and report the percent ownership of each company.

(iv) If the ((~~reporting entity~~)) facility or supplier is owned by a joint venture or a cooperative, the joint venture or cooperative is its own United States parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report one hundred percent ownership by the joint venture or cooperative.

(v) If the ((~~reporting entity~~)) facility or supplier is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report one hundred percent ownership.

(vi) If the ((~~reporting entity~~)) facility or supplier is partially owned by a foreign company and partially owned by one or more United States companies, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of the other United States parent companies, and report the percent ownership of each of these companies.

(vii) If the ((~~reporting entity~~)) facility or supplier is a federally owned facility, report "U.S. Government" and do not report physical address or percent ownership.

(k) An indication of whether the facility includes one or more plant sites that have been assigned a "plant code" by either the Department of Energy's Energy Information Administration or by the Environmental Protection Agency's (EPA) Clean Air Markets Division.

(4) **Emission calculations.** In preparing the GHG report, you must use the calculation methodologies specified in the relevant sections of this chapter. For each source category, you must use the same calculation methodology throughout a reporting period unless you provide a written explanation of why a change in methodology was required.

(5) **Verification.** To verify the completeness and accuracy of reported GHG emissions, ecology may review the certification statements described in subsection (3)(h) of this section and any other credible evidence, in conjunction with a comprehensive review of the GHG reports and periodic audits of selected reporting facilities. Nothing in this section prohibits ecology from using additional information to verify the completeness and accuracy of the reports.

(6) **Recordkeeping.** A person that is required to report((~~s~~)) GHGs under this chapter must keep records as specified in this subsection. Retain all required records for at least three years((~~. The records shall be kept in an electronic or hard copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and review~~)) from the date of submission of the annual GHG report for the reporting year in which the record was generated. Upon request by ecology, the records required under this section must be made available to ecology. Records may be retained off-site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records ((~~shall~~)) must be made available, or, if requested by ecology, electronic records ((~~shall~~)) must be converted to paper documents. You must retain the following records, in addition to those records prescribed in each applicable section of this chapter:

(a) A list of all units, operations, processes, and activities for which GHG emissions were calculated.

(b) The data used to calculate the GHG emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include, but are not limited to, the following information:

(i) The GHG emissions calculations and methods used.

(ii) Analytical results for the development of site-specific emissions factors.

(iii) The results of all required analyses for high heat value, carbon content, and other required fuel or feedstock parameters.

(iv) Any facility operating data or process information used for the GHG emission calculations.

(c) The annual GHG reports.

(d) Missing data computations. For each missing data event, also retain a record of the cause of the event and the corrective actions taken to restore malfunctioning monitoring equipment.

(e) Owners or operators required to report under WAC 173-441-030(1) must keep a written GHG monitoring plan (monitoring plan, plan).

(i) At a minimum, the GHG monitoring plan ((~~shall~~)) must include the following elements:

(A) Identification of positions of responsibility (i.e., job titles) for collection of the emissions data.

(B) Explanation of the processes and methods used to collect the necessary data for the GHG calculations.

(C) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(ii) The GHG monitoring plan may rely on references to existing corporate documents (e.g., standard operating procedures, quality assurance programs under appendix F to 40 C.F.R. Part 60 or appendix B to 40 C.F.R. Part 75, and other documents) provided that the elements required by (e)(i) of this subsection are easily recognizable.

(iii) The owner or operator ((~~shall~~)) must revise the GHG monitoring plan as needed to reflect changes in production processes, monitoring instrumentation, and quality assurance procedures; or to improve procedures for the maintenance and repair of monitoring systems to reduce the frequency of monitoring equipment downtime.

(iv) Upon request by ecology, the owner or operator ((~~shall~~)) must make all information that is collected in conformance with the GHG monitoring plan available for review during an audit. Electronic storage of the information in the plan is permissible, provided that the information can be made available in hard copy upon request during an audit.

(f) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow

meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(g) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this chapter.

(h) Suppliers must retain any other data specified in WAC 173-441-130(5).

(7) **Annual GHG report revisions.**

(a) A person ((~~shall~~)) must submit a revised annual GHG report within forty-five days of discovering that an annual GHG report that the person previously submitted contains one or more substantive errors. The revised report must correct all substantive errors.

(b) Ecology may notify the person in writing that an annual GHG report previously submitted by the person contains one or more substantive errors. Such notification will identify each such substantive error. The person ((~~shall~~)) must, within forty-five days of receipt of the notification, either resubmit the report that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this chapter) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

(c) A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

(d) Notwithstanding (a) and (b) of this subsection, upon request by a person, ecology may provide reasonable extensions of the forty-five day period for submission of the revised report or information under (a) and (b) of this subsection. If ecology receives a request for extension of the forty-five day period, by e-mail to ((~~an address prescribed by ecology~~)) ghgreporting@ecy.wa.gov, at least two business days prior to the expiration of the forty-five day period, and ecology does not respond to the request by the end of such period, the extension request is deemed to be automatically granted for thirty more days. During the automatic thirty-day extension, ecology will determine what extension, if any, beyond the automatic extension is reasonable and will provide any such additional extension.

(e) The owner or operator ((~~shall~~)) must retain documentation for three years to support any revision made to an annual GHG report.

(8) **Calibration and accuracy requirements.** The owner or operator of a facility that is subject to the requirements of this chapter must meet the applicable flow meter calibration and accuracy requirements of this subsection. The accuracy specifications in this subsection do not apply where either the use of company records (as defined in WAC 173-441-020(3)) or the use of "best available information" is specified in an applicable subsection of this chapter to quantify fuel usage and/or other parameters. Further, the provisions of this subsection do not apply to stationary fuel combustion units that use the methodologies in 40 C.F.R. Part 75 to calculate CO_2 mass emissions. Suppliers subject to the requirements of this chapter must meet the calibration accuracy requirements in chapters 308-72, 308-77, and 308-78 WAC.

(a) Except as otherwise provided in (d) through (f) of this subsection, flow meters that measure liquid and gaseous fuel feed rates, process stream flow rates, or feedstock flow rates and provide data for the GHG emissions calculations, ((~~shall~~)) must be calibrated prior to January 1, 2012, using the procedures specified in this subsection when such calibration is specified in a relevant section of this chapter. Each of these flow meters ((~~shall~~)) must meet the applicable accuracy specification in (b) or (c) of this subsection. All other measurement devices (e.g., weighing devices) that are required by a relevant subsection of this chapter, and that are used to provide data for the GHG emissions calculations, ((~~shall~~)) must also be calibrated prior to January 1, 2012; however, the accuracy specifications in (b) and (c) of this subsection do not apply to these devices. Rather, each of these measurement devices ((~~shall~~)) must be calibrated to meet the accuracy requirement specified for the device in the applicable subsection of this chapter, or, in the absence of such accuracy requirement, the device must be calibrated to an accuracy within the appropriate error range for the specific measurement technology, based on an applicable operating standard including, but not limited to, manufacturer's specifications and industry standards ((~~and manufacturer's specifications~~)). The procedures and methods used to quality-assure the data from each measurement device ((~~shall~~)) must be documented in the written monitoring plan, pursuant to subsection (6)(e)(i)(C) of this section.

(i) All flow meters and other measurement devices that are subject to the provisions of this subsection must be calibrated according to one of the following: You may use the manufacturer's recommended procedures; an appropriate industry consensus standard method; or a method specified in a relevant section of this chapter. The calibration method(s) used ((~~shall~~)) must be documented in the monitoring plan required under subsection (6)(e) of this section.

(ii) For facilities and suppliers that become subject to this chapter after January 1, 2012, all flow meters and other measurement devices (if any) that are required by the relevant subsection(s) of this chapter to provide data for the GHG emissions calculations ((~~shall~~)) must be installed no later than the date on which data collection is required to begin using the measurement device, and the initial calibration(s) required by this subsection (if any) ((~~shall~~)) must be performed no later than that date.

(iii) Except as otherwise provided in (d) through (f) of this subsection, subsequent recalibrations of the flow meters and other measurement devices subject to the requirements of this subsection ((~~shall~~)) must be performed at one of the following frequencies:

(A) You may use the frequency specified in each applicable subsection of this chapter.

(B) You may use the frequency recommended by the manufacturer or by an industry consensus standard practice, if no recalibration frequency is specified in an applicable subsection.

(b) Perform all flow meter calibration at measurement points that are representative of the normal operating range of the meter. Except for the orifice, nozzle, and venturi flow meters described in (c) of this subsection, calculate the calibration error at each measurement point using Equation A–2

of this subsection. The terms "R" and "A" in Equation A–2 must be expressed in consistent units of measure (e.g., gallons/minute, ft^3/min). The calibration error at each measurement point ((~~shall~~)) must not exceed 5.0 percent of the reference value.

((~~$CE = \frac{|R-A|}{R} \times 100$ (Eq. A-2)~~))

$$CE = \frac{|R-A|}{R} \times 100 \qquad (Eq.\ A-2)$$

Where:

CE	=	Calibration error (%)
R	=	Reference value
A	=	Flow meter response to the reference value

(c) For orifice, nozzle, and venturi flow meters, the initial quality assurance consists of in situ calibration of the differential pressure (delta-P), total pressure, and temperature transmitters.

(i) Calibrate each transmitter at a zero point and at least one upscale point. Fixed reference points, such as the freezing point of water, may be used for temperature transmitter calibrations. Calculate the calibration error of each transmitter at each measurement point, using Equation A–3 of this subsection. The terms "R," "A," and "FS" in Equation A–3 of this subsection must be in consistent units of measure (e.g., milliamperes, inches of water, psi, degrees). For each transmitter, the CE value at each measurement point ((~~shall~~)) must not exceed 2.0 percent of full-scale. Alternatively, the results are acceptable if the sum of the calculated CE values for the three transmitters at each calibration level (i.e., at the zero level and at each upscale level) does not exceed 6.0 percent.

((~~$CE = \frac{|R-A|}{FS} \times 100$ (Eq. A-3)~~))

$$CE = \frac{|R-A|}{FS} \times 100 \qquad (Eq.\ A-3)$$

Where:

CE	=	Calibration error (%)
R	=	Reference value
A	=	Transmitter response to the reference value
FS	=	Full-scale value of the transmitter

(ii) In cases where there are only two transmitters (i.e., differential pressure and either temperature or total pressure) in the immediate vicinity of the flow meter's primary element (e.g., the orifice plate), or when there is only a differential pressure transmitter in close proximity to the primary element, calibration of these existing transmitters to a CE of 2.0 percent or less at each measurement point is still required, in accordance with (c)(i) of this subsection; alternatively, when two transmitters are calibrated, the results are acceptable if the sum of the CE values for the two transmitters at each calibration level does not exceed 4.0 percent. However, note that installation and calibration of an additional transmitter (or transmitters) at the flow monitor location to measure temperature or total pressure or both is not required in these cases. Instead, you may use assumed values for temperature and/or total pressure, based on measurements of these parameters at a remote location (or locations), provided that the following conditions are met:

(A) You must demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions.

(B) You must make all temperature and/or total pressure measurements in the demonstration described in (c)(ii)(A) of this subsection with calibrated gauges, sensors, transmitters, or other appropriate measurement devices. At a minimum, calibrate each of these devices to an accuracy within the appropriate error range for the specific measurement technology, according to one of the following: You may calibrate using a manufacturer's specification or an industry consensus standard((~~s or a manufacturer's specification~~)).

(C) You must document the methods used for the demonstration described in (c)(ii)(A) of this subsection in the written GHG monitoring plan under subsection (6)(e)(i)(C) of this section. You must also include the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations in the GHG monitoring plan. You must maintain all of this information in a format suitable for auditing and inspection.

(D) You must use the mathematical correlation(s) derived from the demonstration described in (c)(ii)(A) of this subsection to convert the remote temperature or the total pressure readings, or both, to the actual temperature or total pressure at the flow meter, or both, on a daily basis. You ((~~shall~~)) must then use the actual temperature and total pressure values to correct the measured flow rates to standard conditions.

(E) You ((~~shall~~)) must periodically check the correlation(s) between the remote and actual readings (at least once a year), and make any necessary adjustments to the mathematical relationship(s).

(d) Fuel billing meters are exempted from the calibration requirements of this section and from the GHG monitoring plan and recordkeeping provisions of subsections (6)(e)(i)(C) and (g) of this section, provided that the fuel supplier and any unit combusting the fuel do not have any common owners and are not owned by subsidiaries or affiliates of the same company. Meters used exclusively to measure the flow rates of fuels that are used for unit startup ((~~or ignition~~)) are also exempted from the calibration requirements of this section.

