

**WSR 15-23-104**  
**EXPEDITED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket A-151884—Filed November 18, 2015, 9:21 a.m.]

Title of Rule and Other Identifying Information: This rule making would revise adoption-by-reference dates in Title 480 WAC to incorporate the most recent version of adopted federal rules and other adopted publications.

Affected WAC chapters include chapters 480-14, 480-15, 480-30, 480-31, 480-62, 480-70, 480-75, 480-90, 480-93, 480-100, 480-107, 480-108, and 480-109 WAC.

**Proposed Rule Changes**  
**Adoption by Reference Date Changes and Other Changes**  
**Docket A-151884**

<b>Chapter 480-14 WAC, Motor carriers excluding household goods carriers and common brokers.</b>			
Amend	480-14-999	Adoption by reference	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li>• <b>Title 49 Code of Federal Regulations (C.F.R.)</b>, amends the effective date of adoption to <b>October 6, 2015</b>, for the following:                             <ul style="list-style-type: none"> <li>- Part 171 - General Information, Regulations and Definitions - see Note 1.</li> <li>- Part 172 - Hazardous Materials Table, etc. - see Note 2.</li> <li>- Part 173 - Shippers General Requirements for Shipping and Packages - see Note 3.</li> </ul> </li> </ul>
<b>Chapter 480-15 WAC, Household goods carriers.</b>			
Amend	480-15-999	Adoption by reference	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li>• <b>North American Standard Out-Of-Service Criteria</b>, amends the effective date to <b>April 1, 2015</b> - no significant changes - new edition of previously adopted reference.</li> <li>• <b>Title 49 C.F.R.</b>, amends the effective date of adoption to <b>October 6, 2015</b>, for the following:                             <ul style="list-style-type: none"> <li>- Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs - see Note 4.</li> <li>- Part 375 - Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations - see Note 5.</li> <li>- Part 379 - Preservation of Records - no changes since last adoption.</li> <li>- Part 380 - Special Training Requirements - no changes since last adoption.</li> <li>- Part 382 - Controlled Substance and Alcohol Use and Testing - no changes since last adoption.</li> <li>- Part 383 - Commercial Driver's License Standards; Requirements and Penalties - see Note 6.</li> <li>- Part 385 - Safety Fitness Procedures - see Note 7.</li> <li>- Part 390 - Safety Regulations, General - see Note 8.</li> <li>- Part 391 - Qualification of Drivers - see Note 9.</li> <li>- Part 392 - Driving of Commercial Motor Vehicles - see Note 10.</li> <li>- Part 393 - Parts and Accessories Necessary for Safe Operation - see Note 11.</li> <li>- Part 395 - Hours of Service of Drivers - no changes since last adoption.</li> <li>- Part 396 - Inspection, Repair and Maintenance - no changes since last adoption.</li> <li>- Part 397 - Transportation of Hazardous Materials - see Note 12.</li> </ul> </li> </ul>
<b>Chapter 480-30 WAC, Auto transportation companies.</b>			
Amend	480-30-999	Adoption by reference	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li>• <b>North American Standard Out-Of-Service Criteria</b>, amends the effective date to <b>April 1, 2015</b> - no significant changes - new edition of previously adopted reference.</li> </ul>

			<ul style="list-style-type: none"> <li>• <b>Title 49 C.F.R.</b>, amends the effective date of adoption to <b>October 6, 2015</b>, for the following:             <ul style="list-style-type: none"> <li>- Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs - see Note 4.</li> <li>- Part 375 - Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations - see Note 5.</li> <li>- Part 379 - Preservation of Records - no changes since last adoption.</li> <li>- Part 380 - Special Training Requirements - no changes since last adoption.</li> <li>- Part 382 - Controlled Substance and Alcohol Use and Testing - no changes since last adoption.</li> <li>- Part 383 - Commercial Driver's License Standards; Requirements and Penalties - see Note 6.</li> <li>- Part 385 - Safety Fitness Procedures - see Note 7.</li> <li>- Part 390 - Safety Regulations, General - see Note 8.</li> <li>- Part 391 - Qualification of Drivers - see Note 9.</li> <li>- Part 392 - Driving of Commercial Motor Vehicles - see Note 10.</li> <li>- Part 393 - Parts and Accessories Necessary for Safe Operation - see Note 11.</li> <li>- Part 395 - Hours of Service of Drivers - no changes since last adoption.</li> <li>- Part 396 - Inspection, Repair and Maintenance - no changes since last adoption.</li> <li>- Part 397 - Transportation of Hazardous Materials - see Note 12.</li> </ul> </li> </ul>
<b>Chapter 480-31 WAC, Private, nonprofit transportation providers.</b>			
Amend	480-31-999	Adoption by reference	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>North American Standard Out-Of-Service Criteria</b>, amends the effective date to <b>April 1, 2015</b> - no significant changes - new edition of previously adopted reference.</li> <li>• <b>Title 49 C.F.R.</b>, amends the effective date of adoption to <b>October 6, 2015</b>, for the following:             <ul style="list-style-type: none"> <li>- Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs - see Note 4.</li> <li>- Part 375 - Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations - see Note 5.</li> <li>- Part 379 - Preservation of Records - no changes since last adoption.</li> <li>- Part 380 - Special Training Requirements - no changes since last adoption.</li> <li>- Part 382 - Controlled Substance and Alcohol Use and Testing - no changes since last adoption.</li> <li>- Part 383 - Commercial Driver's License Standards; Requirements and Penalties - see Note 6.</li> <li>- Part 385 - Safety Fitness Procedures - see Note 7.</li> <li>- Part 390 - Safety Regulations, General - see Note 8.</li> <li>- Part 391 - Qualification of Drivers - see Note 9.</li> <li>- Part 392 - Driving of Commercial Motor Vehicles - see Note 10.</li> <li>- Part 393 - Parts and Accessories Necessary for Safe Operation - see Note 11.</li> <li>- Part 395 - Hours of Service of Drivers - no changes since last adoption.</li> <li>- Part 396 - Inspection, Repair and Maintenance - no changes since last adoption.</li> <li>- Part 397 - Transportation of Hazardous Materials - see Note 12.</li> </ul> </li> </ul>
<b>Chapter 480-62 WAC, Railroad companies—Operations.</b>			
Amend	480-62-999	Adoption by reference	1. Adoption by reference dates changed as follows:

			<ul style="list-style-type: none"> <li>• <b>Title 49 C.F.R.</b>, amends the effective date of adoption to <b>October 6, 2015</b>, for the following:             <ul style="list-style-type: none"> <li>- Part 171 - General Information, Regulations, and Definitions - see Note 1.</li> <li>- Part 172 - Emergency Response Information, Training Requirements, and Security Plans - see Note 2.</li> <li>- Part 173 - Shippers General Requirements for Shipments and Packages - see Note 3.</li> <li>- Part 174 - Carriage by Rail - see Note 13.</li> <li>- Part 178 - Specifications for Packagings - no changes made since last adoption date.</li> <li>- Part 179 - Specifications for Tank Cars - no changes made since last adoption date.</li> <li>- Part 209 - Railroad Safety Enforcement Procedures - no changes since last adoption date.</li> <li>- Part 211 - Rules of Practice - no changes made since last adoption date.</li> <li>- Part 212 - State Safety Participation Regulations - no changes made since last adoption date.</li> <li>- Part 213 - Track Safety Standards - no changes since last adoption date.</li> <li>- Part 214 - Railroad Workplace Safety - see Note 17.</li> <li>- Part 217 - Railroad Operating Rules - no changes made since last adoption date.</li> <li>- Part 218 - Railroad Operating Practices - no changes made since last adoption date.</li> <li>- Part 219 - Control of Alcohol and Drug Use - no changes made since last adoption date.</li> <li>- Part 220 - Railroad Communications - no changes made since last adoption date.</li> <li>- Part 221 - Rear-end Marking Device - no changes made since last adoption date.</li> <li>- Part 225 - Railroads Accidents/Incidents - no changes made since last adoption date.</li> <li>- Part 228 - Hours of Service of Railroad Employees - no changes made since last adoption date.</li> <li>- Part 234 - Grade Crossing Signal System Safety- see Note 18.</li> <li>- Part 239 - Passenger Train Emergency Preparedness - no changes made since last adoption date.</li> <li>- Part 240 - Qualification and Certification of Locomotive Engineers - no changes made since last adoption date.</li> <li>- Part 570 - Vehicle In Use Inspection Standards - no changes made since last adoption.</li> </ul> </li> </ul>
<p><b>Chapter 480-70 WAC, Solid waste and/or refuse collection companies.</b></p>			
<p>Amend</p>	<p>480-70-999</p>	<p>Adoption by reference</p>	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>North American Standard Out-Of-Service Criteria</b>, amends the effective date to <b>April 1, 2015</b> - no significant changes - new edition of previously adopted reference.</li> <li>• <b>Title 40 C.F.R.</b>, amends the effective date of adoption to <b>October 6, 2015</b>, for the following:             <ul style="list-style-type: none"> <li>- Part 262 - Standards Applicable to Generators of Hazardous Waste - see Note 19.</li> </ul> </li> <li>• <b>Title 49 C.F.R.</b>, amends the effective date of adoption to <b>October 6, 2015</b>, for the following:             <ul style="list-style-type: none"> <li>- Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs - no changes since last adoption.</li> <li>- Part 171 - General Information, Regulations and Definitions - see Note 1.</li> </ul> </li> </ul>

			<ul style="list-style-type: none"> <li>- Part 172 - Hazardous Materials Table, etc. - see Note 2.</li> <li>- Part 173 - Shippers General Requirements for Shipping and Packages - see Note 3.</li> <li>- Part 174 - Carriage by Rail - see Note 13.</li> <li>- Part 175 - Carriage by Aircraft - see Note 14.</li> <li>- Part 176 - Carriage by Vessel - see Note 15.</li> <li>- Part 177 - Carriage by Public Highway - no changes from last adoption.</li> <li>- Part 178 - Specifications for Packagings - no changes from last adoption</li> <li>- Part 179 - Specifications for Tank Cars - see Note 16.</li> <li>- Part 180 - Continuing Qualification and Maintenance of Packagings - no changes from last adoption.</li> <li>- Part 375 - Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations - see Note 5.</li> <li>- Part 379 - Preservation of Records - no changes since last adoption.</li> <li>- Part 380 - Special Training Requirements - no changes since last adoption.</li> <li>- Part 382 - Controlled Substance and Alcohol Use and Testing - no changes since last adoption.</li> <li>- Part 383 - Commercial Driver's License Standards; Requirements and Penalties - see Note 6.</li> <li>- Part 385 - Safety Fitness Procedures - see Note 7.</li> <li>- Part 390 - Safety Regulations, General - see Note 8.</li> <li>- Part 391 - Qualification of Drivers - see Note 9.</li> <li>- Part 392 - Driving of Commercial Motor Vehicles - see Note 10.</li> <li>- Part 393 - Parts and Accessories Necessary for Safe Operation - see Note 11.</li> <li>- Part 395 - Hours of Service of Drivers - no changes since last adoption.</li> <li>- Part 396 - Inspection, Repair and Maintenance - no changes since last adoption.</li> <li>- Part 397 - Transportation of Hazardous Materials - see Note 12.</li> </ul>
<b>Chapter 480-75 WAC, Hazardous liquid pipeline—Safety.</b>			
Amend	480-75-999	Adoption by reference	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 49 C.F.R.</b>, amends the effective date of adoption to <b>March 6, 2015</b>, for the following: <ul style="list-style-type: none"> <li>- Part 195 - Transportation of Hazardous Liquids by Pipeline - no changes since last edition.</li> <li>- Part 199 - Drug and Alcohol Testing - no changes since last edition.</li> </ul> </li> </ul>
<b>Chapter 480-90 WAC, Gas companies—Operations.</b>			
Amend	480-90-999	Adoption by reference	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 18 C.F.R.</b>, amends the effective date of adoption to April 1, 2015, for the entire chapter - see Note 20.</li> </ul> <p>2. Adoption by reference text changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 18 C.F.R.</b>, amends subsection (1)(d) to rephrase the availability of the resource at Government Printing Office and include "It is also available for inspection at the commission branch of the state library." - see Note 21.</li> <li>• <b>Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities</b>, amends subsection (2)(c) to include the internet address for National Association of Regulatory Utility Commissioners (NARUC) publications store <a href="http://www.naruc.org/Store">http://www.naruc.org/Store</a> and add "It is also available for inspection at the commission branch of the state library." - see Note 22.</li> </ul>