(e) For a flow meter that has been previously calibrated in accordance with (a) of this subsection, an additional calibration is not required by the date specified in (a) of this subsection if, as of that date, the previous calibration is still

active (i.e., the device is not yet due for recalibration because the time interval between successive calibrations has not elapsed). In this case, the deadline for the successive calibrations of the flow meter ((~~shall~~)) must be set according to one of the following: You may use either the manufacturer's recommended calibration schedule or you may use the industry consensus calibration schedule.

(f) For units and processes that operate continuously with infrequent outages, it may not be possible to meet the deadline established in (a) of this subsection for the initial calibration of a flow meter or other measurement device without disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage. The best available information from company records may be used in the interim. The subsequent required recalibrations of the flow meters may be similarly postponed. Such postponements ((~~shall~~)) must be documented in the monitoring plan that is required under subsection (6)(e) of this section.

(g) If the results of an initial calibration or a recalibration fail to meet the required accuracy specification, data from the flow meter ((~~shall~~)) must be considered invalid, beginning with the hour of the failed calibration and continuing until a successful calibration is completed. You ((~~shall~~)) must follow the missing data provisions provided in the relevant missing data sections during the period of data invalidation.

(9) **Measurement device installation.** 40 C.F.R. § 98.3(j) and 40 C.F.R. § 98.3(d) as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015, are adopted by reference as modified in WAC 173-441-120(2).

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-060 Authorization and responsibilities of the designated representative. (1) **General.** Except as provided under subsection (6) of this section, each facility, and each supplier, that is subject to this chapter, ((~~shall~~)) must have one and only one designated representative, who ((~~shall~~)) must be responsible for certifying, signing, and submitting GHG emissions reports and any other submissions for such facility and supplier respectively to ecology under this chapter. If the facility is required to submit ((~~an~~)) a GHG emissions report to EPA under 40 C.F.R. Part 98, ((~~the designated representative responsible for certifying, signing, and submitting the GHG emissions reports and all such other emissions reports to EPA shall~~)) that designated representative must also be the designated representative responsible for certifying, signing, and submitting GHG emissions reports to ecology under this chapter.

(2) **Authorization of a designated representative.** The designated representative of the facility or supplier ((~~shall~~)) must be an individual selected by an agreement binding on the owners and operators of such facility or supplier and ((~~shall~~)) must act in accordance with the certification statement in subsection (9)(d)((~~(iv)~~)) of this section.

(3) **Responsibility of the designated representative.** Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier, the designated representative identified in such certificate of representation ((~~shall~~)) must represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of such facility or supplier in all matters pertaining to this chapter, notwithstanding any agreement between the designated representative and such owners and operators. The owners and operators ((~~shall~~)) must be bound by any decision or order issued to the designated representative by ecology, pollution control hearings board, or a court.

(4) **Timing.** No GHG emissions report or other submissions under this chapter for a facility or supplier will be accepted until ecology has received a complete certificate of representation under this section for a designated representative of the facility or supplier. Such certificate of representation ((~~shall~~)) must be submitted at least sixty days before the deadline for submission of the facility's or supplier's initial emission report under this chapter.

(5) **Certification of the GHG emissions report.** Each GHG emission report and any other submission under this chapter for a facility or supplier ((~~shall~~)) must be certified, signed, and submitted by the designated representative or any alternate designated representative of the facility or supplier in accordance with this section and 40 C.F.R. § 3.10 as adopted on October 13, 2005.

(a) Each such submission ((~~shall~~)) must include the following certification statement signed by the designated representative or any alternate designated representative: "I am authorized to make this submission on behalf of the owners and operators of the facility or supplier, as applicable, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) Ecology will accept a GHG emission report or other submission for a facility or supplier under this chapter only if the submission is certified, signed, and submitted in accordance with this section.

(6) **Alternate designated representative.** A certificate of representation under this section for a facility or supplier may designate one alternate designated representative, who ((~~shall~~)) must be an individual selected by an agreement binding on the owners and operators, and may act on behalf of the designated representative, of such facility or supplier. The agreement by which the alternate designated representative is selected ((~~shall~~)) must include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(a) Upon receipt by ecology of a complete certificate of representation under this section for a facility or supplier identifying an alternate designated representative:

(i) The alternate designated representative may act on behalf of the designated representative for such facility or supplier.

(ii) Any representation, action, inaction, or submission by the alternate designated representative ((~~shall~~)) must be deemed to be a representation, action, inaction, or submission by the designated representative.

(b) Except in this section, whenever the term "designated representative" is used in this chapter, the term ((~~shall~~)) must be construed to include the designated representative or any alternate designated representative.

(7) **Changing a designated representative or alternate designated representative.** The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a facility or supplier received by ecology may be changed at any time upon receipt by ecology of another later signed, complete certificate of representation under this section for the facility or supplier. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility or supplier before the time and date when ecology receives such later signed certificate of representation ((~~shall~~)) must be binding on the new designated representative and the owners and operators of the facility or supplier.

(8) **Changes in owners and operators.** In the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator ((~~shall~~)) must be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. Within ninety days after any change in the owners and operators of the facility or supplier (including the addition of a new owner or operator), the designated representative or any alternate designated representative ((~~shall~~)) must submit a certificate of representation that is complete under this section except that such list ((~~shall~~)) must be amended to reflect the change. If the designated representative or alternate designated representative determines at any time that an owner or operator of the facility or supplier is not included in such list and such exclusion is not the result of a change in the owners and operators, the designated representative or any alternate designated representative ((~~shall~~)) must submit, within ninety days of making such determination, a certificate of representation that is complete under this section except that such list ((~~shall~~)) must be amended to include such owner or operator.

(9) **Certificate of representation.** A certificate of representation shall be complete if it includes the following elements in a format prescribed by ecology in accordance with this section:

(a) Identification of the facility or supplier for which the certificate of representation is submitted.

(b) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(c) A list of the owners and operators of the facility or supplier identified in (a) of this subsection, provided that, if the list includes the operators of the facility or supplier and the owners with control of the facility or supplier, the failure to include any other owners ((~~shall~~)) must not make the certificate of representation incomplete.

(d) The following certification statements by the designated representative and any alternate designated representative:

(i) "I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the facility or binding on the supplier, as applicable."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under chapter 173-441 WAC on behalf of the owners and operators of the facility and on behalf of suppliers, as applicable, and that each such owner and operator ((~~shall~~)) must be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the supplier or owners and operators of the facility, as applicable, ((~~shall~~)) must be bound by any order issued to me by ecology, the pollution control hearings board, or a court regarding the facility or supplier."

(iv) "If there are multiple owners and operators of the facility or multiple suppliers, as applicable, I certify that I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the facility and each supplier."

(e) The signature of the designated representative and any alternate designated representative and the dates signed.

(10) **Documents of agreement.** Unless otherwise required by ecology, documents of agreement referred to in the certificate of representation shall not be submitted to ecology. Ecology shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(11) **Binding nature of the certificate of representation.** Once a complete certificate of representation under this section for a facility or supplier has been received, ecology will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility or supplier is received by ecology.

(12) **Objections concerning a designated representative.**

(a) Except as provided in subsection (7) of this section, no objection or other communication submitted to ecology concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative ((~~shall~~)) must affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by ecology under this chapter.

(b) Ecology will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.

(13) **Delegation by designated representative and alternate designated representative.**

(a) A designated representative or an alternate designated representative may delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology provided for or required under this chapter, except for a submission under this subsection.

(b) In order to delegate his or her own authority, to one or more individuals, to submit an electronic submission to ecology in accordance with (a) of this subsection, the designated representative or alternate designated representative must submit electronically to ecology a notice of delegation, in a format prescribed by ecology, that includes the following elements:

(i) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative.

(ii) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such individual (referred to as an "agent").

(iii) For each such individual, a list of the type or types of electronic submissions under (a) of this subsection for which authority is delegated to him or her.

(iv) For each type of electronic submission listed in accordance with subsection (13)(b)(iii) of this section, the facility or supplier for which the electronic submission may be made.

(v) The following certification statements by such designated representative or alternate designated representative:

(A) "I agree that any electronic submission to ecology that is by an agent identified in this notice of delegation and of a type listed, and for a facility or supplier designated, for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as applicable, and before this notice of delegation is superseded by another notice of delegation under WAC 173-441-060 (13)(c) ((~~shall~~)) must be deemed to be an electronic submission certified, signed, and submitted by me."

(B) "Until this notice of delegation is superseded by a later signed notice of delegation under WAC 173-441-060 (13)(c), I agree to maintain an e-mail account and to notify ecology immediately of any change in my e-mail address unless all delegation of authority by me under WAC 173-441-060(13) is terminated."

(vi) The signature of such designated representative or alternate designated representative and the date signed.

(c) A notice of delegation submitted in accordance with (b) of this subsection ((~~shall~~)) must be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by ecology and until receipt by ecology of another such notice that was signed later by such designated representative or alternate designated representative, as applicable. The later signed notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(d) Any electronic submission covered by the certification in (b)(v)(A) of this subsection and made in accordance with a notice of delegation effective under (c) of this subsection ((~~shall~~)) must be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-070 Report submittal. ((~~Each GHG report and certificate of representation for a facility or supplier must be submitted electronically in accordance with the requirements of WAC 173-441-050 and 173-441-060 and in a format specified by ecology.~~)) The following must be submitted electronically in accordance with the requirements of WAC 173-441-050 and 173-441-060 and in a format specified by ecology.

(1) Facility reporters:

(a) GHG report;

(b) Certificate of representation; and

(c) Verification software file.

(2) Transportation fuel suppliers:

(a) GHG report; and

(b) Certificate of representation.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-080 Standardized methods and conversion factors incorporated by reference. (1) The materials incorporated by reference by EPA in 40 C.F.R. § 98.7, as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015, are incorporated by reference in this chapter for use in the sections of this chapter that correspond to the sections of 40 C.F.R. Part 98 referenced here.

(2) Table A–2 of this section provides a conversion table for some of the common units of measure used in this chapter.

Table A-2:
Units of Measure Conversions

To convert from	To	Multiply by
Kilograms (kg)	Pounds (lbs)	2.20462
Pounds (lbs)	Kilograms (kg)	0.45359
Pounds (lbs)	Metric tons	4.53592×10^{-4}
Short tons	Pounds (lbs)	2,000
Short tons	Metric tons	0.90718
Metric tons	Short tons	1.10231
Metric tons	Kilograms (kg)	1,000
Cubic meters (m^3)	Cubic feet (ft^3)	35.31467
Cubic feet (ft^3)	Cubic meters (m^3)	0.028317
Gallons (liquid, US)	Liters (l)	3.78541
Liters (l)	Gallons (liquid, US)	0.26417
Barrels of liquid fuel (bbl)	Cubic meters (m^3)	0.15891
Cubic meters (m^3)	Barrels of liquid fuel (bbl)	6.289
Barrels of liquid fuel (bbl)	Gallons (liquid, US)	42
Gallons (liquid, US)	Barrels of liquid fuel (bbl)	0.023810
Gallons (liquid, US)	Cubic meters (m^3)	0.0037854

To convert from	To	Multiply by
Liters (l)	Cubic meters (m^3)	0.001
Feet (ft)	Meters (m)	0.3048
Meters (m)	Feet (ft)	3.28084
Miles (mi)	Kilometers (km)	1.60934
Kilometers (km)	Miles (mi)	0.62137
Square feet (ft^2)	Acres	2.29568×10^{-5}
Square meters (m^2)	Acres	2.47105×10^{-4}
Square miles (mi^2)	Square kilometers (km^2)	2.58999
Degrees Celsius (°C)	Degrees Fahrenheit (°F)	°C = (5/9) x (°F - 32)
Degrees Fahrenheit (°F)	Degrees Celsius (°C)	°F = (9/5) x (°C + 32)
Degrees Celsius (°C)	Kelvin (K)	K = °C + 273.15
Kelvin (K)	Degrees Rankine (°R)	1.8
Joules	Btu	9.47817×10^{-4}
Btu	MMBtu	1×10^{-6}
Pascals (Pa)	Inches of Mercury (in Hg)	2.95334×10^{-4}
Inches of Mercury (in Hg)	Pounds per square inch (psi)	0.49110
Pounds per square inch (psi)	Inches of Mercury (in Hg)	2.03625

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-090 Compliance and enforcement. (1) **Violations.** Any violation of any requirement of this chapter ((~~shall~~)) must be a violation of chapter 70.94 RCW and subject to enforcement as provided in that chapter. A violation includes, but is not limited to, failure to report GHG emissions by the reporting deadline, failure to report accurately, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emissions, failure to calculate GHG emissions following the methodologies specified in this chapter, and failure to pay the required reporting fee. Each day of a violation constitutes a separate violation.