<b>Chapter 480-93 WAC, Gas companies—Safety.</b>			
Amend	480-93-999	Adoption by reference	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 49 C.F.R.</b>, amends the effective date of adoption to <b>March 11, 2015</b>, for the following: <ul style="list-style-type: none"> <li>- Part 191 - Report Forms - no change since last edition.</li> <li>- Part 193 - Liquefied Natural Gas and Facilities - no change since last edition</li> <li>- Part 192 - Transportation of Natural and Other Gas by Pipeline- see Note 23.</li> </ul> </li> </ul>
<b>Chapter 480-100 WAC, Electric companies—Operations.</b>			
Amend	480-100-999	Adoption by reference	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 18 C.F.R.</b>, amends the effective date of adoption to April 1, 2015, for the entire chapter - see Note 24.</li> <li>• <b>The National Electrical Code (NEC)</b>, amends the effective date of adoption to <b>September 3, 2014</b> - see Note 25.</li> </ul> <p>2. Adoption by Reference text changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 18 C.F.R.</b>, amends subsection (1)(d) to rephrase the availability of the resource at Government Printing Office - see Note 26.</li> <li>• <b>Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities</b>, amends subsection (2)(c) to include the internet address for NARUC publications store <a href="http://www.naruc.org/Store">http://www.naruc.org/Store</a> and add "It is also available for inspection at the commission branch of the state library." - see Note 27.</li> <li>• <b>NEC</b>, amends subsection (3)(a) to include "errata 70-14-2 published December 3, 2013, 70-14-3 published April 21, 2014, and 70-14-4 published July 29, 2014." - see Note 28.</li> <li>• <b>The American National Standard for Electric Meters: Code for Electricity Metering</b>, amends subsection (4)(c) to provide the internet addresses to purchase ANSI C12.1: <a href="http://webstore.ansi.org/">http://webstore.ansi.org/</a> (PDF) and <a href="https://global.ihp.com/">https://global.ihp.com/</a> (PDF or print) - see Note 29.</li> </ul>
<b>Chapter 480-107 WAC, Electric companies—Purchases of electricity from qualifying facilities and independent power producers and purchases of electrical savings from conservation suppliers.</b>			
Amend	480-107-999	Adoption by reference	<p>1. Adoption by reference text changed as follows - see Note 30.</p> <p>In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. The publication, effective date, reference within this chapter, and availability of the resources are as follows:</p> <ul style="list-style-type: none"> <li>• <b>Public Utilities Regulatory Policies Act of 1978 (PURPA), Title II, Sections 201 and 210</b>, cited as 16 U.S.C. § 796 and 824a-3, including all amendments is published by the United States Government Printing Office. <ul style="list-style-type: none"> <li>(a) The commission adopts the version in effect on August 8, 2005.</li> <li>(b) This publication is reference[d] in WAC 480-107-001 Purpose and scope.</li> <li>(c) Copies of U.S.C. are available from the United States Government Printing Office in Washington, D.C. or online at <a href="http://www.gpo.gov/">http://www.gpo.gov/</a>.</li> </ul> </li> <li>• <b>Title 18 C.F.R. Part 292</b>, cited as 18 C.F.R. § 292, including all appendices and amendments is published by the United States Government Printing Office. <ul style="list-style-type: none"> <li>(a) The commission adopts the version in effect on April 1, 2015.</li> <li>(b) This publication is referenced in WAC 480-107-001 Purpose and scope.</li> </ul> <p>Copies of Title 18 C.F.R. are available from the United States Government Printing Office in Washington, D.C. or online at <a href="http://www.gpo.gov/">http://www.gpo.gov/</a>, and from various third-party vendors. It is also available for inspection at the commission branch of the state library.</p> </li> </ul>
<b>Chapter 480-108 WAC, Electric companies—Interconnection with electric generators.</b>			
Amend	480-108-999	Adoption by reference	<p>1. Adoption by reference dates changed as follows:</p>

			<ul style="list-style-type: none"> <li>• <b>NEC</b>, amends the effective date to <b>April 7, 2015</b> - no significant changes - new edition of previously adopted reference.</li> <li>• <b>Underwriters Laboratories (UL) UL Standard 1741</b>, amends the effective date to <b>January 7, 2015</b> - no significant changes - new edition of previously adopted reference.</li> <li>• <b>Occupational Safety and Health Administration (OSHA) Standard at 29 C.F.R. 1910.269</b>, amends the effective date to <b>October 5, 2015</b> - no significant changes - new edition of previously adopted reference.</li> </ul>
<b>Chapter 480-109 WAC, Electric companies—Acquisitions.</b>			
Amend	480-110-999	Adoption by reference	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Northwest Power and Conservation Council's Regional Technical Forum</b>, amends the effective date of adoption to January 10, 2016, for the following: <ul style="list-style-type: none"> <li>- Unit energy savings with status of "Active" or "Under Review."</li> <li>- Standard protocols with status of "Active" or "Under Review."</li> </ul> </li> </ul>

**Notes:**

**1. 49 C.F.R. Part 171, General Information, Regulations, and Definitions - Effective October 6, 2015:**

- Changes effective January 1, 2015. 80 Federal Register (F.R.) 1114 and 1116: January 1, 2016 (delayed compliance date). The Pipeline and Hazardous Materials Safety Administration (PHMSA) amended the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods (IMDG) Code, the International Civil Aviation Organization's Technical Instructions (ICAO TI) for the Safe Transport of Dangerous Goods by Air, the United Nations Recommendations on the Transport of Dangerous Goods (UN Model Regulations) and subsequently address three petitions for rule making.
- Changes effective July 7, 2015. 80 F.R. 26644: PHMSA, in coordination with the Federal Railroad Administration (FRA), adopted requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. The final rule defines certain trains transporting large volumes of flammable liquids as "high-hazard flammable trains" (HHFT) and regulates their operation in terms of speed restrictions, braking systems, and routing. The final rule also adopts safety improvements in tank car design standards, a sampling and classification program for unrefined petroleum-based products, and notification requirements.
- Changes effective November 9, 2015. 80 F.R. 54418: PHMSA adopted regulations to include the standard operating procedures and criteria used to evaluate applications for special permits and approvals. This rule making addresses issues identified in the Hazardous Materials Transportation Safety Improvement Act of 2012 related to the Office of Hazardous Materials Safety's Approvals and Permits Division. In addition, this rule

making also provides clarity regarding what conditions need to be satisfied to promote special permit application completeness.

**2. 49 C.F.R. Part 172, Hazardous Materials Table, etc. - Effective October 6, 2015:**

- Changes effective January 1, 2015. 80 F.R. 1149-1151: January 1, 2015 (voluntary compliance)/January 1, 2016 (delayed compliance). PHMSA amended the HMR to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the HMR with recent changes made to the IMDG Code, the ICAO TI for the Safe Transport of Dangerous Goods by Air, the UN Model Regulations and subsequently address three petitions for rule making.
- Changes effective July 7, 2015. 80 F.R. 26746: PHMSA, in coordination with FRA, adopted requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. The final rule defines certain trains transporting large volumes of flammable liquids as HHFT and regulates their operation in terms of speed restrictions, braking systems, and routing. The final rule also adopts safety improvements in tank car design standards, a sampling and classification program for unrefined petroleum-based products, and notification requirements.

**3. 49 C.F.R. Part 173, Shippers General Requirements for Shipments and Packages - Effective October 6, 2015:**

- Changes effective January 1, 2015. 80 F.R. 1151-1163: January 1, 2015 (voluntary compliance)/January 1, 2016 (delayed compliance). PHMSA amended the HMR to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage require-

ments. These revisions are necessary to harmonize the HMR with recent changes made to the IMDG Code, the ICAO TI for the Safe Transport of Dangerous Goods by Air, the UN Model Regulations and subsequently address three petitions for rule making.

- Changes effective July 7, 2015: 80 F.R. 26644-26748: PHMSA, in coordination with FRA, adopted requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. The final rule defines certain trains transporting large volumes of flammable liquids as HHFT and regulates their operation in terms of speed restrictions, braking systems, and routing. The final rule also adopts safety improvements in tank car design standards, a sampling and classification program for unrefined petroleum-based products, and notification requirements.

**4. 49 C.F.R. Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs - Effective October 6, 2015:**

- Changes effective April 13, 2015. 80 F.R. 19551-0: This action amended the United States Department of Transportation's (DOT) regulations to incorporate changes to the Substance Abuse and Mental Health Services Administration's chain of custody and control form (CCF) recently approved by the Office of Management and Budget. Specifically, this rule making expands the DOT's definition of the CCF to include both paper and electronic forms.

**5. 49 C.F.R. Part 375, Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations - Effective October 6, 2015:**

- Changes effective October 1, 2015. 80 F.R. 59071: The Federal Motor Carrier Safety Administration (FMCSA) amended its regulations by making technical and ministerial corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to UL standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

**6. 49 C.F.R. Part 383, Commercial Driver's License Standards; Requirements and Penalties - Effective October 6, 2015:**

- Changes effective June 2, 2015. 80 F.R. 18155: FMCSA specifies inflation adjustments to civil penalty amounts assessed to those who violate FMCSRs and HMRs. Some of these adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Adjustment Act), as amended by the Debt Collection Improvement Act (DCIA) of 1996. This final rule ensures that FMCSA's civil penalties are consistent with the applicable statutes.

- Changes effective June 22, 2015. 80 F.R. 22810: FMCSA amends the FMCSRs to require certified medical examiners (ME) performing physical examinations of commercial motor vehicle (CMV) drivers to use a newly developed Medical Examination Report (MER) Form, MCSA-5875, in place of the current MER Form and to use Form MCSA-5876 for the Medical Examiner's Certificate (MEC); and report results of all CMV drivers' physical examinations performed (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination. The reporting of results includes all CMV drivers who are required to be medically certified to operate in interstate commerce, not only those who hold or apply for commercial learner's permits (CLP) or commercial driver's licenses (CDL), and results of any examinations performed in accordance with the FMCSRs with any applicable state variances (which will be valid for intrastate operations only). For holders of CLP/CDLs (interstate and intrastate), FMCSA will electronically transmit driver identification, examination results, and restriction information from examinations performed from the National Registry to the State Driver's Licensing Agencies (SDLA). The agency will also transmit medical variance information for all CMV drivers electronically to the SDLAs.
- Changes effective October 1, 2015. 80 F.R. 59072: FMCSA amended its regulations by making technical and ministerial corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to UL standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

**7. 49 C.F.R. Part 385, Safety Fitness Procedures - Effective October 6, 2015:**

- Changes effective June 2, 2015. 80 F.R. 18155: FMCSA specifies inflation adjustments to civil penalty amounts assessed to those who violate FMCSRs and HMRs. Some of these adjustments are required by the Adjustment Act of 1990, as amended by the DCIA of 1996. This final rule ensures that FMCSA's civil penalties are consistent with the applicable statutes.
- Changes effective October 1, 2015. 80 F.R. 59073: FMCSA amended its regulations by making technical and ministerial corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to a UL standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

### **8. 49 C.F.R. Part 390, Safety Regulations, General - Effective October 6, 2015:**

- Changes effective October 2, 2014. 79 F.R. 59457: FMCSA amended its regulations by making technical corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update references, and improve clarity and consistency of certain regulatory provisions. This rule did not make any substantive changes to the affected regulations.
- Changes effective July 27, 2015. 80 F.R. 30178: FMCSA adopted regulations governing the lease and interchange of passenger-carrying CMVs to: Identify the motor carrier operating a passenger-carrying CMV that is responsible for compliance with FMCSRs; and ensure that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMVs and drivers. This action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by entering into a questionable lease arrangement to operate under the authority of another carrier that exercises no actual control over those operations.
- Changes effective October 1, 2015. 80 F.R. 59074: FMCSA amended its regulations by making technical and ministerial corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to a UL standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

### **9. 49 C.F.R. Part 391, Qualification of Drivers - Effective October 6, 2015:**

- Changes effective October 2, 2014. 79 F.R. 59457: FMCSA amended its regulations by making technical corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update references, and improve clarity and consistency of certain regulatory provisions. This rule did not make any substantive changes to the affected regulations.
- Changes effective June 22, 2015. 80 F.R. 22822: FMCSA amends FMCSRs to require certified MEs performing physical examinations of CMV drivers to use a newly developed MER Form, MCSA-5875, in place of the current MER Form and to use Form MCSA-5876 for the MEC; and report results of all CMV drivers' physical examinations performed (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination. The reporting of results includes all CMV drivers who are required to be medically certified to operate in interstate commerce, not only those who hold or apply for CLP or CDL, and results of

any examinations performed in accordance with FMCSRs with any applicable state variances (which will be valid for intrastate operations only). For holders of CLP/CDLs (interstate and intrastate), FMCSA will electronically transmit driver identification, examination results, and restriction information from examinations performed from the National Registry to the SDLAs. The agency will also transmit medical variance information for all CMV drivers electronically to the SDLAs.

- Changes effective October 1, 2015. 80 F.R. 59074-59075: FMCSA amended its regulations by making technical and ministerial corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to a UL standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

### **10. 49 C.F.R. Part 392, Driving of Commercial Motor Vehicles - Effective October 6, 2015:**

- Changes effective October 2, 2014. 79 F.R. 59457: FMCSA amended its regulations by making technical corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update references, and improve clarity and consistency of certain regulatory provisions. This rule did not make any substantive changes to the affected regulations.

### **11. 49 C.F.R. Part 393, Parts and Accessories Necessary for Safe Operation - Effective October 6, 2015:**

- Changes effective October 1, 2015. 80 F.R. 59075: FMCSA amended its regulations by making technical and ministerial corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to a UL standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

### **12. 49 C.F.R. Part 397, Transportation of Hazardous Materials - Effective October 6, 2015:**

- Changes effective October 2, 2014. 79 F.R. 59458: FMCSA amended its regulations by making technical corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update references, and improve clarity and consistency of certain regulatory provisions. This rule did not make any substantive changes to the affected regulations.



- Changes effective October 1, 2015. 80 F.R. 59075: FMCSA amended its regulations by making technical and ministerial corrections throughout Title 49 C.F.R., subtitle B, chapter III. The agency made minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to a UL standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

**13. 49 C.F.R. Part 174, Carriage by Rail - Effective October 6, 2015:**

- Changes effective July 7, 2015: 80 F.R. 26748: PHMSA, in coordination with FRA, adopted requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. The final rule defines certain trains transporting large volumes of flammable liquids as HHFT and regulates their operation in terms of speed restrictions, braking systems, and routing. The final rule also adopts safety improvements in tank car design standards, a sampling and classification program for unrefined petroleum-based products, and notification requirements.

**14. 49 C.F.R. Part 175, Carriage by Aircraft - Effective October 6, 2015:**

- Changes effective January 1, 2015. 80 F.R. 1163-1164: January 1, 2015 (voluntary compliance)/January 1, 2016 (delayed compliance). PHMSA amended HMR to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize HMR with recent changes made to the IMDG Code, ICAO TI for the Safe Transport of Dangerous Goods by Air, UN Model Regulations and subsequently address three petitions for rule making.
- Changes effective March 30, 2015. 80 F.R. 16579: PHMSA issued a 2011 final rule in which it did not harmonize with international regulations regarding the carriage of spare fuel cell cartridges in passenger and crew member checked baggage. A company contested this final rule. As a result, PHMSA issued a document which provides a more thorough explanation and substantial evidence to support PHMSA's decision to prohibit the carriage of spare fuel cell cartridges in passenger and crew member checked baggage.

**15. 49 C.F.R. Part 176, Carriage by Vessel - Effective October 6, 2015:**

- Changes effective January 1, 2015. 80 F.R. 1164-1165: January 1, 2015 (voluntary compliance)/January 1, 2016 (delayed compliance). PHMSA amended HMR to maintain alignment with international standards by incorporating various amendments, including changes to proper

shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize HMR with recent changes made to the IMDG Code, ICAO TI for the Safe Transport of Dangerous Goods by Air, UN Model Regulations and subsequently address three petitions for rule making.

**16. 49 C.F.R. Part 179, Specifications for Tank Cars - Effective October 6, 2015:**

- Changes effective July 7, 2015. 80 F.R. 26749. PHMSA, in coordination with FRA, adopted requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. The final rule defines certain trains transporting large volumes of flammable liquids as HHFT and regulates their operation in terms of speed restrictions, braking systems, and routing. The final rule also adopts safety improvements in tank car design standards, a sampling and classification program for unrefined petroleum-based products, and notification requirements permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations provided an equivalent level of safety is maintained.

**17. 49 C.F.R. Part 214, Railroad Workplace Safety, Effective October 6, 2015:**

- Changes effective January 6, 2015. 79 F.R. 66500-66501: FRA is establishing minimum training standards for all safety-related railroad employees, as required by the Rail Safety Improvement Act of 2008. The final rule requires each railroad or contractor that employs one or more safety-related railroad employee[s] to develop and submit a training program to FRA for approval and to designate the minimum training qualifications for each occupational category of employee. The rule also requires most employers to conduct periodic oversight of their own employees and annual written reviews of their training programs to close performance gaps. The rule also contains specific training and qualification requirements for operators of roadway maintenance machines that can hoist, lower, and horizontally move a suspended load. Finally, the rule clarifies the existing training requirements for railroad and contractor employees that perform brake system inspections, tests, or maintenance.

**18. 49 C.F.R. Part 234, Grade Crossing Signal System Safety - Effective October 6, 2015:**

- Changes effective March 9, 2015. 80 F.R. 786: This final rule requires railroads that operate one or more trains through highway-rail or pathway crossings to submit information to the U.S. DOT National Highway-Rail Crossing Inventory about the crossings through which they operate. These amendments, mandated by section 204 of the Rail Safety Improvement Act of 2008, require railroads to submit information about previously unreported and new highway-rail and pathway crossings to

the U.S. DOT National Highway-Rail Crossing Inventory and to periodically update existing crossing data.

- Changes effective May 28, 2015. 80 F.R. 30364: Updated the current schedule of civil penalties for violations of FRA's grade crossing safety regulations by adding recommended civil penalty amounts for violations of specific requirements contained in a recently added subpart. That subpart prescribes requirements that certain railroads establish emergency notification systems for receiving toll-free telephone calls reporting various unsafe conditions at highway-rail grade crossings and pathway grade crossings, and for taking certain actions in response to those calls.

**19. 40 C.F.R. Part 262, Standards Applicable to Generators of Hazardous Waste - Effective October 6, 2015:**

- Changes effective July 2, 2015. 80 F.R. 37992: The U.S. Environmental Protection Agency amended certain existing regulations that apply to the transboundary movement of hazardous waste among the Organization for Economic Cooperation and Development member countries as promulgated under the hazardous waste provisions of the Resource Conservation and Recovery Act.

**20. Title 18 C.F.R. - Effective April 1, 2015:**

- No changes to Parts 101 (Uniform System of Accounts Prescribed For Public Utilities and Licensees Subject to the Provisions of the Federal Power Act), 141 (Statements and Reports (Schedules)) and 260 (Statements and Reports (Schedules)), which are specifically referenced in WAC 480-90-203, 480-90-244, 480-90-252 and 480-90-268. WAC 480-90-999(1) adopts the entirety of Title 18 - Conservation of Power and Water Resources, so the effective date has been updated to the most recent version.

**21. Title 18 C.F.R.:**

- Copies of Title 18 C.F.R. are available from the U.S. Government Printing Office in Washington, D.C., or online at <http://www.gpo.gov/>, and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

**22. Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities:**

- The electronic copy is available for purchase at the NARUC web site. A print copy is available for inspection at the commission branch of the state library.

**23. 49 C.F.R. Part 195, Transportation of Natural and Other Gas by Pipeline - Effective March 11, 2015:**

- Changes effective March 11, 2015. 80 F.R. 58633-01: PHMSA published a final rule amending the pipeline safety regulations to make miscellaneous changes that updated and clarified certain regulatory requirements. These amendments addressed several subject matter areas, including the performance of post construction inspections, Type B onshore gas gathering line leak surveys, qualifying plastic pipe joiners, ethanol regulation, pipe transportation, offshore pipeline condition report

filing, pressure reduction calculations for hazardous liquid pipeline anomalies, and components fabricated by welding. This final rule responds to petitions for reconsideration of the final rule.

**24. Title 18 C.F.R. - Effective April 1, 2015:**

- No changes to Parts 101 (Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act), 141 (Statements and Reports (Schedules)) and 260 (Statements and Reports (Schedules)), which are specifically referenced in WAC 480-100-203, 480-100-244, 480-100-252 and 480-100-268. WAC 480-100-999(1) adopts the entirety of Title 18 - Conservation of Power and Water Resources, so the effective date has been updated to the most recent version.

**25. NEC - Effective September 3, 2014:**

- NEC addresses the installation of electrical conductors, equipment, and raceways; signaling and communications conductors, equipment, and raceways; and optical fiber cables and raceways in commercial, residential, and industrial occupancies.

**26. Title 18 C.F.R.:**

- Copies of Title 18 C.F.R. are available from the U.S. Government Printing Office in Washington, D.C., or online at <http://www.gpo.gov/>, and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

**27. Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities:**

- The electronic copy is available for purchase at the NARUC web site. A print copy is available for inspection at the commission branch of the state library.

**28. NEC - Effective September 3, 2014:**

- Errata 70-14-2, 70-14-3 and 70-14-4 include corrections to a number of errors in the 2014 edition of National Fire Protection Association's NFPA 70, *National Electrical Code*.

**29. The American National Standard for Electric Meters: Code for Electricity Metering:**

- ANSI C12.1 - 2008 is available at ANSI web site [http://webstore.ansi.org/\(PDF\)](http://webstore.ansi.org/(PDF)) or at IHS Standards Store web site [https://global.ihs.com/\(PDF](https://global.ihs.com/(PDF) and print).

**30. Multiple:** Updates the text to be consistent with other adoption by reference chapters.

**PURPA of 1978, Title II, Sections 201 and 210 - Effective August 8, 2005:**

The previous version of WAC 480-107-999 adopts the version of PURPA Title II, sections 201 and 210 current on the day the WAC was adopted, April 28, 2006. The last update of these two sections of PURPA took place on August 8, 2005. There have been no changes since then. For ease of reference, we adopt PURPA Title II, sections 201 and 210 as of August 8, 2005.

- **Title 18 C.F.R. Part 292 - Effective April 1, 2015:**
  - Changes effective June 29, 2006. 71 F.R. 30585-30589: The Federal Energy Regulatory Commission (FERC) reaffirms its determination and grants clarification in part of Order No. 671, in which it eliminates certain exemptions from rate regulation that were previously available to qualifying facilities (QF).
  - Changes effective January 2, 2007. 71 F.R. 64342-64375: FERC amends its rules to implement section 1253(a) of the Energy Policy Act of 2005, which adds section 210(m) to PURPA of 1978. Section 210(m) provides for termination of the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from QFs if FERC finds that the QF has nondiscriminatory access to a sufficiently competitive market. FERC identifies which markets meet the criteria contained in section 210(m) and determines whether QFs have nondiscriminatory access to those markets.
  - Changes effective January 2, 2007. 71 F.R. 75662: It corrects errors in a final rule FERC published in the F.R. on November 1, 2006.
  - Changes effective June 25, 2007. 72 F.R. 29056-29063: FERC eliminates the exemption of QFs from the reliability standards required by section 215 of the Federal Power Act.
  - Changes effective July 30, 2007. 72 F.R. 35872-35892: FERC denies rehearing on most issues decided in Order No. 688, which amended its regulations in response to section 1253 of the Energy Policy Act of 2005. It clarifies certain aspects of the rule and adopts additional filing requirements.
  - Changes effective August 14, 2007. 72 F.R. 45320-45328: FERC revises a number of references that have become outdated for various reasons. It also revises its delegations of authority to allow the secretary to refer complaint proceedings to FERC's Dispute Resolution Service, and to organize better and clarify other delegations.
  - Changes effective June 1, 2010. 75 F.R. 15950-15986: FERC revises the filing requirement regarding FERC Form No. 556 and adopted an exemption for small generating facilities from the certification requirement to be a QF.

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Steven V. King, Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, AND RECEIVED BY February 1, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would revise the adoption-by-reference dates to reflect the current version(s) of adopted materials and make other minor administrative changes in Title 480 WAC.

Reasons Supporting Proposal: The commission adopts by reference several parts in Titles 18, 480, 47 and 49 C.F.R. and other state rules and national standards. This adoption package will make commission rules consistent with current published versions of federal rules, reflect the most current versions of the national safety standards.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Lynda Holloway, Program Specialist, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1118; Implementation and Enforcement: Steven V. King, Executive Director and Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1115.

November 18, 2015

Steven V. King

Executive Director  
and Secretary

AMENDATORY SECTION (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-14-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publication, effective dates, references within this chapter, and availability of the resource is within Title 49 Code of Federal Regulations (C.F.R.), including all appendices and amendments is published by the United States Government Printing Office.

(1) The commission adopts the version in effect on October ~~(1, 2014)~~ 6, 2015, for 49 C.F.R. Parts 171, 172 and 173.

(2) This publication is referenced in WAC 480-14-250 (Insurance requirements).