(2) **Enforcement responsibility.** Ecology ((~~shall~~)) must enforce the requirements of this chapter unless ecology approves a local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-100 Addresses. All requests, notifications, and communications to ecology pursuant to this chapter, ((~~other than submittal of the annual GHG report, shall~~)) must be submitted ((~~to~~)) in a format as specified by ecology to either of the following ((~~address~~)):

(1) For U.S. mail. Greenhouse Gas Report, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

(2) For e-mail. ghgreporting@ecy.wa.gov.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-120 Calculation methods incorporated by reference from 40 C.F.R. Part 98 for facilities. Owners and operators of facilities that are subject to this chapter must follow the requirements of this chapter and all subparts of 40 C.F.R. Part 98 listed in Table 120-1 of this section. If a conflict exists between a provision in WAC 173-441-050(3) through 173-441-080 and any applicable provision of this section, the requirements of this section ((~~shall~~)) must take precedence.

(1) **Source categories and calculation methods for facilities.** An owner or operator of a facility subject to the requirements of this chapter must report GHG emissions, including GHG emissions from biomass, from all applicable source categories in Washington state listed in Table 120-1 of this section using the methods incorporated by reference in Table 120-1. Table 120-1 and subsection (2) of this section list modifications and exceptions to calculation methods adopted by reference in this section. CO_2 collected and transferred ((~~off-site~~)) off site must be included in the emissions calculation as required under WAC 173-441-030 (1)(b)(iv) using the methods established in 40 C.F.R. Part 98 Subpart PP as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015. Owners or operators are not required to comply with requirements in Subpart PP that do not address CO_2 collected and transferred ((~~off-site~~)) off site.

Table 120-1:
Source Categories and Calculation Methods
Incorporated by Reference from 40 C.F.R. Part 98 for Facilities

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
General Stationary Fuel Combustion Sources	C	
Electricity Generation	D	
Adipic Acid Production	E	
Aluminum Production	F	
Ammonia Manufacturing	G	
Cement Production	H	

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
Electronics Manufacturing	I	In § 98.91, replace "To calculate total annual GHG emissions for comparison to the 25,000 metric ton CO_2e per year emission threshold in paragraph § 98.2 (a)(2), follow the requirements of § 98.2(b), with one exception" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1), follow the requirements of WAC 173-441-030 (1)(b), with one exception."
Ferroalloy Production	K	
Fluorinated Gas Production	L	In § 98.121, replace "To calculate GHG emissions for comparison to the 25,000 metric ton CO_2e per year emission threshold in § 98.2 (a)(2)" with "To calculate GHG emissions for comparison to the emission threshold in WAC 173-441-030(1)."
Glass Production	N	
HCFC-22 Production and HFC-23 Destruction	O	
Hydrogen Production	P	
Iron and Steel Production	Q	
Lead Production	R	
Lime Manufacturing	S	
Magnesium Production	T	
Miscellaneous Uses of Carbonate	U	
Nitric Acid Production	V	
Petroleum and Natural Gas Systems	W	§ 98.231(a) should read: "You must report GHG emissions under this subpart if your facility contains petroleum and natural gas systems and the facility meets the requirements of WAC 173-441-030(1)."
Petrochemical Production	X	
Petroleum Refineries	Y	
Phosphoric Acid Production	Z	
Pulp and Paper Manufacturing	AA	
Silicon Carbide Production	BB	
Soda Ash Manufacturing	CC	
((~~Use of~~)) Electrical Transmission and Distribution Equipment Use	DD	§ 98.301 should read: "You must report GHG emissions under this subpart if your facility contains any ((~~use of~~)) electrical transmission and distribution equipment use process and the facility meets the requirements of WAC 173-441-030(1)." See subsection (2)(f) of this section.
Titanium Dioxide Production	EE	
Underground Coal Mines	FF	
Zinc Production	GG	
Municipal Solid Waste Landfills	HH	CO_2 from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

Source Category	40 C.F.R. Part 98 Subpart*	Exceptions to Calculation Method or Applicability Criteria+#
Industrial Wastewater Treatment	II	CO_2 from combustion of wastewater biogas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Manure Management	JJ	See subsection (2)(e) of this section.
Suppliers of Carbon Dioxide	PP	Owners or operators are only required to calculate and report emissions specified in WAC 173-441-030 (1)(b)(iv).
((~~Carbon Dioxide Injection and~~)) Geologic Sequestration of Carbon Dioxide	RR((~~**~~))	§ 98.441(a) should read: "You must report GHG emissions under this subpart if any well or group of wells within your facility injects any amount of CO_2 for long-term containment in subsurface geologic formations and the facility meets the requirements of WAC 173-441-030(1)."
Electrical Equipment Manufacture or Refurbishment	SS	§ 98.451 should read: "You must report GHG emissions under this subpart if your facility contains an electrical equipment manufacturing or refurbishing process and the facility meets the requirements of WAC 173-441-030(1)."
Industrial Waste Landfills	TT	CO_2 from combustion of landfill gas must also be included in calculating emissions for reporting and determining if the reporting threshold is met.
Injection of Carbon Dioxide	UU	§ 98.471 should read: "(a) You must report GHG emissions under this subpart if your facility contains an injection of carbon dioxide process and the facility meets the requirements of WAC 173-441-030(1). For purposes of this subpart, any reference to CO_2 emissions in WAC 173-441-030 means CO_2 received."

* Unless otherwise noted, all calculation methods are from 40 C.F.R. Part 98, as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015.

((~~* From 40 C.F.R. Part 98, as proposed on April 12, 2010.~~))

~~*~~

\+ Modifications and exceptions in subsection (2) of this section and WAC ((~~173-441-173-010~~)) 173-441-010 through 173-441-050(2) also apply.

\# Whenever the use of verification software is required or voluntarily used, the file generated by the verification software must be submitted with the facility's annual GHG report.

(2) **Modifications and exceptions to calculation methods adopted by reference.** Except as otherwise specifically provided:

(a) Wherever the term "administrator" is used in the rules incorporated by reference in this chapter, the term "director" ((~~shall~~)) must be substituted.

(b) Wherever the term "EPA" is used in the rules incorporated by reference in this chapter, the term "ecology" ((~~shall~~)) must be substituted.

(c) Wherever the term "United States" is used in the rules incorporated by reference in this chapter, the term "Washington state" ((~~shall~~)) must be substituted.

(d) Wherever a calculation method adopted by reference in Table 120-1 of this section or a definition adopted by reference from 40 C.F.R. Part 98.6 refers to another subpart or paragraph of 40 C.F.R. Part 98:

(i) If Table 120-2 of this section lists the reference, then replace the reference with the corresponding reference to this chapter as specified in Table 120-2.

(ii) If the reference is to a subpart or subsection of a reference listed in Table 120-2 of this section, then replace the reference with the appropriate subsection of the corresponding reference to this chapter as specified in Table 120-2.

(iii) If the reference is to a subpart or paragraph of 40 C.F.R. Part 98 Subparts C through ((~~TT~~)) UU incorporated by reference in Table 120-1, then use the existing reference except as modified by this chapter.

(e) For manure management, use the following subsections instead of the corresponding subsections in 40 C.F.R. § 98.360 as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015.

(i) 40 C.F.R. § 98.360(a): This source category consists of livestock facilities with manure management systems.

(A) § 98.360 (a)(1) is not adopted by reference.

(B) § 98.360 (a)(2) is not adopted by reference.

(ii) 40 C.F.R. § 98.360(b): A manure management system (MMS) is a system that stabilizes and/or stores livestock manure, litter, or manure wastewater in one or more of the following system components: Uncovered anaerobic lagoons, liquid/slurry systems with and without crust covers (including, but not limited to, ponds and tanks), storage pits, digesters, solid manure storage, dry lots (including feedlots), high-rise houses for poultry production (poultry without lit-

ter), poultry production with litter, deep bedding systems for cattle and swine, manure composting, and aerobic treatment.

(iii) 40 C.F.R. § 98.360(c): This source category does not include system components at a livestock facility that are unrelated to the stabilization and/or storage of manure such as daily spread or pasture/range/paddock systems or land application activities or any method of manure utilization that is not listed in § 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii).

(iv) 40 C.F.R. § 98.360(d): This source category does not include manure management activities located off-site from a livestock facility or off-site manure composting operations.

(v) 40 C.F.R. § 98.361: Livestock facilities must report GHG emissions under this subpart if the facility contains a manure management system as defined in 98.360(b) as modified in WAC 173-441-120 (2)(e)(ii), and meets the requirements of WAC 173-441-030(1).

(vi) 40 C.F.R. § 98.362 (b) and (c) are not adopted by reference.

(vii) 40 C.F.R. § 98.362(a), 40 C.F.R. § 98.363 through 40 C.F.R. § 98.368, Equations JJ-2 through JJ-15, and Tables JJ-2 through JJ-7 as adopted ((~~or proposed by December 1, 2010~~)) by January 1, 2015, remain unchanged unless otherwise modified in this chapter.

(viii) CO_2 from combustion of gas from manure management must also be included in calculating emissions for reporting and determining if the reporting threshold is met.

(f) For electrical transmission and distribution equipment use facilities where the electrical power system crosses Washington state boundaries, limit the GHG report to emissions that occur in Washington state using one of the following methods:

(i) Direct, state specific measurements;

(ii) Prorate the total emissions of the electric power system based upon either nameplate capacity or transmission line miles in the respective service areas by state using company records. Update the nameplate capacity or transmission line miles factor each reporting year and include the data used to establish the nameplate capacity or transmission line miles factor with your annual GHG report.

(iii) Prorate the total emissions of the electric power system based upon population in the respective service areas by state using the most recent U.S. Census data. Update the population factor each reporting year and include the data used to establish the population factor with your annual GHG report.

(g) Use the following method to obtain specific version or date references for any reference in 40 C.F.R. Part 98 that refers to any document not contained in 40 C.F.R. Part 98:

(i) If the reference in 40 C.F.R. Part 98 includes a specific version or date reference, then use the version or date as specified in 40 C.F.R. Part 98.

(ii) If the reference in 40 C.F.R. Part 98 does not include a specific version or date reference, then use the version of the referenced document as available on the date of adoption of this chapter.

Table 120-2:
Corresponding References in 40 C.F.R. Part 98 and Chapter 173-441 WAC

Reference in 40 C.F.R. Part 98		Corresponding Reference in Chapter 173-441 WAC	
Section	**Topic**	**Section**	**Topic**
40 C.F.R. Part 98 or "part"	Mandatory Greenhouse Gas Reporting	Chapter 173-441 WAC	Reporting of Emissions of Greenhouse Gases
Subpart A	General Provision	WAC 173-441-010 through 173-441-100	General Provisions
§ 98.1	Purpose and scope	WAC 173-441-010	Scope
§ 98.2	Who must report?	WAC 173-441-030	Applicability
§ 98.2(a)	Applicability: Facility reporting	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(1)	Applicability: Facility reporting Table A-3	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(2)	Applicability: Facility reporting Table A-4	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(3)	Applicability: Facility reporting source categories that meet all three of the conditions listed in this paragraph (a)(3)	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2 (a)(4)	Applicability: Facility reporting Table A-5 source categories	WAC 173-441-030(1)	Applicability: Facility reporting
§ 98.2(b)	Calculating emissions for comparison to the threshold	WAC 173-441-030 (1)(b)	Calculating facility emissions for comparison to the threshold
§ 98.2(i)	Reporting requirements when emissions of greenhouse gases fall below reporting thresholds	WAC 173-441-030(5)	Reporting requirements when emissions of greenhouse gases fall below reporting thresholds
§ 98.3	What are the general monitoring, reporting, recordkeeping and verification requirements of this part?	WAC 173-441-050	General monitoring, reporting, recordkeeping and verification requirements
§ 98.3(c)	Content of the annual report	WAC 173-441-050(3)	Content of the annual report
§ 98.3(g)	Recordkeeping	WAC 173-441-050(6)	Recordkeeping
§ 98.3 (g)(5)	A written GHG monitoring plan	WAC 173-441-050 (6)(e)	A written GHG monitoring plan

Reference in 40 C.F.R. Part 98		Corresponding Reference in Chapter 173-441 WAC	
§ 98.3(i)	Calibration accuracy requirements	WAC 173-441-050(8)	Calibration and accuracy requirements
§ 98.3 (i)(6)	Calibration accuracy requirements: Initial calibration	WAC 173-441-050 (8)(f)	Calibration accuracy requirements: Initial calibration
§ 98.4	Authorization and responsibilities of the designated representative	WAC 173-441-060	Authorization and responsibilities of the designated representative
§ 98.5	How is the report submitted?	WAC 173-441-070	Report submittal
§ 98.5(b)	Verification software	WAC 173-441-070(1)	Facility report submittal
§ 98.6	Definitions	WAC 173-441-020	Definitions
§ 98.7	What standardized methods are incorporated by reference into this part?	WAC 173-441-080	Standardized methods and conversion factors incorporated by reference
§ 98.8	What are the compliance and enforcement provisions of this part?	WAC 173-441-090	Compliance and enforcement
§ 98.9	Addresses	WAC 173-441-100	Addresses
Table A-1 to Subpart A of Part 98—Global Warming Potentials, Table A-1 of this part, or Table A-1 of this subpart	Global Warming Potentials	Table A-1 of WAC 173-441-040	Global Warming Potentials
Table A-2 to Subpart A of Part 98—Units of Measure Conversions	Units of Measure Conversions	Table A-2 of WAC 173-441-080	Units of Measure Conversions

(3) **Calculation methods for voluntary reporting.** GHG emissions reported voluntarily under WAC 173-441-030(4) must be calculated using the following methods:

(a) If the GHG emissions have calculation methods specified in Table 120-1 of this section, use the methods specified in Table 120-1.