(3) Copies of Title 49 C.F.R. are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-15-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~2014~~) 2015.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October (~~1, 2014~~) 6, 2015.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-30-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~2014~~) 2015.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October (~~1, 2014~~) 6, 2015.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements) and WAC 480-30-226 (Intrastate medical waivers).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-31-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references

within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~2014~~) 2015.

(b) This publication is referenced in WAC 480-31-120 (Equipment—Inspection—Ordered for repairs).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October (~~1, 2014~~) 6, 2015.

(b) This publication is referenced in WAC 480-31-100 (Equipment—Safety), WAC 480-31-120 (Equipment—Inspection—Ordered for repairs), and WAC 480-31-130 (Operation of motor vehicles).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-62-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October (~~1, 2014~~) 6, 2015.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), and WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October (~~1, 2014~~) 6, 2015.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices) and WAC 480-62-235 (Flaggers).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **ANSI Z308.1 - ((2009)) 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on October ((1, 2014)) 6, 2015.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - ((2009)) 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits and Supplies are available from IHS Global Engineering Documents in Englewood, Colorado.

(4) **ANSI/ISEA 207-2011 - American National Standard for High-Visibility Public Safety Vests** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on October ((1, 2014)) 6, 2015.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA 207-2011 - American National Standard for High-Visibility Public Safety Vests are available from IHS Global Engineering Documents in Englewood, Colorado.

**AMENDATORY SECTION** (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-70-999 Adoption by reference.** In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **The North American Standard Out-of-Service Criteria** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2014)) 2015.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 40 Code of Federal Regulations**, cited as 40 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October ((1, 2014)) 6, 2015.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October ((1, 2014)) 6, 2015.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431

(Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending WSR 14-05-001, filed 2/5/14, effective 3/8/14)

**WAC 480-75-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., Parts 195 and 199 including all appendices and amendments except for 49 C.F.R. Sections 195.0 and 195.1, and 49 C.F.R. Sections 199.1 and 199.2, published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ((October 1, 2012)) March 6, 2015.

(b) This publication is referenced in WAC 480-75-370 (Design factor (*F*) for steel pipe) and WAC 480-75-660 (Procedural manual for operations, maintenance, and emergencies).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>.

(2) **The American Society of Mechanical Engineers (ASME) B31.4**, 2006 edition, October 20, 2006.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The 2007 edition, July 2007, of **Section IX of the ASME Boiler and Pressure Vessel Code**.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of the 2007 edition, of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** (20th edition 2005, including errata/addendum July 2007 and errata 2 (December 2008)).

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 (20th edition 2005, including errata/addendum July 2007 and errata December 2008) are available from the Office of API Publishing Services, <http://www.api.org/>. It is also available for inspection at the commission.

(5) The commission adopts **API RP standard 1117** Third Edition, July 2008, including errata December 2008 and errata 2 (August 2009).

(a) This publication is referenced in WAC 480-75-500 (Moving and lowering hazardous liquid pipelines).

(b) Copies of API standard 1117 Third Edition, July 2008, including errata December 2008 and errata 2 August 2009 are available from API, <http://www.api.org/>. It is also available for inspection at the commission.

**AMENDATORY SECTION** (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-90-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, ~~((2014))~~ 2015.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-90-203 (Accounting system requirements), WAC 480-90-244 (Transferring cash or assuming obligation), WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2), and WAC 480-90-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Printing Office in Washington, D.C., or online at <http://www.gpo.gov/>, and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 2007.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC, in Washington, D.C. or at NARUC publications store online: <http://www.naruc.org/store>. It is also available for inspection at the commission branch of the state library.

**AMENDATORY SECTION** (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-93-999 Adoption by reference.** In this chapter, the commission adopts by reference each of the regulations and/or standards identified below. Each regulation or standard is listed by publication, publisher, scope of what the

commission is adopting, effective date of the regulation or standard, the place within the commission's rules the regulation or standard is referenced, and where to obtain the regulation or standard.

(1) Parts 191, 192, 193, and 199 of Title 49 Code of Federal Regulations, including all appendices and amendments thereto as published by the United States Government Printing Office.

(a) The commission adopts the version of the above regulations that were in effect on ~~((October 1, 2012))~~ March 11, 2015, except the following sections are not adopted by reference: 191.1, 192.1(a), 193.2001(a), 199.1. In addition, please note that in WAC 480-93-013, the commission includes "new construction" in the definition of "covered task," as defined in 49 C.F.R. § 192.801 (b)(2).

(b) This publication is referenced in WAC 480-93-005 (Definitions), WAC 480-93-080 (Welder and plastic joiner identification and qualification), WAC 480-93-100 (Valves), WAC 480-93-110 (Corrosion control), WAC 480-93-124 (Pipeline markers), WAC 480-93-170 (Tests and reports for gas pipelines), WAC 480-93-180 (Plans and procedures), and WAC 480-93-18601 (Leak classification and action criteria—Grade—Definition—Priority of leak repair).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>. It is also available for inspection at the commission.

(2) Section IX of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

(a) The commission adopts the 2007 edition, July 1, 2007, of Section IX of the ASME Boiler and Pressure Vessel Code.

(b) This publication is referenced in WAC 480-93-080.

(c) Copies of Section IX of the ASME Boiler and Pressure Vessel Code (2007 edition, including addenda through July 1, 2005) are available from ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The American Petroleum Institute (API) standard 1104 (20th edition October 2005, including errata/addendum July 2007 and errata 2 (2008)).

(a) The commission adopts the 20th edition 2005, including errata/addendum July 2007 and errata 2 (2008) of this standard.

(b) This standard is referenced in WAC 480-93-080.

(c) Copies of API standard 1104 (20th edition 2005, including errata/addendum July 2007 and errata December 2008) are available from the Office of API Publishing Services, <http://www.api.org/>. It is also available for inspection at the commission.

**AMENDATORY SECTION** (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-100-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, (~~2014~~) 2015.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligation), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Printing Office in Washington D.C., or online at <http://www.gpo.gov/>, and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 2007.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC in Washington, D.C. or at NARUC publications store online: <http://www.naruc.org/store>. It is also available for inspection at the commission branch of the state library.

(3) **The National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition effective September 3, 2014, including errata 70-14-1 published September 16, 2013, errata 70-14-2 published December 3, 2013, 70-14-3 published April 21, 2014, and 70-14-4 published July 29, 2014.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts 02169, or at internet address <http://www.nfpa.org/>.

(4) **The American National Standard for Electric Meters: Code for Electricity Metering**, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in 2008.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. ANSI C12.1 - 2008 is available at American National Standards Institute web site <http://webstore.ansi.org/> (PDF) or at IHS Standards Store web site <https://global.ihs.com/> (PDF and print).

**AMENDATORY SECTION** (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-107-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified in subsections (1) and (2) of this section. The publication, effective date, reference within this chapter, and availability of the resources are as follows:

(1) **Public Utilities Regulatory Policies Act of 1978 (PURPA), Title II, Sections 201 and 210**, cited as 16 U.S.C. Sec. 796 and 824a-3, including all amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on August 8, 2005.

(b) This publication is reference in WAC 480-107-001 (Purpose and scope).

(c) Copies of U.S. Code are available from the U.S. Government Printing Office in Washington, D.C. or online at <http://www.gpo.gov/>.

(2) **Title 18 Code of Federal Regulations Part 292**, cited as 18 C.F.R. Sec. 292, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, (~~2014~~) 2015.

(b) This publication is referenced in WAC 480-107-001 (Purpose and scope).

(c) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Printing Office in Washington D.C. or online at <http://www.gpo.gov/> and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

**AMENDATORY SECTION** (Amending WSR 15-06-048, filed 3/2/15, effective 4/2/15)

**WAC 480-108-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition effective (~~September 3, 2014~~) April 7, 2015, including errata 70-14-1 published September 16, 2013, errata 70-14-2 published December 3, 2013, errata 70-14-3 published April 21, 2014, and errata 70-14-4 published July 29, 2014.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address <http://www.nfpa.org/>.

(2) National Electrical Safety Code (NESC).

(a) The commission adopts the 2012 edition.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of the National Electrical Safety Code are available from the Institute of Electrical and Electronics Engineers at <http://standards.ieee.org/nesc>.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(a) The commission adopts the version published in 2003 and reaffirmed in 2008, including amendment 1547a-2014, published May 21, 2014.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org>.

(4) American National Standards Institute (ANSI) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005 and reaffirmed in 2011.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org>.

(5) Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published June 11, 2014.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org>.

(6) Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1994 and reaffirmed in 1999.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org>.

(7) Institute of Electrical and Electronics Engineers (IEEE) Standard 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems.

(a) The commission adopts the version published in 2007.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 142 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org>.

(8) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, Controllers and Interconnection Systems Equipment for Use with Distributed Energy Resources.

(a) The commission adopts the version published (~~2010~~) January 7, 2015.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) UL Standard 1741 is available from Underwriters Laboratory at <http://www.ul.com>.

(9) Occupational Safety and Health Administration (OSHA) Standard at 29 C.F.R. 1910.269.

(a) The commission adopts the version published on (~~April 11, 2014, and amended on September 24, 2014~~) October 5, 2015.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

**WAC 480-109-999 Adoption by reference.** In this chapter, the commission adopts by reference all, or portions of, the publications identified below. They are available for inspection at the commission branch of the Washington state library. The publications, publication dates, references within this chapter, and availability of the resources are as follows:

(1) *Northwest Conservation and Electric Power Plan* as published by the Northwest Power and Conservation Council.

(a) The commission adopts the sixth version published in 2010.

(b) This publication is referenced in WAC 480-109-100.

(c) Copies of *Sixth Northwest Conservation and Electric Power Plan* are available from the Northwest Power and Conservation Council at <http://www.nwcouncil.org/energy/powerplan/6/plan/>.

(2) *Weatherization Manual* as published by the Washington state department of commerce.

(a) The commission adopts the version published in April 2009, and revised July 2014.

(b) This publication is referenced in WAC 480-109-100.

(c) Copies of *Weatherization Manual* are available from the Washington state department of commerce at <http://www.commerce.wa.gov/Programs/services/weatherization/Pages/WeatherizationTechnicalDocuments.aspx>.

(3) The unit energy savings values as published by the Northwest Power and Conservation Council's Regional Technical Forum.

(a) The commission adopts the unit energy savings with status of "Active" or "Under Review" on (~~August 1, 2014~~) January 10, 2016.

(b) This information is referenced in WAC 480-109-100.

(c) The spreadsheets containing the unit energy savings values are available for download at <http://rtf.nwcouncil.org/measures/Default.asp>.

(4) The standard protocols as published by the Northwest Power and Conservation Council's Regional Technical Forum.

(a) The commission adopts the standard protocols with status of "Active" or "Under Review" on (~~August 1, 2014~~) January 10, 2016.

(b) This information is referenced in WAC 480-109-100.



(c) The spreadsheets containing the standard protocols are available for download at <http://rtf.nwcouncil.org/protocols/Default.asp>.

**WSR 15-24-080**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed November 30, 2015, 8:36 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-15503 Digital products.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail [markbohe@dor.wa.gov](mailto:markbohe@dor.wa.gov), AND RECEIVED BY February 1, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposal incorporates changes from SSB 5275 (section 310, chapter 86, Laws of 2015) concerning recordkeeping and examination requirements. Clarifying language was also added throughout by changing "section" to "rule."

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

Reasons Supporting Proposal: Proposal incorporates the legislative changes from SSB 5275, 2015 regular session (chapter 86, Laws of 2015).

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

Statute Being Implemented: RCW 82.32.070.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

November 30, 2015  
Kevin Dixon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-13-092, filed 6/17/14, effective 7/18/14)

**WAC 458-20-15503 Digital products.** This rule provides a structured approach for determining tax liability for

digital products and digital codes. For purposes of this rule, a digital product includes digital goods or digital automated services, which are described in detail below. The sale or use of digital products and digital codes is generally subject to retail sales or use tax unless purchased for resale or some other exemption applies.

This rule is organized into six parts. Each part addresses a question or topic relevant to the determination of whether a person is selling or purchasing a digital product or digital code and, if so, what are the tax consequences that follow from such activity. In this respect this rule is intended to function similar to the decision tree provided in ETA 9003.2010.

1. Part 1: Are the products or services transferred electronically? If yes, go to Part 2.

2. Part 2: Does the product or service meet the general definitions of digital product or digital code? If yes, go to Part 3.

3. Part 3: Are there applicable exclusions from the general definitions of the digital product or digital code? If no, go to Part 4.

4. Part 4: Are the sales of the digital product or digital code sourced to Washington? If yes, go to Part 5.

5. Part 5: Are there applicable retail sales or use tax exemptions for the purchase or use of the digital product or digital code? If no, the transaction is likely taxable in Washington.

6. Part 6: Miscellaneous provisions.

Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances. Additionally, each fact pattern in each example is self contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

**Part 1. Are the Products or Services Transferred Electronically?**

(101) **Introduction.** Products or services must be transferred electronically in order to be digital products. If a product is transferred by means of a tangible storage media (e.g., compact disc, magnetic tape, hard drive, etc.), it is not a digital product. Digital codes need not be transferred electronically in order to be digital codes, but may be obtained by any means, including tangible storage media.

(102) **Transferred electronically.** Means the purchaser obtains the product by means other than tangible storage media. Generally, this means the product is transferred using the public internet, a private network, or some combination. However, it is not necessary that the product be delivered to the purchaser. As long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser. For example, whether a digital movie is downloaded by the user or streamed by the user, it is considered to be "transferred electronically." Alternatively, the same movie purchased on tangible media (e.g., DVD, etc.) is the purchase of tangible personal property and is not consid-

ered to be either the sale of a digital product or transferred electronically.

**Part 2. Does the Product or Service Meet the General Definition of Digital Product or Digital Code?**

(201) **Introduction.** The term "digital product" means (1) digital goods and (2) digital automated services. Digital products transferred to an end user are generally subject to retail sales or use tax regardless of whether the purchaser's right of use is permanent, less than permanent (e.g., 24-hour period), or the purchaser is obligated to make continued payments as a condition of the sale (e.g., "subscriptions").

(202) **Digital goods.** Means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, with certain exclusions discussed in Part 3 of this rule. The term "digital goods" includes within it the specific term "specified digital products" (as required by the Streamline Sales and Use Tax Agreement). The sale of a digital good is generally subject to retail sales tax and retailing business and occupation (B&O) tax.

(a) **Specified digital products.** Means electronically transferred digital audio-visual works, digital audio works, and digital books.

(i) **Digital audio works.** These are products that result from the fixation of a series of musical, spoken, or other sounds. Digital audio works include ringtones, recorded or live music, readings of books or other written materials, speeches, and other sound recordings. For example, a music file in MP3 format accessed or downloaded through the internet is a digital audio work.

(A) A "ringtone" is a digitized sound file that is downloaded onto a communication device (e.g., mobile phone) and may be used to alert the user to an incoming communication such as a call or text message.

(B) A ringtone does not include "ring-back tones" or other digital audio files that are not stored on the purchaser's communication device. In other words a ring-back tone is not a "specified digital product." A ring-back tone may be a digital automated service or a digital good depending on the facts. See analysis for digital automated services in subsection (203) of this ((section)) rule.

(ii) **Digital audio visual works.** These products are a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Digital audio visual works include movies, music videos, videos of live events, and news and entertainment programs. For example, a movie downloaded or accessed via the internet is a digital audio visual work.

(iii) **Digital books.** These are books in a digital format that are generally recognized in the ordinary and usual sense as books. A digital book does not include periodicals, magazines, newspapers, chat rooms, or weblogs. For example, a cookbook in a PDF format downloaded or accessed through the internet is a digital book.

(b) **Other digital goods.** The following list illustrates the types of products that are also digital goods in addition to the subclass of "specified digital products" discussed above. This list is merely illustrative and not exhaustive:

(i) A digital schematic of a lawnmower engine transferred electronically.

(ii) A digital car history report transferred electronically.

(iii) A digital picture transferred electronically.

(iv) Digital periodicals or magazines transferred electronically.

(v) A digital presentation that includes still photos and accompanying audio content transferred electronically.

(c) **Digital goods prior to July 26, 2009.** The mere accessing or streaming of a digital good was not a retail sale before July 26, 2009. Instead, accessing or streaming a digital good was subject to the service and other activities B&O tax. The sale of a digital good to a customer who downloaded the digital good was a retail sale. See Part 6, subsection (604) of this ((section)) rule for a discussion of tax amnesty for past periods.

(203) **Digital automated services.** Means services transferred electronically that use one or more software applications. The sale of a digital automated service is generally subject to retail sales tax and retailing B&O tax.

(a) **Digital automated services may include.** One or more software applications either prewritten or custom, as well as components that are similar to stand-alone digital goods. For example, an online information service may contain data, facts, or information the use of which is facilitated by one or more software applications that provide search capabilities and other functionality. Thus, digital automated services will include software and may include elements similar to stand alone digital goods, which operate together in an integrated fashion to provide an electronically transferred service.

**Example 1.** BFC provides an online service that facilitates apartment building management. The online service lists and advertises apartment vacancies, screens applicants, routes maintenance requests, and accepts and processes rental payments. In this example the software based service facilitates and automates various administrative functions and coordinates third-party services for apartment renting. The service is a digital automated service the sale of which is generally subject to retail sales tax and retailing B&O tax.

**Example 2.** QPR provides a service that uses one or more software applications to "crawl the internet" in order to identify, gather, and categorize digital information according to specified criteria. In this example software facilitates the gathering, identifying and categorizing of information acquired from the internet. The service is a digital automated service the sale of which is generally subject to retail sales tax and retailing B&O tax.

(i) **Distinguishing a digital good from digital automated services.** A digital good is not a service involving one or more software applications. A digital good consists solely of images, sounds, data, facts, information or any combination thereof. Clear examples of digital goods are digital books, digital music, digital video files, and raw data.

**Example 3.** XYZ provides an online service that uses one or more software applications to facilitate the use of news and information with features such as: Research history, natural and boolean searching, industry chat forums, chart creation, document and word flagging, and information organizing folders. In this example software features facilitate the search of the news or information. XYZ's service is a digital

automated service the sale of which is subject to retail sales tax and retailing B&O tax.

**Example 4.** Company sells digital music files (i.e., digital goods) on its web site. In order to locate specific digital music files customers may use a free software based search function that is integrated into Company's web site. Customers may also find the digital music file they are seeking by clicking on a series of links to get to the desired music file. Company's software based search function associated with the sale of the digital music file does not transform the sale of the digital music file into a digital automated service. Company is selling a digital good (i.e., music file) subject to retail sales tax and retailing B&O tax.

(ii) **Distinguishing remote access prewritten software from digital automated services.** Remote access prewritten software (defined in RCW 82.04.050 (6)(b)) is solely prewritten software that is made remotely accessible from the vendor's server or other third-party server for a customer. To the extent that components similar to digital goods and/or additional services are supplied with the prewritten software the sale may be the sale of a digital automated service (see also Part 3, subsection (303)(h) of this ~~(section)~~ rule).

**Example 5.** CFC provides an online gaming service that allows subscribers to play a game with other subscribers in a real time multiplayer environment using software accessed via the internet. In this example the gaming software is combined with additional capabilities that enable a real time multiplayer environment that is not otherwise available. The service is a digital automated service, the sale of which is generally subject to retail sales tax and retailing B&O tax.

**Example 6.** Company sells prewritten word processing software that is accessed by customers but hosted on Company's computers. The software includes access to clip-art image files that can be inserted into documents created with the remotely accessed prewritten word processing software. Company is selling remote access prewritten software and not a digital automated service or digital goods. The clip art made available with the software does not transform the remotely accessed prewritten software into a digital automated service or a digital good. Company is selling remote access prewritten software subject to retail sales tax and retailing B&O tax.

(b) **Digital automated service prior to July 26, 2009.** The sale of a digital automated service to consumers was not a retail sale before July 26, 2009. Generally, income earned from such sales was subject to B&O tax under the service and other activities classification.

(204) **Digital codes.** These are codes that provide a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same retail sales and use tax treatment. A digital code may be obtained by any means, including e-mail or by tangible media regardless of its designation as song code, video code, book code, or some other term. For example, a digital code includes the sale of an alphanumeric code that, when entered online at a web site, provides the customer with a digital music file for download.

(a) **Products with mixed tax treatment.** Codes that provide the right to obtain one or more products that do not have

the same retail sales and use tax treatment are not digital codes.

(b) **Codes that represent a stored monetary value, redeemable cards, gift cards, or gift certificates.** Codes that represent a stored monetary value that is deducted from a total as it is used by the purchaser or that represent a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value, are not digital codes.

**Example 7.** Calvin purchases a code at his local grocery store for use on Joe Seller's (JS) web site. At check out, Calvin tells the grocery store clerk to put \$25.00 in value on the plastic card containing the code. Calvin then goes to JS's web site and inputs the code from the card. The \$25.00 value of the card is stored in Calvin's "account" and can be used on any purchase by Calvin from JS's web site. Calvin then purchases five digital songs for \$5.00 from JS. At check-out from JS's web site, \$5.00 is deducted from Calvin's account to pay for the songs. When the transaction is complete, Calvin has a \$20.00 balance remaining in his account on JS's web site. Because the code represents a stored monetary value it is not a digital code and the sale of the code is not subject to retail sales tax or retailing B&O tax.

### Part 3. Are There Applicable Exclusions from the General Definitions of Digital Product and Digital Code?

(301) **Introduction.** For certain products or services transferred electronically that otherwise meet the definition of digital good or digital automated service (as discussed in Part 2) there may be a specific exclusion from the applicable definition. If an exclusion applies, then the product or service will generally not be considered a digital good or digital automated service for retail sales and use tax purposes. For example, a service that is transferred electronically and that uses one or more software applications will generally be subject to retail sales tax as a digital automated service. However, if the service is an advertising service, then an exclusion applies, and the service will not be a digital automated service subject to retail sales tax; however, the service may still be subject to B&O tax. An excluded service may also still be subject to retail sales tax under certain circumstances. For example, telecommunications services are excluded from the definition of digital automated services, but remain subject to retail sales tax under their own separate definition of retail sale.

(302) **Exclusions from the definition of digital good are:**

(a) **Telecommunications and ancillary services** as defined in RCW 82.04.065. These services may be used to distribute digital goods, digital automated services, and digital codes, but are not themselves any of these products.

(b) **Computer software** as defined in RCW 82.04.215 and WAC 458-20-15502. These are coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(c) **The internet and internet access** as defined in RCW 82.04.297.

(d) **Professional or personal services** represented in electronic form are not a digital good. This exclusion applies where the service primarily involves the application of human effort by the service provider, and the human effort

originated after the customer requested the service. For example, an electronic engineering report created at the customer's request that reflects an engineer's professional analysis, calculations, and judgment, which is sent to the customer electronically, is considered evidence of a professional service and not a digital good.

**Photography.** This exclusion for professional or personal services does not apply to photographers in respect to amounts received for the taking of digital photographs that are transferred electronically to the end user/customer as defined in RCW 82.04.190(11). See Example 39 for an example of a nonend user transaction involving photography that is subject to royalties B&O tax.

(e) **Exclusions listed directly below for digital automated services** are also exclusions from the definition of digital good.

(303) **Exclusions from the definition of digital automated service are:**

(a) **Services that require primarily human effort by the seller** and the human effort originated after the customer requested the service. In this context, "primarily" means greater than fifty percent of the effort to perform the service involved human labor. To determine whether the fifty percent or greater threshold is satisfied, the average of the time and cost factors is considered. The time factor is determined by dividing the time spent to perform the human effort portion for customers by the total time spent performing the service. The cost factor is determined by dividing the direct costs incurred to perform the human effort portion for customers by the total direct costs incurred to perform the service. Direct costs of the human effort component include salaries, employee benefits and similar direct costs. Direct costs of the automated component include the cost of software, computers, hosting services and other similar direct costs. If the average of the time and cost factors is greater than fifty percent then the service requires primarily human effort and is not a digital automated service in which case the service will generally be subject to service and other activities B&O tax.

**Example 8.** RepuCo.com performs a reputation monitoring service on the internet for its clients. The service utilizes software and other technology that searches the internet for web sites that allow posting of information that may be harmful to RepuCo.com's client's reputation ("the automated component"). If the automated component finds a web site that is posting erroneous or harmful information about one of RepuCo.com's clients, then a RepuCo.com employee will contact the owner of the web site by phone or e-mail and work with the owner and the client to resolve the matter to the satisfaction of the client ("the human effort component"). If the human effort time factor is 20% and the human effort direct cost factor is 60%, then the average of the two factors is 40% ( $(20\% + 60\%) / 2 = 40\%$ ). Accordingly, the service is performed using 40% human effort which is less than 50% and therefore the service does not require primarily human effort and is subject to retail sales tax as a digital automated service.

**Alternative methods.** If the time and cost factors in this rule do not fairly represent the extent to which the service is performed using primarily human effort, the taxpayer may ask in writing for, or the department may require, the employment of another reasonable method to equitably determine

whether the service is performed using primarily human effort.

(b) **Loaning or transferring money or the purchase, sale, or transfer of financial instruments.** For purposes of this ((section)) rule, "financial instruments" include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options. For example, the electronic transfer of money from a savings account to a checking account, whether done for the customer by a bank teller or by an ATM machine, is excluded from the definition of digital automated service.