(b) If the GHG emissions have calculation methods specified in WAC 173-441-130, use the methods specified in WAC 173-441-130.

(c) For all GHG emissions from facilities not covered in Table 120-1 of this section or persons supplying any product other than those listed in WAC 173-441-130, contact ecology for an appropriate calculation method no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2) or submit a petition for alternative calculation methods according to the requirements of WAC 173-441-140.

(4) **Alternative calculation methods approved by petition.** An owner or operator may petition ecology to use calculation methods other than those specified in Table 120-1 of this section to calculate its facility GHG emissions. Such alternative calculation methods must be approved by ecology prior to reporting and must meet the requirements of WAC 173-441-140.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-130 Calculation methods for suppliers. Suppliers of liquid motor vehicle fuel, special fuel, or aircraft fuel subject to the requirements of this chapter must calculate the CO_2 emissions that would result from the complete combustion or oxidation of each fuel that is reported to DOL as sold in Washington state using the methods in this section.

(1) **Applicable fuels.** Suppliers are responsible for calculating CO_2 emissions from the following applicable fossil fuels and biomass derived fuels:

(a) All taxed liquid motor vehicle fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of motor vehicle fuel sales under chapter 308-72 WAC.

(b) All taxed special fuel that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of special fuel sales under chapter 308-77 WAC.

(c) All taxed and untaxed aircraft fuel supplied to end users that the supplier is required to report to DOL as part of the supplier's filed periodic tax reports of aircraft fuel under chapter 308-78 WAC.

(2) Calculating CO_2 emissions separately for each fuel type. CO_2 emissions must be calculated separately for each applicable fuel type using Equation 130-1 of this section. Use Equation 130-2 of this section to separate each blended fuel into pure fuel types prior to calculating emissions using Equation 130-1.

((~~CO_{2i} = Fuel Type$_i$ X EF_i (Eq. 130 - 1)~~))

$$CO_{2i} = Fuel\ Type_i \times EF_i \qquad (Eq.\ 130-1)$$

Where:

CO_{2i}	=	Annual CO_2 emissions that would result from the complete combustion or oxidation of each fuel type "i" (metric tons)
Fuel Type$_i$	=	Annual volume of fuel type "i" supplied by the supplier (gallons).

EF_i	=	Fuel type-specific CO_2 emission factor (metric tons CO_2 per gallon) found in Table 130-1 of this section.

((~~Fuel Type$_i$~~ = ~~Fuel$_i$~~ ~~X~~ ~~%Vol$_i$~~ ~~(Eq. 130 - 2)~~))

$$Fuel\ Type_i = Fuel_i \times \%Vol_i \qquad (Eq.\ 130-2)$$

Where:

Fuel $Type_i$	=	Annual volume of fuel type "i" supplied by the supplier (gallons).
$Fuel_i$	=	Annual volume of blended fuel "i" supplied by the supplier (gallons).
$\%Vol_i$	=	Percent volume of product "i" that is fuel $type_i$.

(3) **Calculating total CO_2 emissions.** A supplier must calculate total annual CO_2 emissions from all fuels using Equation 130-3 of this section.

((

~~$CO_{2x} = \sum(CO_{2i})$ (Eq. 130 - 3)~~

))

$$CO_{2x} = \sum(CO_{2i}) \qquad (Eq.\ 130-3)$$

Where:

CO_{2x}	=	Annual CO_2 emissions that would result from the complete combustion or oxidation of all fuels (metric tons).
CO_{2i}	=	Annual CO_2 emissions that would result from the complete combustion or oxidation of each fuel type "i" (gallons).

(4) **Monitoring and QA/QC requirements.** Comply with all monitoring and QA/QC requirements under chapters 308-72, 308-77, and 308-78 WAC.

(5) **Data recordkeeping requirements.** In addition to the annual GHG report required by WAC 173-441-050 (6)(c), the following records must be retained by the supplier in accordance with the requirements established in WAC 173-441-050(6):

(a) For each fuel type listed in Table 130-1 of this section, the annual quantity of applicable fuel in gallons of pure fuel supplied in Washington state.

(b) The CO_2 emissions in metric tons that would result from the complete combustion or oxidation of each fuel type for which subsection (5)(a) of this section requires records to be retained, calculated according to subsection (2) of this section.

(c) The sum of biogenic CO_2 emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(d) The sum of nonbiogenic and biogenic CO_2 emissions that would result from the complete combustion oxidation of all supplied fuels, calculated according to subsection (3) of this section.

(e) All records required under chapters 308-72, 308-77, and 308-78 WAC in the format required by DOL.

Table 130-1:

Emission Factors for Applicable Liquid Motor Vehicle Fuels, Special Fuels, and Aircraft Fuels

Fuel Type (pure fuel)	Emission Factor (metric tons CO_2 per gallon)
Gasoline	0.008960
Ethanol (E100)	0.005767
Diesel ((~~(B100)~~))	0.010230
Biodiesel (B100)	0.009421
Propane	0.005593
Natural gas	0.000055*
Kerosene	0.010150
Jet fuel	0.009750
Aviation gasoline	0.008310

Contact ecology to obtain an emission factor for any applicable fuel type not listed in this table.

*In units of metric tons CO_2 per scf. When using Equation 130-1 of this section, enter fuel in units of scf.

AMENDATORY SECTION (Amending WSR 10-24-108, filed 12/1/10, effective 1/1/11)

WAC 173-441-140 Petitioning ecology to use an alternative calculation method to calculate greenhouse gas emissions. An owner or operator may petition ecology to use calculation methods other than those specified in WAC 173-441-120 to calculate GHG emissions. Alternative calculation methodologies are not available for GHG emissions covered by a source category adopted by reference in WAC 173-441-130. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** An owner or operator must submit a petition that meets the following conditions before ecology may review the petition and issue a determination.

(a) An owner or operator must submit a complete petition no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-050(2). Such petition must include sufficient information, as described in (b) of this subsection, for ecology to determine whether the proposed alternative calculation method will provide emissions data sufficient to meet the reporting requirements of RCW 70.94.151. Ecology will notify the owner or operator within thirty days of receipt of a petition of any additional information ecology requires to approve the proposed calculation methods in the petition. If a petition is under review by ecology at the time an annual emissions report is due under WAC 173-441-050(2), the owner or operator must submit the emissions report using the calculation methods approved under this chapter at the time of submittal of the emissions report.

(b) The petition must include, at a minimum, the following information:

(i) Identifying information as specified in WAC 173-441-060 (9)(b) and 173-441-060 (13)(b)(ii) of the designated representative and any agent submitting a petition;

(ii) Identifying information as specified in WAC 173-441-050 (3)(a) of the facility or facilities where the owner or operator proposes to use the alternative calculation method;

(iii) A clear and complete reference to the subparts or sections in EPA's mandatory greenhouse gas reporting regulation that contain the alternative calculation method and the date that EPA adopted the subparts or sections;

(iv) The source categories that will use the alternative calculation method;

(v) The date that the owner or operator intends to start using the alternative calculation method;

(vi) Any other supporting data or information as requested by ecology as described in subsection (2) of this section; and

(vii) The designated representative must sign and date the petition.

(2) **Ecology review of the petition.** Ecology must approve the alternative calculation method before the owner or operator may use it to report GHG emissions. Ecology will issue a determination within sixty days of receiving a complete petition. The alternative calculation method must meet the following conditions:

(a) Except as noted in (b) of this subsection, alternative calculation methods for facilities required to report under WAC 173-441-030(1) must be methods adopted by the United States Environmental Protection Agency in its mandatory greenhouse gas reporting regulation. The alternative calculation method must be more recent than the method for the given source category adopted by reference in WAC 173-441-120.

(b) ((~~As of November 9, 2010, the United States Environmental Protection Agency had not adopted a final GHG reporting protocol for carbon dioxide injection and geologic sequestration. Facilities with emissions in this source category that are required to report under WAC 173-441-030(1) may use alternative calculation methods approved by ecology using the criteria established in (c)(ii)(A) and (B) of this subsection until the United States Environmental Protection Agency adopts a final protocol for that source category in 40 C.F.R. Part 98. Beginning January 1st of the first year reporting is required for the source category by the United States Environmental Protection Agency under a final protocol in 40 C.F.R. Part 98, emissions from the source category must be reported to ecology using either the protocol adopted in Table 120-1 of WAC 173-441-120 or a protocol approved by ecology under (a) of this subsection.~~

~~(c)~~)) For GHG emissions reported voluntarily under WAC 173-441-030(4), ecology must apply the following criteria when evaluating an alternative calculation method:

(i) If the GHG emissions are covered by a source category adopted by reference in WAC 173-441-120, then the requirements of (a) and (b) of this subsection apply.

(ii) If the GHG emissions are not covered by a source category adopted by reference in WAC 173-441-120 or 173-441-130, then ecology must consider whether the methods meet the following criteria:

(A) The alternative calculation method is established by a nationally or internationally recognized body in the field of GHG emissions reporting such as:

(I) Ecology;

(II) EPA;

(III) The International Panel on Climate Change;

(IV) The Western Climate Initiative;

(V) The Climate Registry;

(B) If an alternative calculation method is not available from sources listed in (((~~(c)~~))) (b)(ii)(A) of this subsection, then ecology may accept a method from an industry or trade association or devised by the owner or operator if ecology determines the alternative calculation method is consistent with the requirements established under RCW 70.94.151.

(((~~(d)~~))) (c) For all source categories, including those covered in (a)((~~, (b),~~)) and (((~~(c)~~))) (b) of this subsection, the alternative calculation method must be consistent in content and scope with the requirements established under RCW 70.94.151. In the event that a proposed alternative calculation method does not include all required GHG emissions, the owner or operator must use the calculation methods specified in subsection (3) of this section to calculate those emissions.

(3) **Calculating emissions not included in alternative calculation method.** An owner or operator must report all source categories of GHG emissions for which reporting is required under RCW 70.94.151 and for which calculation methods have been established in WAC 173-441-120 or 173-441-130. If an approved alternative calculation method does not include calculation methods for all required source categories of emissions, then the owner or operator must use a method described in WAC 173-441-120, 173-441-130, or approved for the owner or operator by ecology in a separate petition to calculate and report those emissions.

(4) **Appeal of determination.** An approval or denial issued by ecology in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1)(h).

WSR 15-04-083
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 2, 2015, 1:14 p.m., effective March 5, 2015]

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

Purpose: WAC 392-501-601 and 392-501-602, the additional language for the WAC has been drafted to include situations whereby a student had special, unavoidable circumstances that prevented the student, during the student's eleventh grade year, from successfully demonstrating his or her skills and knowledge on the state high school assessment, on an objective alternate assessment authorized in RCW 28A.655.061 or 28A.655.065, or on a Washington alternate assessment available to student[s] eligible for special education services. For purposes of this subsection, a special, unavoidable circumstance is a major irregularity in the administration of the assessment that meets the following criteria:

(i) The major irregularity was caused by school district personnel,

(ii) The student was not at fault for the irregularity, and

(iii) The school district has taken appropriate disciplinary action against the school district personnel.

We are also shifting the transfer date eligibility and making general language updates consistent with shifts in the overall testing program.

Citation of Existing Rules Affected by this Order: Amending WAC 392-501-601 and 392-501-602.

Statutory Authority for Adoption: RCW 28A.655.065 and 28A.665.061.

Adopted under notice filed as WSR 15-01-169 on December 23, 2014.