(c) **Dispensing cash or other physical items from a machine.** Includes an ATM that dispenses cash to users.

(d) **Payment processing services,** including services such as electronic credit card processing activities conducted online or in physical retail stores via electronic transmission.

(e) **Parimutuel wagering and handicapping contests** as authorized by chapter 67.16 RCW.

(f) **Telecommunications services and ancillary services** as those terms are defined in RCW 82.04.065. For additional information, refer to the discussion above concerning the comparable exclusion from the definition of digital goods (see Part 3, subsection (302)(a) of this ((section)) rule).

(g) **The internet and internet access** as those terms are defined in RCW 82.04.297.

(h) **Remote access prewritten software.** Remote access prewritten software (defined in RCW 82.04.050 (6)(b)) provided on a standalone basis is excluded from the definition of digital automated service. However, software that is used in connection with a service that is transferred electronically would generally be included in the definition of a digital automated service.

**Example 9.** Company sells prewritten gaming software that is identical in all substantive respects to the same software available in stores for individual use and installation on home computers except that it is hosted on Company's servers and accessed by customers. Company's sales to consumers would be treated as a sale of remote access prewritten software and therefore is excluded from the definition of digital automated services and generally subject to retail sales tax and retailing B&O tax.

**Example 10.** Same facts as Example 9 except that Company uses the remote access prewritten software to provide a monthly subscription service that provides a real item multi-player environment. Company is selling a digital automated service. In this case the customers are not merely receiving the individual use of software, but instead an online gaming service facilitated by the software. Thus, the monthly subscription service is not excluded from the definition of digital automated service and is subject to retail sales tax and retailing B&O tax.

(i) **Online education programs** provided by the following:

- (i) Public or private elementary or secondary schools; or
- (ii) An institution of higher education as defined in Sections 1001 or 1002 of the federal Higher Education Act of 1965 (Title 20 U.S.C. Sections 1001 and 1002), as existing on July 1, 2009. This would include most colleges and universi-

ties. For the purposes of this ((section)) rule, an online educational program must be encompassed within the institution's accreditation.

**Example 11.** ABC University, a qualifying institution of higher education under the federal Higher Education Act of 1965, provides an accredited online Spanish course for which it charges a quarterly access and use fee to students. The course is remotely accessed by students logging into a web site and accessing a fully interactive program that includes components of video, text, and audio, as well as extensive software code. This service would generally be considered a digital automated service. However, it is specifically excluded from the definition of digital automated service as an online educational program and may be subject to service and other activities B&O tax if another exclusion, deduction, or exemption does not apply.

(j) **Live presentations** such as lectures, seminars, workshops, or courses, where participants are connected to other participants and presenters via the internet or other networks, allowing the participants and the presenters to provide, receive, and discuss information together in real time.

**Example 12.** Company provides an online seminar service for Customer. Company provides a panel of live speakers that make a presentation to Customer's employees listening to and viewing the seminar through an internet connection supplied by a third-party service provider. The seminar allows Customer's employees and panelists to ask and answer questions on a real time basis. Company's online seminar service is transferred electronically and uses one or more software applications and therefore would generally be considered a digital automated service. However, this type of service allowing live interaction is specifically excluded from the definition of digital automated service and would generally be subject to service and other activities B&O tax.

**Example 13.** Same facts as Example 12 except that Company records the seminar and charges other individuals a fee for accessing the seminar from Company's web site. The recorded presentation allows these customers to watch the presentation but it does not allow them to ask questions on a real time basis. Because the presentation was prerecorded there is no live interaction contemporaneous with the presentation and therefore Company is selling a digital good generally subject to retail sales tax and retailing B&O tax.

**Example 14.** Company provides online training courses to Steve for a fee. The training courses provide key interactive elements such as study guides, knowledge testing, and automated help, all facilitated by one or more software applications. Such courses are not live presentations and do not provide human interaction. Accordingly, Company is selling a digital automated service generally subject to retail sales tax and retailing B&O tax.

(k) **Travel agent services**, including online travel services, and automated systems used by travel agents to book reservations.

(l) **Online marketplace related activities**, which are services that allow the person receiving the services to make online sales of products or services, digital or otherwise, using either:

(i) The service provider's web site; or

(ii) The service recipient's web site, but only when the service provider's technology is used either to:

(A) Create or host the service recipient's web site; or

(B) Process orders from customers using the service recipient's web site.

**Example 15.** Company provides an "electronic marketplace" service to Holcomb that allows Holcomb to list and sell his coffee mugs on the internet using Company's web site. This online marketplace service is excluded from the definition of digital automated services and charges for the service would generally be subject to service and other activities B&O tax.

**Example 16.** Same facts as Example 15, except that now Holcomb decides he no longer wants to be just another seller on Company's web site. Instead, Holcomb wants his own "retailing presence" on the internet so Holcomb contracts with Company to create and host Holcomb's new coffee mug web site, "HolcombsCoffeeWorld.com." This is still an online marketplace service that is excluded from the definition of digital automated services and charges for the service would generally be subject to service and other activities B&O tax.

(ii) **Exclusion limitation.** The services described in this subsection do not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service. For instance, in Examples 15 and 16, the sale by Holcomb of coffee mugs would still generally be subject to retail sales tax and retailing B&O tax as the sale of tangible personal property.

(m) **Advertising services** means all services directly related to the creation, preparation, production, or the dissemination of advertisements. Advertising services include: Layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of web site traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration.

**Example 17.** Company provides marketing services to customers wishing to promote their products using the internet. Amy sells widgets on the internet and hires Company to market her products. Company consults with Amy on her marketing needs and then creates a marketing plan for her business. Company also creates and distributes online banners, links, and targeted "e-mail blasts" that promote Amy's business. All of the services provided by Company are advertising services excluded from the definition of digital automated services and would generally be subject to service and other activities B&O tax.

**Example 18.** RVP, Inc. creates "sponsored links" on its web site that drive customer traffic to Amy's web site. RVP is paid by Amy for each click on a sponsored link on RVP's web site. The services provided by RVP are advertising services excluded from the definition of digital automated services

and charges for such would generally be subject to service and other activities B&O tax.

(n) **Storage, hosting, and back-up.** The mere storage of digital products, digital codes, computer software, or master copies of software is excluded from the definition of digital automated services. This exclusion includes providing space on a server for web hosting or backing-up data or other information.

**Example 19.** Company charges Rowe a fee for 25 terabytes of storage space under its "basic storage service" offering. Company also charges Rowe an additional and optional fee for its "premium service" package offering, which involves services beyond mere storage. The "basic storage" services are mere storage services and excluded from the definition of digital automated services. These services would generally be subject to service and other activities B&O tax. However, the charges for the optional premium services are more than mere storage or hosting services. As such, the premium services are not excluded from the definition of digital automated services and would generally be subject to retail sales tax and retailing B&O tax.

(o) **Data processing services** means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to: (i) Extract the required information in an appropriate form, or (ii) to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include remote access prewritten software used by the customer to process their own data.

**Example 20.** Bango Corp., in preparation for litigation, hires Company to use its automated technology to search Bango's computers and gather documents relevant to the lawsuit. Company's service also provides software tools that allow Bango to categorize, copy, store, and notate the gathered documents. Company's service is not data processing. The services performed primarily involve gathering data, and providing software tools that allow the customer to categorize, copy, store and notate documents in preparation for litigation. Accordingly, Company is selling a digital automated service generally subject to retail sales tax and retailing B&O tax.

**Example 21:** Company provides check processing services to Wallo Corp., a bank operating in Washington. Company accepts scanned checks provided by Wallo and then uses its software and technology to extract the check dollar amount, account number, and verify the check has been signed. Company then provides this extracted and reformatted data back to Wallo allowing it to reconcile its customer's accounts. Company provides data processing services which are excluded from the definition of digital automated services. These services would generally be subject to service and other activities B&O tax.

**Example 22.** Same facts as Example 21, except that Company accepts checks provided directly by Wallo's customers. Thus, check images come from both Wallo and Wallo's customers. The services provided by Company are

still data processing services excluded from the definition of digital automated services even though the data does not come exclusively from Wallo. These services would generally be subject to service and other activities B&O tax.

#### **Part 4. Are the Sales of the Digital Product or Digital Code Sourced to Washington?**

(401) **Introduction.** Once it is determined that a transaction involves the sale of a digital product or digital code, the sale must be sourced to Washington in order to be subject to Washington's retail sales tax and B&O tax. If the sale is sourced outside Washington it is not subject to Washington sales tax or B&O tax. Sales of digital products are sourced using the same statute that applies to other retail sales, RCW 82.32.730 as outlined below.

##### **(402) Sourcing retail sales.**

(a) **Business location.** When a digital product or digital code is received by the buyer at a business location of the seller, the sale is sourced to that business location.

**Example 23.** Frank goes to BigBox brick-and-mortar store in Washington and purchases a music file from an electronic kiosk in the store. Frank purchases and downloads the music file inside BigBox's store by connecting his digital music player to the kiosk in the store. The sale of the music file is sourced to BigBox's store location in Washington and is generally subject to retail sales tax and retailing B&O tax.

(b) **Place of receipt.** If the first sourcing rule explained above in (a) of this subsection does not apply, the sale is sourced to the location where receipt takes place.

(i) The digital product or digital code may be received by the buyer at the buyer's location or by the buyer's donee (e.g., a gift recipient) at the donee's location.

(ii) In the context of digital products and digital codes, "receive" and "receipt" means: (A) Making first use of digital automated services; or (B) taking possession or making first use of digital goods or digital codes, whichever comes first.

**Example 24.** Drogba Inc., located in Olympia, Washington, purchases a digital automated service generally subject to retail sales tax from Company. Drogba's employees access and make first use of the service at their computer workstations located in Olympia. Company knows that the digital automated service is received in Olympia and therefore will source the sale of the digital automated service to that location.

(c) **Address in records.** If the first two sourcing rules explained in (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the buyer that is available from the seller's business records maintained in the ordinary course of business, so long as use of this address does not constitute bad faith. For example, any address of the buyer held by the seller that reasonably estimates the receipt location will be sufficient, including an address contained in a relevant service contract or an address used for accounts receivable purpose.

**Example 25.** Nani Corp., located in California, purchases a digital automated service generally subject to retail sales tax and retailing B&O tax from Company located in Washington. The purchase contract between Nani and Company provides that Nani may have 5 users access the digital automated service. Company does not know where the digital

automated service is actually received. However, Company has Nani's California address in its business records and will therefore source the sale to Nani's California address. Because the sale is sourced outside Washington, it is not subject to Washington's retail sales tax or retailing B&O tax. Note, to the extent that Nani Corp., receives the service at locations in Washington, it may have a use tax liability. See subsection (403) of this ((section)) rule for more on use tax.

(d) **Address obtained during sale.** If the first three sourcing rules explained in (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the buyer obtained during the consummation of the sale. For example, an address obtained during consummation of the sale would include the address of a buyer's payment instrument (e.g., billing address for a credit card), if no other address is available, so long as use of this address does not constitute bad faith.

**Internet protocol (IP) address.** The buyer's IP address is acceptable location information obtained at the time of sale if an address cannot otherwise be obtained during consummation of the sale.

(e) **Origin.** If the first four sourcing rules explained in (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the sale must be sourced to the location determined by the address from which the digital good or digital code was first available for transmission by the seller, or from which the digital automated service was provided. Any location that merely provided the digital transfer of the product sold shall be disregarded.

(403) **Sourcing for use tax purposes.** The sales sourcing rules above in subsection (402) of this ((section)) rule are for sourcing sales subject to retail sales tax under RCW 82.08.020 and RCW 82.32.730. What follows below is a discussion of use tax reporting obligations with respect to digital goods, digital automated services, and digital codes. Generally, use tax applies to the use of a digital product or digital code in Washington if retail sales tax has not already been paid and no exemption otherwise applies.

(a) **Digital good or digital code.** "Use" means the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code.

(b) **Digital automated service.** "Use" means the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service.

**Example 26.** Company, located in New York, sells a digital automated service generally subject to retail sales tax and retailing B&O tax to Lampard Inc., located in Washington. Lampard's employees in Washington use the internet to access Company's services using an internet web browser. However, Company does not have nexus with Washington and is therefore not required to charge and collect retail sales tax on the sale of its service to Lampard. Lampard has a use tax reporting obligation because it uses, enjoys, or otherwise receives the benefit of Company's digital automated service at its location in Washington.

## Part 5. Are there Applicable Retail Sales or Use Tax Exemptions for the Purchase or Use of the Digital Product or Digital Code?