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

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

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

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

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

Date Adopted: January 29, 2015.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 10-01-053, filed 12/9/09, effective 1/9/10)

WAC 392-501-601 Eligibility and application requirements. (1) A student, or a student's parent or guardian may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's twelfth grade year (eleventh grade year under a specific circumstance where an educator has caused a testing irregularity), from successfully demonstrating his or her skills and knowledge on the ((~~Washington~~)) state high school assessment ((~~of student learning (WASL)~~)), on ((~~an~~)) any of the objective alternative assessments authorized in RCW 28A.655.061 or 28A.655.065, or ((~~on a Washington alternate~~)) alternative assessments available to students eligible for special education services.

(2) Special, unavoidable circumstances shall include the following:

(a) Not being able to take or complete an assessment because of:

(i) The death of a parent, guardian, sibling or grandparent;

(ii) An unexpected and/or severe medical condition. The condition must be documented by a medical professional and included with the application, within the constraints of the Health Insurance Portability and Accountability Act (HIPAA); or

(iii) Another unavoidable event of a similarly compelling magnitude that ((~~reasonably~~)) district administrators determine prevented the student from sitting for or completing the assessment.

(b) A major irregularity in the administration of the assessment;

(c) Loss of the assessment material;

(d) Failure to receive an accommodation during administration of the assessment that was documented in the student's individualized education program that is required in the federal Individuals with Disabilities Education Act, as amended, or in a plan required under Section 504 of the Rehabilitation Act of 1973;

(e) For students enrolled in the state transitional bilingual instructional program, failure to receive an accommodation during the administration of the assessment that was scheduled to be provided by the school district; ((~~or~~))

(f) Students who transfer from an out-of-state ((~~or~~)), out-of-country, or nonpublic (including home-school environment) school to a Washington public school in the twelfth grade year after ((~~March 1~~)) December 31st.

(3) A school district superintendent may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's eleventh grade year, from successfully demonstrating his or her skills and knowledge on the state high school assessment, on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or alternative assessments available to students eligible for special education services. For purposes of this subsection, a special, unavoidable circumstance is a major irregularity in the administration of the assessment that meets the following criteria:

(a) The major irregularity was caused by school district personnel;

(b) The student was not at fault for the irregularity; and

(c) The school district has taken documented disciplinary action against the school district personnel.

(4) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school an appeal application on a form developed by the superintendent of public instruction.

(((~~(4)~~))) (5) The application shall require that the following be submitted: All available score reports from prior standardized assessments taken by the student during his or her high school years, the medical condition report (if applicable), IEP, 504 or transitional bilingual education program documentation pertinent to decisions about student access to available assessment type and/or testing accommodations, enrollment/transfer information, and the student's transcript. The principal of the school shall review the application and accompanying material and certify that, to the best of his or her knowledge, the information in the application is accurate and complete.

(((~~(5)~~))) (6) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the school district's assessment coordinator who will conduct an independent review for completeness prior to transmitting the application to the state superintendent of public instruction.

(((~~(6)~~))) (7) Applications must be received by the superintendent of public instruction on or before May 1st or October 1st.

AMENDATORY SECTION (Amending WSR 10-01-053, filed 12/9/09, effective 1/9/10)

WAC 392-501-602 Special, unavoidable circumstance appeal review board and approval criteria. (1) The special, unavoidable circumstance appeal review board shall be created to review and make recommendations to the superintendent of public instruction on all special, unavoidable circumstance appeal applications.

(2) The superintendent of public instruction shall appoint seven members total to the board, five voting members and two alternates (for cases of unanticipated absenteeism or potential conflict of interest on the part of a regular voting member). The board, where membership and panel experience allows, shall be chaired by a current or former high school principal and shall consist of current or former district administrators, teachers, school department heads, and/or school district assessment directors with experience and expertise ((~~in~~)) with the Washington ((~~essential academic learning requirements~~)) learning standards. Each member shall be appointed for a three-year term, provided that the initial terms may be staggered as the superintendent deems appropriate. As needed, the superintendent may elect to reappoint previous members if new candidates are not available to assume review board positions.

(3) The ((~~high school graduation certificate~~)) special, unavoidable circumstance appeals review board shall review applicable special, unavoidable circumstance appeal applications submitted to it by the superintendent of public instruction. The board shall:

(a) Review the written information submitted ((~~to the superintendent~~)) to determine whether sufficient evidence was presented that the student has the required knowledge and skills; and

(b) Make a recommendation to the superintendent, based on the criteria in subsection (6) of this section, regarding whether or not the appeal should be granted.

(4) Staff from the office of superintendent of public instruction (OSPI) shall coordinate and assist the work of the board. In this capacity, staff from ((~~the~~)) OSPI shall prepare a preliminary analysis of each application and accompanying information that evaluates the extent in which the criteria in subsection (6) of this section have been met.

(5) If the board determines that additional information on a particular student is needed in order to fulfill its duties, the chair of the board shall contact the OSPI staff to request the information.

(6) The board shall recommend to the superintendent of public instruction that the appeal be granted if it finds that:

(a) The student, due to special, unavoidable circumstances as defined in WAC 392-501-601(2), was not able to successfully demonstrate his or her skills on ((~~the WASL,~~)) a state high school assessment or on an objective alternative assessment((~~, or on a Washington alternate assessment available to students eligible for special education services~~));

(b) No other recourse or remedy exists to address the special, unavoidable circumstance prior to the student's expected graduation date;

(c) ((~~The student has met, or is on track to meet, all other state and local graduation requirements; and~~

~~(d)~~)) After considering the criteria below, in the board's best judgment, the student more likely than not possesses the skills and knowledge required to meet the state standard. The board shall consider the following criteria:

(i) Trends indicated by prior ((~~WASL or alternate~~)) state high school assessment or alternative assessment results;

(ii) How near the student has been in achieving the standard;

(iii) Scores on other assessments, as available;

(iv) Participation and successful completion of remediation courses and other academic assistance opportunities;

(v) Cumulative grade point average;

(vi) Whether the student has taken advanced placement, honors, or other higher-level courses; and

(vii) Other available information deemed relevant by the board.

(7) Based upon the recommendation of the ((~~high school graduation~~)) special, unavoidable circumstance appeals board and any other information that the superintendent deems relevant, the superintendent of public instruction shall decide, based on the criteria established in subsection (6) of this section, whether to:

(a) Grant the appeal and waive the requirement that a student earn a certificate to graduate;

(b) Deny the appeal and not waive the certificate; or

(c) Remand the appeal back to the appeals board for further information or deliberation.

(8) The superintendent of public instruction shall act upon the student's application and notify the student, the student's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of ((~~the deadline for~~))

receiving the recommendation from the certificate appeals review board. ((~~This deadline~~)) The timeline for acting on the application recommendation may be extended if additional information is required from the student or the school district.

(9) If approved, the student's transcript shall indicate that the applicable ((~~certificate~~)) content area assessment was waived.

(10) School staff shall include a copy of the application, supporting information, and the superintendent's decision in the student's cumulative folder.

WSR 15-04-102
PERMANENT RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed February 3, 2015, 7:58 a.m., effective March 6, 2015]

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

Purpose: Update the address and telephone number for the board of appeals.

Citation of Existing Rules Affected by this Order: Amending WAC 182-526-0030.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 14-22-112 on November 5, 2014.

Changes Other than Editing from Proposed to Adopted Version: Telephone number corrected.

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

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

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

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

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

Date Adopted: February 3, 2015.

Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0030 Contacting the board of appeals. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the health care authority's internet site, in person at the board of appeals (BOA) office, or by a telephone call to the BOA's main public number.

Board of Appeals	
Location	((~~Office Building 2 (OB-2) 2nd Floor 1115 Washington Street~~)) 626 8th Avenue S.E. Olympia, Washington
Mailing address	P.O. Box ((~~45803~~)) 42700 Olympia, WA ((~~98504-5803~~)) 98504-2700
Toll free telephone	((~~360-664-6100~~)) 1-844-728-5212
Fax	((~~360-664-6187~~)) 360-507-9018
((~~Toll free~~	~~1-877-351-0002~~))
Internet web site	www.hca.wa.gov/appeals

WSR 15-04-103
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed February 3, 2015, 8:19 a.m., effective March 6, 2015]

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

Purpose: Amend WAC 458-29A-400 Leasehold excise tax—Exemptions, to:

- Recognize provisions of ESSB 5882 (sections 1701 and 1717, chapter 13, Laws of 2013), establishing expiration dates for new tax preferences for the leasehold excise tax; and
- Clarify language throughout the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 458-29A-400.

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

Other Authority: RCW 82.32.805 and 82.29A.025.

Adopted under notice filed as WSR 14-24-110 on December 3, 2014.

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

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

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

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

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

Date Adopted: February 3, 2015.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-18-034, filed 8/25/10, effective 9/25/10)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) **Introduction.**

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

((~~(2)~~)) (b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) **Rule examples.** This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

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

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department of revenue (department), except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) **Operating properties of a public utility.**

(a) All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

((~~For example,~~)) (b) **Example.** Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company ((~~at the Port of Seaside~~)) are exempt from leasehold excise tax because ((~~the~~)) ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

((~~(3)~~)) (4) **Student housing at public and nonprofit schools and colleges.**

(a) All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

((~~For example,~~)) (b) **Example.** Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with ((~~a~~)) this building ((~~used as a~~)) is exempt from the leasehold excise tax. This is because the dormitory ((~~for~~)) is used to house State Public ((~~University~~)) University's students ((~~is exempt from the leasehold excise tax~~)).

((~~(4)~~)) (5) **Subsidized housing.**

(a) All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

((~~For example, a leasehold interest in an apartment house that is subsidized by~~)) (b) **Example.** Assume an apartment building and the property on which it is located is:

• Owned in fee simple by the state of Washington; and

• Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax ((~~if~~)). This is because the property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

((~~(5)~~)) (6) **Nonprofit fair associations.**

(a) All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

((~~For example,~~)) (b) **Example.** Assume a leasehold interest held by ((~~the~~)) Local Nonprofit Fair Association is ((~~considered~~)) exempt from leasehold excise tax. ((~~However, if~~)) Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds ((~~are rented~~)) to private parties for storage during the winter((~~,~~)). These ((~~rentals may be~~)) subleases are subject to the leasehold excise tax.

((~~(6)~~)) (7) **Public employee housing.**

(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

((~~The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.~~

~~(a)~~)) (b) **Examples.**

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call twenty-four hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

((~~(b)~~)) (ii) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

((~~(c)~~)) (iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

((~~(7)~~)) (8) **Interests held by enrolled Indians.**

(a) Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

((~~For example, if~~)) (c) **Example.** Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery((~~,~~)). The leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

((~~(8)~~)) (9) **Leases on Indian lands to non-Indians.**

(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(b) and WAC 458-29A-200.

((~~For example,~~)) (b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of $900 per month. The fair market value for similar lands used for similar purposes is $975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

((~~(9)~~)) (10) **Annual taxable rent is less than two hundred fifty dollars.**

(a) Leasehold interests for which the taxable rent is less than $250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

((~~The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.~~

~~(a)~~)) (b) **Examples.**

(i) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

((~~(b)~~)) (ii) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

((~~(c)~~)) (iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year.

She pays $50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

((~~(d)~~)) (iv) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays $125 to the port to rent the lot for 6 weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed $250 per year in taxable rent.

((~~(10)~~)) (11) **Leases for a continuous period of less than thirty days.** Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than thirty days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

((~~(11)~~)) (12) **Month-to-month leases in residential units to be demolished or removed.**

(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

((~~For example,~~)) (b) **Example.** State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

((~~(12)~~)) (13) **Public works contracts.**

(a) Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

((~~For example,~~)) (b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During construction of ((~~a~~)) the second deck on the Nisqually Bridge ((~~pursuant to a public works contract between the state of Washington and Tinker Construction,~~)) any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

((~~(13)~~)) (14) **Correctional industries in state adult correctional facilities.**

(a) Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

((~~For example, a profit or nonprofit organization operating and managing~~)) (b) **Examples.**

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

((~~(14)~~)) (ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

(15) **Camp facilities for persons with disabilities.**

(a) Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for persons with disabilities of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

((~~For example,~~)) (b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled persons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax ((~~if~~)) because the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

((~~(15)~~)) (16) **Public or entertainment areas of certain baseball stadiums.**

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof

or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

(b) "Public or entertainment areas" for the purposes of this ((~~exemption~~)) subsection include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(((~~16~~))) (17) **Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this ((~~exemption~~)) subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection ((~~(15) above~~)) (16) of this rule.

(((~~17~~))) (18) **Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(((~~18~~))) (19) **State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

(((~~19~~))) (20) **Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. ((~~This exemption is effective July 28, 2000.~~)) RCW 82.29A.134.