(501) **Introduction.** After determining that a digital product or digital code has been sold or used and the sale or use is sourced to Washington, exemptions from retail sales or use tax should be examined. What follows is not an exhaustive list of exemptions but instead an explanation of the most common exemptions for digital products. Some exemptions may apply only with respect to certain digital products (e.g., some exemptions apply only to digital goods, not digital automated services). Exemptions may also require an exemption certificate or reseller permit.

(502) **Resale.** The purchase of a digital product or digital code for resale with no intervening use is not subject to retail sales or use tax. Sellers should obtain from buyers a copy of the buyer's reseller permit, a properly completed "Digital Products and Remote Access Software Exemption Certificate," or otherwise comply with RCW 82.04.470 to substantiate the wholesale nature of the sale. See RCW 82.32.780.

(503) **Component of a new product.** Generally, purchasing, acquiring, owning, holding, or using any digital product or digital code for purposes of incorporating it into a new product for sale will not be subject to retail sales tax. The digital product or digital code must become a component of the new product for sale. A digital code becomes a component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes incorporated into a new product. RCW 82.04.190(11). This is also discussed in subsection (602) of this ((section)) rule in the context of wholesale sales.

**Product.** For purposes of this subsection, "product" means a digital product, an article of tangible personal property, or remote access prewritten software as defined in RCW 82.04.050 (6)(b). For example, an industrial drill manufacturer and seller combines hardware, software, and data to create a new product, a "smart drill." Software embedded in the drill uses the variance data (also embedded in the drill) to control the hardware during drill operations. The data is a digital good purchased for use as a component of a new product for sale (i.e., the drill). Sellers should obtain from buyers a copy of the buyer's reseller permit, a properly completed "Digital Products and Remote Access Software Exemption Certificate," or otherwise comply with RCW 82.04.470 to substantiate the wholesale nature of the sale.

(504) **Made available free to the general public.** Retail sales and use tax does not apply to the purchase or use by a business or other organization of a digital product (including a digital product acquired through the use of a digital code) in order to make that digital product (1) available free of charge for the use or enjoyment of (2) the general public. Buyers claiming this exemption must provide the seller with a properly completed "Digital Products and Remote Access Software Exemption Certificate" or other exemption certificate acceptable to the department. See RCW 82.08.02082.

(a) **Available for free.** In order to qualify, the digital product purchased must be made available for free. In this context, "free" means that the recipient of the digital product does not need to provide anything of significant value. If the

purchaser requires something of significant value from the recipient in exchange for the digital product, it is not given away for free.

**Example 27.** Mauro purchases 1,000 digital music files from Company to be used for a "give away" to the first 1,000 people to visit Mauro's web site. When people visit Mauro's web site they are required to fill out a marketing survey before they may receive a digital music file. The information gathered from the marketing survey is then sold to a marketing company by Mauro. Thus, Mauro has required that recipients provide something of significant value in exchange for the digital music file. This is not a "free" transaction and therefore, Mauro's purchase of the digital music from Company does not qualify for the exemption and would be subject to retail sales tax and retailing B&O tax. (See also Example 29.)

(b) **"General public"** means all persons and is not limited or restricted to a particular class of persons, except that the general public includes:

(i) **Certain classes of persons defined by their residency or property ownership.** The general public includes a class of persons residing or owning property within the boundaries of any state (e.g., Washington), political subdivision of a state (e.g., King County), or a municipal corporation (e.g., Seattle).

**Example 28.** The City of Evergreen (a municipal corporation) makes satellite images of land parcels available for free only to persons residing in Evergreen. Residents are required to enter their zip code prior to accessing the images and certify that they are a resident of the City. Accordingly, the City of Evergreen can purchase the satellite images exempt from retail sales tax.

(ii) **Library customers.** With respect to libraries, the term general public includes authorized library patrons.

(c) **Buyer must have the legal rights to provide the digital product to the general public.** The exemption provided in this subsection does not apply unless the purchaser has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the digital product, in whole or in part, to the general public.

**Example 29.** Same facts as Example 27, except this time visitors to Mauro's web site are provided free access to the digital music files and no survey information is required in exchange. Additionally, Mauro purchased the digital music files from Company with the right to distribute them to the general public. Mauro also provided the seller with an exemption certificate. Accordingly, Mauro's purchase from Company qualifies for the exemption because he has made the digital audio files available free of charge to the general public pursuant to a contract that gives him rights of distribution. Mauro only purchased 1,000 files and therefore must limit the distribution to the first 1,000 people. Most "give-aways" will have similar quantity limitations but this fact alone will not disqualify such transactions under the "general public" requirement.

**(505) Purchased solely for business purpose.**

(a) **Introduction.** Retail sales and use tax does not apply to the sale to or use by a business of digital goods and services rendered in respect to those digital goods, where the digital goods and services rendered in respect to digital goods

are purchased solely for business purposes. This exemption only applies to purchases of digital goods and does not apply to the purchase of digital automated services, prewritten software, or remote access prewritten software. The exemption is only available when the buyer provides the seller with an exemption certificate. Buyers may use the department's "Digital Products and Remote Access Software Exemption Certificate" to claim this exemption. See RCW 82.08.02087.

(b) **Digital codes.** This exemption also applies to the sale to or use by a business of a digital code if all of the digital goods to be obtained through the use of the code will be used solely for business purposes. If the digital code purchased by a business for a business purpose provides access to both digital goods and digital automated services, the purchase of the digital code does not qualify for this exemption.

(c) **"Business purposes"** means the digital good is relevant to the buyer's business needs.

(d) **Personal or household purpose.** This exemption does not apply to the purchase for personal or household purposes.

(e) **Government entities.** This exemption does not apply to purchases by a governmental entity.

(f) **Prior periods.** For the period July 26, 2009, through June 30, 2010, the "business purpose" exemption applied only to "standard digital information." Standard digital information is a subset of digital goods.

**Standard digital information** is a digital good that consists primarily of data, facts, and/or information that is not generated or compiled for a specific client or customer. Standard digital information does not include a digital good that is comprised primarily of sounds or images.

**(506) Purchases of standard financial information by qualifying international investment management companies.** Effective October 1, 2013, the purchase of standard financial information by a qualifying international investment management company is exempt from retail sales tax. The exemption applies regardless of whether the standard financial information is provided in a tangible format or on a tangible storage medium or as a digital product transferred electronically. This sales and use tax exemption expires July 1, 2021.

(a) **"Qualifying international investment management company"** means a person:

(i) Who is primarily engaged in the business of providing investment management services; and

(ii) Who has gross income that is at least ten percent derived from providing investment management services to:

(A) Persons or collective investment funds residing outside the United States; or

(B) Collective investment funds with at least ten percent of their investments located outside the United States.

(b) The definitions in RCW 82.04.293 generally apply here to this subsection (506) except as follows:

(i) **Important distinction.** This definition of "qualifying international investment management company" is more narrow than the definition in RCW 82.04.293; this definition in (a)(ii)(B) of this subsection excludes "persons" and only allows for "collective investment funds" unlike RCW 82.04.293 (1)(b)(ii) which includes "persons or collective investment funds" for B&O tax purposes.



(ii) **"Standard financial information"** means financial data, facts, or information, or financial information services, not generated, compiled, or developed only for a single customer. Standard financial information includes, but is not limited to, financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports.

(iii) **"Financial market data"** means market pricing information, such as for securities, commodities, and derivatives; corporate actions for publicly and privately traded companies, such as dividend schedules and reorganizations; corporate attributes, such as domicile, currencies used, and exchanges where shares are traded; and currency information.

(iv) **Filing and documentation.** Sellers making tax-exempt sales should obtain a completed buyer's retail sales tax exemption certificate from the buyer. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy of the exemption certificate or other relevant data elements from the seller's files and must meet the records requirement in subsection (607) of this rule for tax liabilities owed to this state. For sellers who electronically file their taxes, the department will provide a separate tax reporting line for exemption amounts claimed under this ((section)) rule.

(v) **Limitations on exemption.** A buyer may not continue to claim the exemption once the buyer has purchased standard financial information during the current calendar year with an aggregate total selling price in excess of fifteen million dollars and an exemption has been claimed for such standard financial information. The fifteen million dollar limitation under this subsection does not apply to any other exemption that applies to standard financial information.

(vi) **Sellers' responsibilities.** Sellers are not responsible for ensuring a buyer's compliance with the fifteen million dollar limitation under this subsection. Sellers may not be assessed for uncollected sales tax on a sale to a buyer claiming an exemption under this ((section)) rule after having exceeded the fifteen million dollar limitation under this subsection, except as provided in RCW 82.08.050 (4) and (5).

(vii) **Reporting requirements for buyers.** This sales and use tax exemption for standard financial information is subject to additional reporting requirements. Buyers must report the amount of tax preference received as directed by the department. Buyers are not required to report the amount of preference received if the tax benefit to a buyer is less than one thousand dollars per year; or the buyer files an annual tax return with the department.

(507) **Multiple points of use (MPU).** Retail sales tax does not apply to the sale of digital products or digital codes concurrently available for use within and outside this state. See RCW 82.12.02088 and 82.08.02088. Note that Washington use tax still applies to the use of the digital product or digital code used in Washington.

(a) **Requirements.** A buyer is entitled to claim the MPU exemption only if:

(i) The buyer is a business or other organization.

(ii) The digital product purchased (or obtained by using the digital code purchased) will be concurrently available for use within and outside this state (not for personal use).

(ii) The buyer provides the seller with a valid exemption certificate acceptable to the department claiming the MPU exemption. Buyers may use the department's "Digital Products and Remote Access Software Exemption Certificate" to claim this exemption.

(b) **Concurrently available.** "Concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital product simultaneously from one or more locations within this state and one or more locations outside this state.

**Example 30.** Company sells an online patent searching service to Iniesta Corp., for simultaneous use at Iniesta's headquarters in Washington and its research and development facility in California. This service would generally be considered the sale of a digital automated service subject to retail sales tax and retailing B&O tax. In this case, the digital automated service is concurrently available for use by Iniesta's employees both within Washington and outside Washington, and therefore Iniesta may claim the MPU exemption from retail sales tax for its purchase of the digital automated service from Company. See (c) of this subsection for an explanation of how to apportion the use tax in this example.

(c) **Apportionment (allocation) of use tax.** For purposes of this subsection on multiple points of use, "allocation" and "apportionment" have the same meaning. A business or other organization subject to use tax on digital products or digital codes that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. For example, in the case of Iniesta in Example 30, if we assume Iniesta had five employees in California and five employees in Washington using the service concurrently, Iniesta would allocate one-half of the purchase price to Washington because five of its ten users are in Washington (e.g.,  $5/10 = 50\%$ ). Thus Iniesta would pay use tax to Washington based on fifty percent of the value of the digital automated service. Additionally, the department may authorize or require an alternative method of allocation supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer.

(i) **Records requirement.** No allocation under this ((section)) rule is allowed unless the allocation method is supported by the taxpayer's records kept in the ordinary course of business in compliance with the records requirement in subsection (607) of this rule for tax liabilities owed to this state.

(ii) **"User"** means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital product purchased in the performance of his or her duties as an employee or other agent of the taxpayer.

(d) **Application to digital codes.** A digital code is concurrently available for use within and outside this state if users may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

(e) **Reporting.** A buyer claiming an exemption under this ((section)) rule must report and pay state and local use tax directly to the department. As explained in (c) of this subsection, use tax may be reported and paid on an apportioned

basis if supported by the buyer's records in compliance with the records requirement in subsection (607) of this rule for tax liabilities owed to this state.

(508) **Machinery and equipment.** Generally retail sales and use tax does not apply to sales to or use by a manufacturer or processor for hire of certain machinery and equipment used directly in a manufacturing or research and development operation. This exemption is commonly referred to as the M&E exemption. (See RCW 82.08.02565 and 82.12.-02565 and WAC 458-20-13601 for information regarding the M&E exemption.) Included within the definition of "machinery and equipment" for purposes of the M&E exemption are digital goods. Accordingly, digital goods acquired by manufacturers and processors for hire and used directly in a manufacturing or research and development operation are exempt from retail sales and use tax, provided all of the requirements for the M&E exemption are met.

(509) **Audio or video programming.** Income received from the sale of regular audio or video programming by a radio or television broadcaster is generally subject to service and other B&O tax and therefore not subject to retail sales tax. However, the sale of audio or video programming sold on a pay per program or subscription on-demand basis is generally subject to retail sales and use tax except as provided in (d) and (e) of this subsection.

(a) **"Radio and television broadcasters"** include satellite radio providers, satellite television providers, cable television providers, and providers of subscription internet television.

(b) **"Pay per program or subscription on-demand basis"** means programming that the buyer pays for on a per program basis or a service that allows the buyer to access a library of programs at any time for a specific charge.