(((~~20~~))) (21) **Interests consisting of three thousand or more residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. ((~~This exemption is effective January 1, 2002.~~)) RCW 82.29A.136.

(((~~21~~))) (22) **Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

(a) Owned by the United States government or a municipal corporation; and

(b) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(((~~22~~))) (23) **Amphitheaters.**

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominately by the lessee.

(((~~23~~))) (24) **Military housing.**

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(25) **Expiration date for new tax preferences.**

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is

expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.

WSR 15-04-104
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed February 3, 2015, 8:20 a.m., effective March 6, 2015]

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

Purpose: Amend WAC 458-20-126 Sales of motor vehicle fuel, special fuel, and nonpolluting fuel, to:

- Recognize provisions of ESSB 6440 (sections 301, 304, and 305, chapter 216, Laws of 2014), with respect to natural gas, compressed natural gas, or liquefied natural gas used for transportation fuel;
- Update language on filing and paying retail sales and use tax for motor vehicle fuel, special fuel, and fuels commonly referred to as liquefied natural gas, compressed natural gas, or propane; and
- Clarify language such as changing "section" to "rule" throughout.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-126.

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

Other Authority: RCW 82.12.022 and 82.14.230.

Adopted under notice filed as WSR 14-24-109 on December 3, 2014.

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

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

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

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

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

Date Adopted: February 3, 2015.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-01-051, filed 12/9/09, effective 1/9/10)

WAC 458-20-126 Sales of motor vehicle fuel, special fuel((~~s~~)), and ((~~nonpollutant~~)) nonpolluting fuel. (1) **Introduction.** This ((~~section~~)) rule explains the retail sales and use taxes for motor vehicle fuel, special fuel((~~s~~)), and fuels commonly referred to as liquefied natural gas ((~~and~~)), compressed natural gas, or propane. This ((~~section~~)) rule also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) **What are motor vehicle fuel and special fuel((~~s~~)), and how are they taxed?** "Motor vehicle fuel" as used in this ((~~section~~)) rule means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuel((~~s~~))" as used in this ((~~section~~)) rule means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

((~~The~~)) Retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally ((~~the~~)), fuel taxes apply to sales of fuel for highway consumption and ((~~the~~)) retail sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) **What motor vehicle fuel and special fuel((~~s~~)) exemptions are available?**

(a) **Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide ((~~exemptions from the~~)) retail sales tax and use tax exemptions for motor vehicle fuel or special fuel((~~, purchased on or after April 27, 2007,~~)) for use in passenger-only ferry vessels. ((~~This~~)) These exemptions ((~~applies~~)) apply only to fuel purchased by public transportation benefit areas created under chapter 36.57A RCW, county owned ferries, or county ferry districts created under chapter 36.54 RCW.

(b) **Nonprofit transportation providers.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for ((~~sales of or uses of~~)) motor vehicle fuel or special fuel((~~s~~)) purchased or used by private, nonprofit transportation providers certified under chapter 81.66 RCW, ((~~who are~~)) if the purchaser is entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) **Public transportation.** RCW 82.08.0255 and 82.12.0256 provide ((~~exemptions for the~~)) retail sales tax and use tax ((~~when~~)) exemptions for motor vehicle fuel or special fuel((~~s are~~)) purchased or used for the purpose of public transportation, ((~~and~~)) if the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(((~~(3)~~))).

(d) **Special fuel((~~s~~)) used in interstate commerce.** ((~~The~~)) RCW 82.08.0255 provides a retail sales tax ((~~does not apply to~~)) credit or refund for sales of special fuel((~~s~~)) that is delivered in this state ((~~which are~~)) but later transported and used outside this state by persons engaged in interstate commerce. (((~~RCW 82.08.0255(2).) This exemption~~)) The credit or refund also applies to persons hauling their own goods in interstate commerce.

((Exemption)) Certificate. Persons selling special fuel((s)) to interstate carriers must obtain a completed ((exemption certificate)) "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser ((in order)) to document ((the)) entitlement to the ((exemption)) credit or refund. The ((exemption)) certificate ((can)) may be obtained from the department of revenue (department) on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

The provisions of the ((exemption)) certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(e) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this ((section)) rule, a "farm fuel user" means either a farmer or a person who provides horticultural services for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) ((Effective March 6, 2006,)) RCW 82.08.865 and 82.12.865 ((exempt)) provided retail sales tax and use tax exemptions to farm fuel users ((from retail sales and use taxes)) for diesel, biodiesel, and aircraft fuel purchased for nonhighway use.

(ii) ((Substitute Senate Bill (SSB) 5009, chapter 443, Laws of 2007, added biodiesel fuel as exempt from retail sales and use taxes when purchased or used by farm fuel users for nonhighway use. This)) These exemptions((, effective May 11, 2007, also applies)) also apply to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which ((can)) may be obtained from the department ((on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706)) using the contact information described in (d) of this subsection.

Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) **((Nonpollutant)) Nonpolluting fuels.** ((Nonpollutant)) Nonpolluting fuels are described as liquefied natural gas ((and)), compressed natural gas, or liquefied petroleum gas, commonly called propane. ((Nonpollutant)) Nonpolluting fuels ((can)) may be purchased for either highway or "off-highway" use. ((Sales of nonpollutant)) Nonpolluting fuels purchased for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. ((Nonpollutant)) Nonpolluting fuels purchased for "off-highway" use are subject to retail sales tax or use tax.

(a) **Highway fuel used by Washington licensed vehicle owners.** RCW 82.38.075 ((provides)) encourages the use of nonpolluting fuels by providing for payment of an annual fee by users of ((nonpollutant fuel)) nonpolluting fuels, in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the department of licensing as authority to purchase these ((nonpollutant)) nonpolluting fuels.

Fuel dealers should not collect retail sales or use tax on any ((nonpollutant fuel)) nonpolluting fuels sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) **"Off-highway" fuel use.** ((Nonpollutant)) Nonpolluting fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) **Bulk purchases of fuel.** The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of ((nonpollutant)) nonpolluting fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling ((nonpollutant)) nonpolluting fuels to such bulk purchasers must obtain from the purchaser an exemption certificate ((in order)) to document entitlement to the exemption. The "Certificate for Purchase of ((Nonpollutant)) Nonpolluting Special Fuels" must certify the amount of fuel ((which will be consumed by the purchaser)) that the purchaser will consume in using motor vehicles upon the highways of this state. This procedure is limited((, however,)) to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The "Certificate for Purchase of ((Nonpollutant)) Nonpolluting Special ((Fuels" can)) Fuel" may be obtained from the department ((on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706)) using the contact information described in subsection (3)(d) of this rule.

(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. ((In the event such)) If an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) ((~~Nonpollutant~~)) Nonpolluting fuel not placed in motor vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of ((~~Nonpollutant~~)) Nonpolluting Special Fuel((~~s~~))" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of ((~~his~~)) its permanent records. When ((~~nonpollutant~~)) nonpolluting fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions where it is not delivered into the fuel tanks of motor vehicles, ((~~it will be presumed~~)) the department will presume that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) **Vehicles licensed outside the state of Washington.** Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075. ((~~In lieu of~~))

(i) Therefore, the fuel taxes of chapters 82.36 and 82.38 RCW generally apply to the out-of-state licensed vehicle owner's purchases of nonpolluting fuel for highway use.

(ii) Retail sales tax applies to the out-of-state licensed vehicle owner's purchases of nonpolluting fuel for off-highway use.

(iii) If the fuel taxes of chapters 82.36 and 82.38 RCW((~~,~~)) have not been paid, have been refunded, or have not been applied, then retail sales tax is due on ((~~their~~)) the out-of-state licensed vehicle owner's purchases of ((~~nonpollutant~~)) nonpolluting fuel, for either highway or off-highway use.

(e) Any person selling or dispensing liquefied natural gas, compressed natural gas, or propane into a tank of a motor vehicle powered by this fuel that does not comply with the provisions in chapter 82.38 RCW described in this rule, is subject to the penalty provisions in chapter 82.38 RCW.

(5) **Refunds are available for fuel taxes paid when fuel is consumed off the highway.** If a person purchases motor vehicle fuel or special fuel((~~s~~)) and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.

WSR 15-04-121
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed February 3, 2015, 11:45 a.m., effective March 6, 2015]

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

Purpose: The proposed change will require promoters of amateur mixed martial arts events, overseen by a sanctioning organization, to have a physician and an ambulance or paramedical unit on site at all times.

Citation of Existing Rules Affected by this Order: Amending WAC 36-14-545 Physician and ambulance or paramedical unit requirements for amateur events.

Statutory Authority for Adoption: RCW 67.08.017, 43.24.023.

Adopted under notice filed as WSR 15-01-077 on December 15, 2014.

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

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

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

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

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

Date Adopted: February 3, 2015.

Damon G. Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-545 Physician and ambulance or paramedical unit requirements for amateur events. Promoters of an amateur mixed martial arts event held under an amateur mixed martial arts sanctioning organization shall have at least one physician in attendance at the event ((~~or~~)) and an ambulance or paramedical unit with transportation and resuscitation capabilities to be present at the event location at all times during the event.

WSR 15-04-122
PERMANENT RULES
DEPARTMENT OF HEALTH
(Medical Quality Assurance Commission)
[Filed February 3, 2015, 1:01 p.m., effective March 6, 2015]

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

Purpose: Chapter 246-918 WAC, Physicians assistants—Medical quality assurance commission, the revised physician assistant rules comply with SHB 1737 (chapter 203, Laws of 2013) and incorporate current national standards and best practices.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-918-030, 246-918-070, 246-918-090, 246-918-110, 246-918-140, 246-918-150, 246-918-170, 246-918-230, and 246-918-310; and amending WAC 246-918-005, 246-918-007, 246-918-035, 246-918-050, 246-918-075, 246-918-080, 246-918-081, 246-918-095, 246-918-105, 246-

918-120, 246-918-130, 246-918-171, 246-918-180, 246-918-250, and 246-918-260.

Statutory Authority for Adoption: RCW 18.71.017, 18.130.050, chapter 18.71A RCW.

Other Authority: SHB 1737 (chapter 203, Laws of 2013).

Adopted under notice filed as WSR 14-21-109 on October 16, 2014.

A final cost-benefit analysis is available by contacting Daidria Pittman, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-2727, fax (360) 236-2795, e-mail daidria.pittman@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 15, Repealed 9.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 15, Repealed 9.

Date Adopted: December 5, 2014.

Melanie de Leon
Executive Director

AMENDATORY SECTION (Amending WSR 01-18-085, filed 9/5/01, effective 10/6/01)

WAC 246-918-005 Definitions. ((~~The following terms used in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:~~

~~(1) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).~~

~~(2) "Physician assistant" means an individual who either:~~

~~(a) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination and was licensed in Washington state prior to July 1, 1999;~~

~~(b) Qualified based on work experience and education and was licensed prior to July 1, 1989;~~

~~(c) Graduated from an international medical school and was licensed prior to July 1, 1989; or~~

~~(d) Holds an interim permit issued pursuant to RCW 18.71A.020(1).~~

~~(3) "Physician assistant-surgical assistant" means an individual who was licensed as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-230.~~

~~(4) "Licensee" means an individual credentialed as a certified physician assistant, physician assistant, or physician assistant-surgical assistant.~~

~~(5) "Commission approved program" means a physician assistant program accredited by the Committee on Allied Health Education and Accreditation (CAHEA); the Commission on Accreditation of Allied Health Education Programs (CAAHEP); the Accreditation Review Committee on Education for the Physician Assistant (ARC-PA); or any successive accrediting organizations.~~

~~(6) "Sponsoring physician" means the physician who is responsible for consulting with a certified physician assistant. An appropriate degree of supervision is involved.~~

~~(7) "Supervising physician" means the physician who is responsible for closely supervising, consulting, and reviewing the work of a physician assistant.~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Commission" means the Washington state medical quality assurance commission.

(2) "Commission approved program" means a physician assistant program accredited by the committee on allied health education and accreditation (CAHEA); the commission on accreditation of allied health education programs (CAAHEP); the accreditation review committee on education for the physician assistant (ARC-PA); or other substantially equivalent organization(s) approved by the commission.

(3) "Delegation agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a sponsoring physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.

(4) "NCCPA" means National Commission on Certification of Physician Assistants.

(5) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.

(6) "Physician" means an individual licensed under chapter 18.71 RCW.

(7) "Physician assistant" means a person who is licensed under chapter 18.71A RCW by the commission to practice medicine to a limited extent only under the supervision of a physician as defined in chapter 18.71 RCW.

(a) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).