(c) **"Regular programming"** is scheduled programming. The person watching cannot stop, pause, rewind, or otherwise control the broadcast of the scheduled programming, including the time that the scheduled program is broadcast.

The fact that a customer uses a recording device, such as a VCR or DVR, does not result in the broadcaster's programming being characterized as a digital good.

(d) **Cable television providers paying franchise fees.** Cable television providers' sales of programming to consumers on a pay-per-program or subscription on-demand basis are not subject to retail sales and use tax if the cable television provider is subject to a franchise fee (under the authority of Title 47 U.S.C. Sec. 542(a)) on the gross revenue received from such sales. If the cable television provider is not subject to a franchise fee on the income from the sale of programming on a pay-per-program or subscription on-demand basis, then the exemption does not apply and the cable television provider must collect and remit retail sales tax on the retail sale of such programming.

**Example 31.** XYZ sells video programming to customers using cable technology. XYZ does not pay a franchise fee. Customers of XYZ are charged a monthly subscription fee to receive video programming. Customers are charged additional fees to view selected movies. XYZ must charge and collect retail sales tax on the additional fees charged to view the selected movies, but not on the monthly subscription fee

which would generally be subject to service and other activities B&O tax.

(e) Satellite television providers do not generally pay franchise fees and therefore do not qualify for the retail sales and use tax exemption based on payment of franchise fees as described in (d) of this subsection.

(510) **Newspapers.** Generally, retail sales and use tax does not apply to sales of newspapers transferred electronically, provided that the electronic version has a printed counterpart, and the electronic version:

(a) Shares content with the printed newspaper; and

(b) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

(c) "Printed newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper.

(511) **Received for free by end user.** Digital products and digital codes obtained by the end user for free are not subject to use tax.

(a) For example, a person's use of a free search engine is not subject to use tax.

(b) For example, a person reading an online article or viewing an online picture for free is not subject to use tax.

(512) **Other use tax exemptions.** Use tax does not apply to the use of digital goods that are:

(a) Noncommercial in nature, such as personal e-mail communications;

(b) Created solely for an internal audience; or

(c) Created solely for the business needs of the person who created the digital good and is not the type of digital good that is offered for sale, including business e-mail communications.

**Example 32.** Gary, an employee of Kadabbera Corp., creates a digital audio-visual presentation using presentation authoring software and his innate creative capacity. Gary distributes the presentation internally to various divisions within Kadabbera in order to train employees on changes to company policies. Gary has created and distributed an item that meets the definition of "digital good." However, the distribution and use of this digital good is not subject to use tax as long as it is used solely internally or solely for the business needs of Kadabbera.

## Part 6. Miscellaneous Provisions

(601) **Retail services.** Washington imposes retail sales and use tax on certain enumerated services under RCW 82.04.050 ("retail services"). For example, the sale of credit bureau services is subject to retail sales tax. However, when a retail service is transferred electronically and also meets the definition of digital automated service or digital good, such service will be treated as a digital product and is eligible for all applicable digital products retail sales and use tax exemptions as described above in Part 5 of this rule. Retail services that are not transferred electronically or those retail services that are excluded from the definitions of digital good or digital automated service (e.g., telecommunications services and ancillary services) continue to be taxed as retail services.

**Example 33.** ABC creates a "canned" digital report on Company X's creditworthiness prepared prior to a customer request for the report. The report may be a credit bureau service and/or a digital good (if transferred electronically). The "canned" report is listed for sale on ABC's web site. An employee of InvestCo, Inc. purchases and downloads a digital copy of the "canned" credit report from ABC's web site for InvestCo's business purpose. ABC is selling a digital good generally subject to retail sales tax. However, the "canned" report is purchased by InvestCo solely for a business purpose and therefore exempt from retail sales tax (see subsection (505) of this ((section)) rule for more on this exemption).

**Example 34.** Company sells credit reports and credit research services. EPD Corp., requests that Company prepare a credit report for EPD's specialized business purposes. After receiving the request, Company's employee researches, analyzes and generates information from various digital sources to prepare the credit report for EPD. Company then sends the report electronically as a digital file to EPD. Company is not selling a digital good because the digital item supplied to EPD is merely a representation of a professional service performed by EPD's employee. Therefore, Company's services are not a "digital product." However, Company is still required to charge and collect retail sales tax because Company is still providing credit bureau services, a retail service, subject to retail sales tax.

**Example 35.** Company sells an online credit reporting service. The service includes access to searchable data bases, digital data analysis, and digital data reporting tools. ManageCo investigates the credit worthiness of individuals and therefore purchases access to Company's online service. Company is selling a digital automated service to be used solely for a business purpose by ManageCo. However, the "used solely for a business purpose" exemption is limited to digital goods and is not applicable to digital automated services. As such, Company is required to charge and collect retail sales tax on its sale of the digital automated service to ManageCo.

(602) **Royalties and wholesaling B&O tax on digital products.** The sale of digital products to "nonend users" may be subject to royalties or wholesaling B&O tax depending on the type of transaction and the intangible rights provided to the purchaser. Transactions which provide the right to resell digital products (no copying rights) to consumers will generally be treated as wholesale sales. Additionally, transactions which allow the purchaser the right to incorporate a digital product into a new product for sale will also be treated as wholesale sales. See also subsection (503) of this ((section)) rule. Other nonend user transactions involving digital products or digital codes will generally be treated as royalties transactions.

**Example 36.** Media Corp., licenses to Rerun Inc., the right to further broadcast a digital movie file on Rerun's web site for a specified period of time. In this case Media Corp. provides Rerun with the right by contract to further commercially broadcast or exhibit a digital movie to its subscribers. This is a nonend user transaction subject to royalties B&O tax. Media Corp. would report its gross receipts from this transaction under the royalties B&O tax classification and not charge and collect retail sales tax on the transaction with

Rerun. Rerun's charges for the subscription service provided to consumers are generally subject to retail sales tax and retailing B&O tax.

**Example 37.** Same facts as Example 36 except Rerun purchases individual digital movie files from Media Corp. with the right to resell those individual files to end users at retail instead of rebroadcasting or exhibiting to the public. In this case Media Corp. has provided Rerun with the right to resell individual digital movie files to end users. Media Corp. would report its gross receipts from this transaction under the wholesaling B&O tax classification and not charge and collect retail sales tax on the transaction with Rerun. Rerun's charges to consumers for the movie files are generally subject to retail sales tax and retailing B&O tax.

**Example 38.** Same facts as Example 37 except that Rerun purchases a single digital movie file with the right provided by contract to duplicate and sell that movie file. In this case Media Corp. has provided Rerun with the right to duplicate and sell individual digital movie files. Media Corp. would report its gross receipts from this transaction under the royalties B&O tax classification. Media Corp. would not need to charge and collect retail sales or use tax from Rerun. Rerun's charges to consumers for the movie files are generally subject to retail sales tax and retailing B&O tax.

**Example 39.** Jack is a photographer who creates a digital picture of Mt. Rainier. Jack licenses, by contract, to Cashman the right to duplicate and sell copies of the Mt. Rainier picture in retail stores. Cashman's payment to Jack is for the grant of an intangible right and subject to royalties B&O tax. Cashman's sale of the picture at retail to customers is subject to retail sales tax and retailing B&O tax.

(603) **Substantial nexus** is not established in Washington if a business's only contact with the state of Washington is ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; a digital goods or digital codes residing on servers in Washington. For purposes of this ((section)) rule, "substantial nexus" means the requisite connection that a person must have with a state to allow the state to subject the person to the state's taxing authority, consistent with the commerce clause of the United States Constitution.

(604) **Amnesty.** Before July 26, 2009, retail sales of downloaded digital goods on a permanent or nonpermanent basis were subject to retail sales tax. This did not include accessed or streamed digital goods. However, amnesty is available to those who did not collect or pay retail sales or use tax on digital goods and digital codes during that time. Sales of digital automated services and accessed or streamed digital goods were subject to service and other B&O tax before July 26, 2009, and amnesty does not extend to these transactions because they were not subject to retail sales tax during that time period.

(a) **Refunds and credits of retail sales or use tax.** No refund or credit will be given for state and local retail sales and use taxes properly paid on the sale or use, before July 26, 2009, of digital goods or of installing, repairing, altering, or improving digital goods.

(b) **No B&O tax refund or credit unless sales tax was paid.** If a taxpayer paid B&O tax under the service and other

activities classification prior to July 26, 2009, on income received from retail sales of digital products or digital codes, the taxpayer may not receive a refund or credit for the difference between the B&O tax actually paid and the B&O tax that should have been paid under the retailing classification unless the taxpayer has remitted the retail sales tax for those sales.

(605) **Bundled transactions.** A "bundled transaction" is the retail sale of two or more products, which are distinct and identifiable for one nonitemized price. Because retail sales of digital products and digital codes are subject to retail sales tax, the general rules on the taxation of bundled transactions may apply to certain transactions involving digital products and digital codes. See RCW 82.08.190 and 82.08.195 for more information on the tax treatment of bundled transactions.

(606) **Property tax.** The excise tax laws relating to digital products and digital codes do not have any impact in the characterization of digital goods and digital codes as tangible or intangible personal property for purposes of property taxation and may not be used in any way in construing Title 84 RCW. See section 1201, chapter 535, Laws of 2009.

(607) **Records requirement.** Every taxpayer liable for any tax collected by the department must keep and preserve, for a period of five years, suitable records to determine the amount of tax owed. Such records must include copies of all federal income tax and state tax returns and reports. All of taxpayer's books, records, and invoices must be open to examination by the department. An out-of-state taxpayer that does not keep the necessary books and records within this state may produce within this state the books and records required by the department, or permit the examination by an agent authorized or designated by the department at the place the books and records are kept.

### WSR 15-24-121

#### EXPEDITED RULES

#### BUILDING CODE COUNCIL

[Filed December 1, 2015, 4:49 p.m.]

Title of Rule and Other Identifying Information: Chapter 51-54A WAC, Washington State Fire Code.

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Joanne T. McCaughan, State Building Code Council, P.O. Box 41449, Olympia, WA 98504-1449, AND RECEIVED BY February 2, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are

editorial corrections for the 2016 Washington State Fire Code.

Reasons Supporting Proposal: Editorial corrections are necessary to correct dates and other minor changes.

Statutory Authority for Adoption: Chapter 19.27 RCW.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State Building Code Council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne T. McCaughan, Olympia, Washington, (360) 407-9279; and Enforcement: Not applicable.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: These are editorial corrections [corrections] being filed to ensure that the rule-making record is complete.

December 1, 2015

Dave Kokot

Chair

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

**WAC 51-54A-003 International Fire Code.** The ((2012)) 2015 edition of the International Fire Code, published by the International Code Council is hereby adopted by reference with the following additions, deletions, and exceptions.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

**WAC 51-54A-007 Exceptions.** The exceptions and amendments to the International Fire Code contained in the provisions of chapter 19.27 RCW shall apply in case of conflict with any of the provisions of these rules.

Codes referenced which are not adopted through RCW 19.27.031 or chapter 19.27A RCW shall not apply unless specifically adopted by the authority having jurisdiction. The ((2012)) 2015 International Wildland Urban Interface Code is included in this code as Section 8100 with amendments found in Appendix Chapter ((K)) N.

The provisions of this code do not apply to temporary growing structures used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables, and fruits. "Temporary growing structure" means a structure that has the sides and roof covered with polyethylene, polyvinyl, or similar flexible synthetic material and is used to provide plants with either frost protection or increased heat retention. A temporary growing structure is not considered a building for purposes of this code.

The provisions of this code do not apply to the construction, alteration, or repair of temporary worker housing except as provided by rule adopted under chapter 70.114A RCW or chapter 37, Laws of 1998 (2SSB 6168). "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an employer for his or her employees or by another person, including a temporary

worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy, and includes "labor camps" under RCW 70.54.110.

The manufacture, storage, handling, sale and use of fire-works shall be governed by chapter 70.77 RCW and by chapter 212-17 WAC and local ordinances consistent with chapter 212-17 WAC.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

**WAC 51-54A-0101 Section 101—Scope and general requirements.**

**101.2.1 Appendices.** Provisions in the appendices shall not apply unless specifically adopted. The State Building Code Council has determined that a local ordinance adopting Appendix ((K)) N Wildland Urban Interface Code may be adopted by any local government upon notification of the council.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

**WAC 51-54A-1104 Means of egress for existing buildings.**

**1104.1 General.** Means of egress in existing buildings shall comply with Section 1030 and 1104.2 through ((1104.24)) 1104.25.

EXCEPTION: Means of egress conforming to the requirements of the building code under which they were constructed and Section 1030 shall not be required to comply with 1104.2 through 1104.22 and ((1104.24)) 1104.25.