(b) "Noncertified physician assistant" means an individual who:

(i) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination, and was licensed in Washington state prior to July 1, 1999;

(ii) Is qualified based on work experience and education and was licensed prior to July 1, 1989;

(iii) Graduated from an international medical school and was licensed prior to July 1, 1989; or

(iv) Holds an interim permit issued pursuant to RCW 18.71A.020(1).

(c) "Physician assistant-surgical assistant" means an individual who was licensed under chapter 18.71A RCW as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-250 and 246-918-260.

(8) "Remote site" means a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.

(9) "Supervising physician" means a sponsoring or alternate physician providing clinical oversight for a physician assistant.

(a) "Sponsoring physician" means any physician licensed under chapter 18.71 RCW and identified in a delegation agreement as providing primary clinical and administrative oversight for a physician assistant.

(b) "Alternate physician" means any physician licensed under chapter 18.71 or 18.57 RCW who provides clinical oversight of a physician assistant in place of or in addition to the sponsoring physician.

AMENDATORY SECTION (Amending WSR 01-18-085, filed 9/5/01, effective 10/6/01)

WAC 246-918-007 Application withdrawals. An ((~~application~~)) applicant for a license or interim permit may not ((~~be withdrawn~~)) withdraw his or her application if grounds for denial exist.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-035 ((~~Certified physician assistant~~)) Prescriptions. ((~~A certified physician assistant may issue written or oral prescriptions as provided herein when approved by the commission or its designee.~~

~~(1) Written prescriptions shall include the name, address, and telephone number of the physician or medical group; the name and address of the patient and the date on which the prescription was written.~~

~~(a) The certified physician assistant shall sign such a prescription using his or her own name followed by the letters "P.A.-C."~~

~~(b) The written prescriptions for schedule two through five must include the physician assistant's D.E.A. registration number, or, if none, the sponsoring physician's D.E.A. registration number, followed by the letters "P.A. C" and the physician assistant's license number.~~

~~(2) A certified physician assistant employed or extended privileges by a hospital, nursing home or other health care institution may, if permissible under the bylaws, rules and regulations of the institution, order pharmaceutical agents for inpatients under the care of the sponsoring physician(s).~~

~~(3) The license of a certified physician assistant who issues a prescription in violation of these provisions shall be subject to revocation or suspension.~~

~~(4) Certified physician assistants may dispense medications the certified physician assistant has prescribed from office supplies. The certified physician assistant shall comply with the state laws concerning prescription labeling requirements.~~)) (1) A physician assistant may prescribe, order, administer, and dispense legend drugs and Schedule II, III, IV, or V controlled substances consistent with the scope of practice in an approved delegation agreement provided:

(a) The physician assistant has an active DEA registration; and

(b) All prescriptions comply with state and federal prescription regulations.

(2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the physician assistant will be similarly limited in his or her prescribing privileges, unless otherwise authorized in writing by the commission.

AMENDATORY SECTION (Amending WSR 01-18-085, filed 9/5/01, effective 10/6/01)

WAC 246-918-050 Physician assistant qualifications ((~~effective July 1, 1999~~)) for interim permits. ((~~Individuals applying to the commission under chapter 18.71A RCW after July 1, 1999, must have graduated from an accredited physician assistant program approved by the commission and be certified by successful completion of the NCCPA examination: EXCEPT those applying for an interim permit under RCW 18.71A.020(1) who will have one year from issuance of the interim permit to successfully complete the examination.~~)) An interim permit is a limited license. The permit allows an individual who has graduated from a commission approved program within the previous twelve months to practice prior to successfully passing the commission approved licensing examination.

(1) An individual applying to the commission for an interim permit under RCW 18.71A.020(1) must have graduated from an accredited commission approved physician assistant program.

(2) An interim permit is valid for one year from completion of a commission approved physician assistant training program. The interim permit may not be renewed.

(3) An applicant for a physician assistant interim permit must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Applicable fees as specified in WAC 246-918-990; and

(c) Requirements as specified in WAC 246-918-080.

(4) An interim permit holder may not work in a remote site.

NEW SECTION

WAC 246-918-055 Delegation agreements. (1) The physician assistant and sponsoring physician must submit a joint delegation agreement on forms provided by the commission. A physician assistant may not begin practicing without written commission approval of a delegation agreement.

(2) The delegation agreement must specify:

(a) The names and Washington state license numbers of the sponsoring physician and alternate physician, if any. In

the case of a group practice, the alternate physicians do not need to be individually identified;

(b) A detailed description of the scope of practice of the physician assistant;

(c) A description of the supervision process for the practice; and

(d) The location of the primary practice and all remote sites and the amount of time spent by the physician assistant at each site.

(3) The sponsoring physician and the physician assistant shall determine which services may be performed and the degree of supervision under which the physician assistant performs the services.

(4) The physician assistant's scope of practice may not exceed the scope of practice of the supervising physician.

(5) A physician assistant practicing in a multispecialty group or organization may need more than one delegation agreement depending on the physician assistant's training and the scope of practice of the physician(s) the physician assistant will be working with.

(6) It is the joint responsibility of the physician assistant and the supervising physician(s) to notify the commission in writing of any significant changes in the scope of practice of the physician assistant. The commission or its designee will evaluate the changes and determine whether a new delegation agreement is required.

(7) A physician may enter into delegation agreements with up to five physician assistants, but may petition the commission for a waiver of this limit. However, no physician may have under his or her supervision:

(a) More than three physician assistants who are working in remote sites as provided in WAC 246-918-120; or

(b) More physician assistants than the physician can adequately supervise.

(8) Within thirty days of termination of the working relationship, the sponsoring physician or the physician assistant shall submit a letter to the commission indicating the relationship has been terminated.

(9) Whenever a physician assistant is practicing in a manner inconsistent with the approved delegation agreement, the commission may take disciplinary action under chapter 18.130 RCW.

AMENDATORY SECTION (Amending WSR 10-05-029, filed 2/9/10, effective 2/11/10)

WAC 246-918-075 Background check—Temporary practice permit. ((~~The medical quality assurance commission (MQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The MQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.~~

~~(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the MQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.~~

~~The MQAC will issue a temporary practice permit that is valid for six months. A one time extension of six months will be granted if the national background check report has not been received by the MQAC.~~

~~(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant.~~

~~(3) The MQAC issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.~~

~~(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.~~)) The commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the commission is valid for six months. A one-time extension of six months may be granted if the national background check report has not been received by the commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant provided that the temporary practice permit holder has a delegation agreement approved by the commission.

(3) The commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

AMENDATORY SECTION (Amending WSR 01-18-085, filed 9/5/01, effective 10/6/01)

WAC 246-918-080 Physician assistant—Requirements for licensure. ((~~(1) Application procedure. Applications may be made jointly by the physician and the physician assistant on forms supplied by the commission. Applications and supporting documents must be on file in the commission office prior to consideration for a license or interim permit.~~

~~(2) No physician assistant or physician assistant-surgical assistant shall begin practice without commission approval of~~

~~the practice plan of that working relationship. Practice plans must be submitted on forms provided by the commission.~~

~~(3) Changes or additions in supervision. In the event that a physician assistant or physician assistant-surgical assistant who is currently credentialed desires to become associated with another physician, he or she must submit a new practice plan. See WAC 246-918-110 regarding termination of working relationship.~~)) (1) Except for a physician assistant licensed prior to July 1, 1999, individuals applying to the commission for licensure as a physician assistant must have graduated from an accredited commission approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as a physician assistant must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Proof the applicant has completed an accredited commission approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-918-990;

(d) Proof of completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8; and

(e) Other information required by the commission.

(3) The commission will only consider complete applications with all supporting documents for licensure.

(4) A physician assistant may not begin practicing without written commission approval of a delegation agreement.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-918-081 ((~~Expired license.~~)) How to return to active status when a license has expired. (1) ((~~If the license has expired for three years or less the practitioner~~)) To return to active status the physician assistant must meet the requirements of chapter 246-12 WAC, Part 2, which includes paying the applicable fees under WAC 246-918-990 and meeting the continuing medical education requirements under WAC 246-918-180.

(2) If the license has expired for over three years, the ((~~practitioner must:~~

~~(a) Reapply for licensing under current requirements;~~

~~(b) Meet the requirements of chapter 246-12 WAC, Part 2~~)) physician assistant must meet requirements in subsection (1) of this section and the current licensure requirements under WAC 246-918-080.

NEW SECTION

WAC 246-918-082 Requirements for obtaining an allopathic physician assistant license for those who hold an active osteopathic physician assistant license. A person who holds a full, active, unrestricted osteopathic physician assistant license that is in good standing issued by the Washington state board of osteopathic medicine and surgery and meets current licensing requirements may apply for licensure as an allopathic physician assistant through an abbreviated application process.

(1) An applicant for an allopathic physician assistant license must:

(a) Hold an active, unrestricted license as an osteopathic physician assistant issued by the Washington state board of osteopathic medicine and surgery;

(b) Submit a completed application on forms provided by the commission; and

(c) Submit any fees required under WAC 246-918-990.

(2) An allopathic physician assistant may not begin practice without written commission approval of the delegation agreement.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-095 Scope of practice—Osteopathic alternate physician. The physician assistant ((~~licensed under chapter 18.71A RCW practices under the practice plan~~)) shall practice under the delegation agreement and prescriptive authority approved by the commission whether the ((~~alternate sponsoring physician or~~)) alternate supervising physician is licensed as an osteopathic physician under chapter 18.57 RCW or an allopathic physician under chapter 18.71 RCW.

AMENDATORY SECTION (Amending WSR 94-15-065, filed 7/19/94, effective 8/19/94)

WAC 246-918-105 ((~~Disciplinary action of sponsoring or supervising physician.~~)) Practice limitations due to disciplinary action. ((~~To the extent that the sponsoring or supervising physician's practice has been limited by disciplinary action under chapter 18.130 RCW, the physician assistant's practice is similarly limited while working under that physician's sponsorship or supervision.~~)) (1) To the extent a supervising physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physician's agreement to such limitation, the physician assistant will be similarly limited in his or her prescribing privileges, unless otherwise authorized in writing by the commission.

(2) The physician assistant shall notify their sponsoring physician whenever the physician assistant is the subject of an investigation or disciplinary action by the commission. The commission may notify the sponsoring physician or other supervising physicians of such matters as appropriate.

AMENDATORY SECTION (Amending WSR 04-11-100, filed 5/19/04, effective 6/30/04)

WAC 246-918-120 Remote site((~~—Utilization—Limitations, geographic~~)). (1) ((~~No licensee shall be utilized~~)) A physician assistant may not work in a remote site without approval ((~~by~~)) of the commission or its designee. ((~~A remote site is defined as a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.~~)) A physician may not supervise more than three physician assistants who are working in remote sites, or more physician assistants than the physician can adequately supervise.

(2) ((~~Approval by~~)) The commission or its designee may ((~~be granted to utilize a licensee~~)) grant the use of a physician assistant in a remote site if:

(a) There is a demonstrated need for such ((~~utilization~~)) use;

(b) Adequate provision for timely communication exists between the ((~~primary or alternate~~)) supervising physician and the ((~~licensee exists~~)) physician assistant;

(c) The ((~~responsible sponsoring or~~)) supervising physician spends at least ten percent of the practice time of the ((~~licensee~~)) physician assistant in the remote site. In the case of part time or unique practice settings, the physician may petition the commission to modify the on-site requirement providing the ((~~sponsoring~~)) supervising physician demonstrates that adequate supervision is being maintained by an alternate method including, but not limited to, telecommunication. The commission will consider each request on an individual basis((~~;~~)).

(((~~(d)~~)) (3) The names of the ((~~sponsoring or~~)) supervising physician and the ((~~licensee shall~~)) physician assistant must be prominently displayed at the entrance to the clinic or in the reception area of the remote site.

(((~~(3) No~~)) (4) A physician assistant holding an interim permit ((~~shall be utilized~~)) may not work in a remote site ((~~setting~~)).

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-130 Physician assistant((~~s~~)) identification. (1) A physician assistant ((~~may perform only those services as outlined in the standardized procedures reference and guidelines established by the commission. If said assistant is being trained to perform additional procedures beyond those established by the commission, the training must be carried out under the direct, personal supervision of the supervising physician or a qualified person mutually agreed upon by the supervising physician and the physician assistant. Requests for approval of newly acquired skills shall be submitted to the commission and may be granted by a reviewing commission member or at any regular meeting of the commission.~~

~~(2) The physician assistant may not practice in a remote site, or prescribe controlled substances unless specifically approved by the commission or its designee.~~

~~(3) A physician assistant may sign and attest to any document that might ordinarily be signed by a licensed physician, to include but not limited to such things as birth and death certificates.~~

~~(4) A physician assistant and supervising physician shall ensure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the physician assistant. Every written entry shall be reviewed and countersigned by the supervising physician within two working days unless a different time period is authorized by the commission.~~

~~(5) It shall be the responsibility of the physician assistant and the supervising physician to ensure that adequate supervision and review of the work of the physician assistant are provided.~~

~~(6) In the temporary absence of the supervising physician, the supervisory and review mechanisms shall be provided by a designated alternate supervisor(s).~~

~~(7) The physician assistant, at all times when meeting or treating patients, must wear a badge identifying him or her as a physician assistant.~~

~~(8) No physician assistant may be presented in any manner which would tend to mislead the public as to his or her title~~)) must clearly identify himself or herself as a physician assistant and must appropriately display on his or her person identification as a physician assistant.

(2) A physician assistant must not present himself or herself in any manner which would tend to mislead the public as to his or her title.

AMENDATORY SECTION (Amending WSR 99-23-090, filed 11/16/99, effective 1/1/00)

WAC 246-918-171 Renewal and continuing medical education cycle ((~~revision~~)). ((~~Beginning January 1, 2000, the one-year renewal cycle for physician assistants will transition to a two-year cycle and two-year continuing medical education cycle. The renewal and continuing medical education will be as follows:~~

~~(1) Effective January 1, 2000, any physician assistant whose birth year is an even number will renew their credential for twenty-four months and every two years thereafter. Those physician assistants must obtain one hundred hours of continuing medical education within the twenty-four months following the date their first two-year license is issued and every two years thereafter.~~

~~(2) Effective January 1, 2001, any physician assistant whose birth year is an odd number will renew their credential for twenty-four months and every two years thereafter. Those physician assistants must obtain one hundred hours of continuing medical education within the twenty-four months following the date their first two-year license is issued and every two years thereafter.~~)) (1) Under WAC 246-12-020, an initial credential issued within ninety days of the physician assistant's birthday does not expire until the physician assistant's next birthday.

(2) A physician assistant must renew his or her license every two years on his or her birthday. Renewal fees are accepted no sooner than ninety days prior to the expiration date.

(3) Each physician assistant will have two years to meet the continuing medical education requirements in WAC 246-918-180. The review period begins on the first birthday after receiving the initial license.

NEW SECTION

WAC 246-918-175 Retired active license. (1) To obtain a retired active license a physician assistant must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) A physician assistant with a retired active license must have a delegation agreement approved by the commission in order to practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180

(5)(a) and engaged in authorized emergency management activities.

(3) A physician assistant with a retired active license may not receive compensation for health care services.

(4) A physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time nonpermanent basis.

(5) A retired active license expires every two years on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ninety days prior to the expiration date.

(6) A physician assistant with a retired active license shall report one hundred hours of continuing education at every renewal.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-918-180 Continuing medical education requirements. (1) ((~~Licensed~~)) A physician assistant((~~s~~)) must complete one hundred hours of continuing education every two years as required in chapter 246-12 WAC, Part 7, which may be audited for compliance at the discretion of the commission.

(2) In lieu of one hundred hours of continuing medical education the commission will accept ((~~a current certification with the National Commission for the Certification of Physician Assistants and will consider approval of other programs as they are developed~~)):

(a) Current certification with the NCCPA; or

(b) Compliance with a continuing maintenance of competency program through the American Academy of Physician Assistants (AAPA) or the NCCPA; or

(c) Other programs approved by the commission.

(3) The commission approves the following categories of creditable continuing medical education. A minimum of forty credit hours must be earned in Category I.

Category I	Continuing medical education activities with accredited sponsorship
Category II	Continuing medical education activities with nonaccredited sponsorship and other meritorious learning experience.

(4) The commission adopts the standards approved by the ((~~American Academy of Physician Assistants~~)) AAPA for the evaluation of continuing medical education requirements in determining the acceptance and category of any continuing medical education experience.

(5) ((~~It will not be necessary to inquire into the~~)) A physician assistant does not need prior approval of any continuing medical education. The commission will accept any continuing medical education that reasonably falls within ((~~these regulations~~)) the requirements of this section and relies upon each ((~~licensee's~~)) physician assistant's integrity ((~~in complying with this~~)) to comply with these requirements.

(6) A continuing medical education sponsor((~~s need~~)) does not need to apply for ((~~nor~~)) or expect to receive prior commission approval for a formal continuing medical education program. The continuing medical education category will depend solely upon the accredited status of the organization or institution. The number of hours may be determined by counting the contact hours of instruction and rounding to the nearest quarter hour. The commission relies upon the integrity of the program sponsors to present continuing medical education for ((~~licensees~~)) the physician assistant that constitutes a meritorious learning experience.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-250 Basic physician assistant-surgical assistant (PASA) duties. The physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certifying exam shall:

(1) Function only in the operating room as approved by the commission;

(2) Only be allowed to close skin and subcutaneous tissue, placing suture ligatures, clamping, tying and clipping of blood vessels, ((~~use of cautery~~)) and cauterizing for hemostasis under direct supervision;

(3) ((~~Not be allowed to perform any independent surgical procedures, even under direct supervision, and will~~)) Only be allowed to ((~~only~~)) assist the operating surgeon. The PASA may not perform any independent surgical procedures, even under direct supervision;

(4) Have no prescriptive authority; and

(5) Only write operative notes. The PASA may not write any progress notes or order(s) on hospitalized patients((~~, except operative notes~~)).

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-918-260 Physician assistant-surgical assistant (PASA)—((~~Utilization~~)) Use and supervision. ((~~(1) Responsibility of physician assistant-surgical assistant. The physician assistant-surgical assistant is responsible for performing only those tasks authorized by the supervising physician(s) and within the scope of physician assistant-surgical assistant practice described in WAC 246-918-250. The physician assistant-surgical assistant is responsible for ensuring his or her compliance with the rules regulating physician assistant-surgical assistant practice and failure to comply may constitute grounds for disciplinary action.~~

~~(2) Limitations, geographic. No physician assistant-surgical assistant shall be utilized in a place geographically separated from the institution in which the assistant and the supervising physician are authorized to practice.~~

~~(3) Responsibility of supervising physician(s). Each physician assistant-surgical assistant shall perform those tasks he or she is authorized to perform only under the supervision and control of the supervising physician(s), but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered. It shall be the responsibility of the supervising physician(s) to insure that:~~

~~(a) The operating surgeon in each case directly supervises and reviews the work of the physician assistant-surgical assistant. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;~~

~~(b) The physician assistant-surgical assistant shall wear a badge identifying him or her as a "physician assistant-surgical assistant" or "P.A.S.A." In all written documents and other communication modalities pertaining to his or her professional activities as a physician assistant-surgical assistant, the physician assistant-surgical assistant shall clearly denominate his or her profession as a "physician assistant-surgical assistant" or "P.A.S.A.";~~

~~(c) The physician assistant-surgical assistant is not presented in any manner which would tend to mislead the public as to his or her title.~~)) The following section applies to the physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certification exam.

(1) Responsibility of PASA. The PASA is responsible for performing only those tasks authorized by the supervising physician(s) and within the scope of PASA practice described in WAC 246-918-250. The PASA is responsible for ensuring his or her compliance with the rules regulating PASA practice and failure to comply may constitute grounds for disciplinary action.

(2) Limitations, geographic. No PASA may be used in a place geographically separated from the institution in which the PASA and the supervising physician are authorized to practice.

(3) Responsibility of supervising physician(s). Each PASA shall perform those tasks he or she is authorized to perform only under the supervision and control of the supervising physician(s). Such supervision and control may not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered. It is the responsibility of the supervising physician(s) to ensure that:

(a) The operating surgeon in each case directly supervises and reviews the work of the PASA. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;

(b) The PASA shall wear identification as a "physician assistant-surgical assistant" or "PASA." In all written documents and other communication modalities pertaining to his or her professional activities as a PASA, the PASA shall clearly denominate his or her profession as a "physician assistant-surgical assistant" or "PASA";

(c) The PASA is not presented in any manner which would tend to mislead the public as to his or her title.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-918-030	Prescriptions issued by physician assistants.
WAC 246-918-070	Credentialing of physician assistants.
WAC 246-918-090	Physician assistant and certified physician assistant utilization.
WAC 246-918-110	Termination of sponsorship or supervision.
WAC 246-918-140	Certified physician assistants.
WAC 246-918-150	Assistance or consultation with other physicians.
WAC 246-918-170	Physician assistant and certified physician assistant AIDS prevention and information education requirements.
WAC 246-918-230	Practice of medicine—Surgical procedures.
WAC 246-918-310	Acupuncture—Definition.

WSR 15-04-136
PERMANENT RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed February 4, 2015, 11:19 a.m., effective March 7, 2015]

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

Purpose: This rule modifies license limitations and upgrade requirements for a new pilot in the Grays Harbor pilotage district. These changes will allow a pilot in his/her first five years to perform pilotage services on vessels more in line with the traffic currently calling in the Grays Harbor district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-082.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 14-16-087 on August 4, 2014.

Changes Other than Editing from Proposed to Adopted Version: Slight modifications were made to the tonnage categories in license years three, four and five along with the corresponding license upgrade requirements for those license years.

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

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

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

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

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

Date Adopted: January 15, 2015.

Peggy Larson
Executive Director

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-082 Limitations on new pilots. (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during his/her first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and liquefied petroleum gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - License limitation periods. Except for trips being made for pilot license upgrades, licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	30,000 GT (ITC) or 660 feet except for passenger vessels which may only have a maximum size of 5000 GT (ITC)
2	30,000 GT (ITC)	38,000 GT (ITC)
3	38,000 GT (ITC)	48,000 GT (ITC)
4	45,000 GT (ITC)	60,000 GT (ITC)
5	55,000 GT (ITC)	75,000 GT (ITC)

(3) Puget Sound pilotage district - Pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of eight trips to be made by each pilot in the last one hundred twenty days of each year of the license limitation periods specified in subsection (2) of this section((~~, except that pilots whose license anniversary date is less than one hundred twenty days after the effective date of this section shall only be required to make three such trips prior to the first license anniversary subsequent to the effective date of this section~~)). As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, or between the pilot station and a port. The supervising pilots shall complete and submit to the board an evaluation form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - License limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products <u>as Bulk Cargo</u>	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	((~~25,000~~)) <u>32,000</u> GT (ITC) except that piloting on vessels of any size is prohibited through the Chehalis River Bridge unless vessel is in ballast and does not exceed 25,000 GT (ITC)
2	((~~10,000~~)) <u>15,000</u> GT (ITC)	((~~30,000~~)) <u>42,000</u> GT (ITC)
3	((~~45,000~~)) <u>32,000</u> GT (ITC)	((~~45,000~~)) <u>52,000</u> GT (ITC)
4	((~~60,000~~)) <u>42,000</u> GT (ITC)	((~~60,000~~)) <u>62,000</u> GT (ITC)
5	((~~75,000~~)) <u>52,000</u> GT (ITC)	((~~75,000~~)) <u>72,000</u> GT (ITC)

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - Pilot license upgrade requirements.

(a) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River <u>B</u>ridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of ((~~25,000~~)) <u>32,000</u> GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make two license upgrade trips on tank vessels in excess of ((~~10,000~~)) <u>15,000</u> GT (ITC) and ((~~one~~)) <u>two</u> trip<u>s</u> on ((~~a~~)) <u>other</u> vessel<u>s</u> in excess of ((~~30,000~~)) <u>42,000</u> GT

(ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and ((~~one~~)) two of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the ((~~one~~)) two upgrade trips upon ((~~a~~)) other vessels in excess of ((~~30,000~~)) 42,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make ((~~three~~)) two license upgrade trips on tank vessels in excess of 32,000 GT (ITC) and two trips on other vessels in excess of ((~~45,000~~)) 52,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and ((~~one~~)) two of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 42,000 GT (ITC) and two trips on other vessels in excess of ((~~60,000~~)) 62,000 GT (ITC).

(e) Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 52,000 GT (ITC) and two trips on other vessels in excess of ((~~75,000~~)) 72,000 GT (ITC).

(f) If vessels are not available in the Grays Harbor pilotage district to allow a pilot to comply with ((~~(e)~~)) (a) through (e) of this subsection in a timely manner, the board may designate substitute trips in the Puget Sound pilotage district as allowed by law and in so doing may specify the size of the vessel and any other characteristics of the trips that the board deems appropriate. Such designation shall be considered a modification of the pilot's state license to authorize the specified trips in the Puget Sound pilotage district.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he/she shall notify the board and request a revised schedule of limitations.

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that he/she has completed all the required license upgrade trips and the vessel simulator courses.