WSR 16-12-010
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed May 19, 2016, 2:38 p.m., effective June 19, 2016]

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

Purpose: The department is amending WAC 388-832-0015 and repealing WAC 388-832-0085 due to the 2014 operating supplemental budget directing the developmental disabilities administration to move the state funded individual and family services (IFS) program into a 1915(C) home and community based services waiver. These changes will reflect that the IFS program is closed to new entrants.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-832-0085; and amending WAC 388-832-0015.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: ESSB 6002 2014 operating supplemental budget, SSB 6387 of the 63rd legislature, 2014 regular session.

Adopted under notice filed as WSR 16-06-048 on February 24, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 1.

Date Adopted: May 18, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0015 Am I eligible for the IFS program? (1) The IFS program and SSP in lieu of IFS is not open to new enrollment.

(2) If you were enrolled in the IFS program before June 1, 2015 you are eligible to ((~~be considered for~~)) remain on the IFS program if you meet the following criteria:

(a) You are currently an eligible client of ((~~DDD~~)) DDA;

(b) You live in your family home;

(c) You are not eligible to enroll((~~ed~~)) in a ((~~DDD~~)) DDA home and community based services waiver defined in chapter 388-845 WAC;

(d) You are currently enrolled in ((~~traditional family support, family support opportunity or the family support pilot or funding has been approved for you to receive IFS program services~~)) the IFS program;

(e) You are age three or older;

(f) You have been assessed as having a need for IFS program services as listed in WAC 388-832-0140; and

(g) You are not receiving a ((~~DDD~~)) DDA adult or child residential service or licensed foster care.

(((~~2~~))) (3) If you are a parent who is a client of ((~~DDD~~)) DDA, you are eligible to ((~~receive~~)) remain on the IFS program ((~~services~~)) in order to promote the integrity of the family unit until your next assessment, provided:

(a) You meet the criteria in subsections (((~~1~~))) (2)(a) through (f) ((~~above~~)) of this section; and

(b) Your minor child who lives in your home is at risk of being placed up for adoption or into foster care.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-832-0085	When there is state funding available to enroll additional clients on the IFS program, how will DDD select from the clients on the IFS program request list?

WSR 16-12-022
PERMANENT RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed May 20, 2016, 12:54 p.m., effective June 20, 2016]

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

Purpose: The agency is amending these rules to include changes to broker requirements for transportation requests made by tribes, changes to client responsibility in regards to urgent care requests, changes to limitations on trips when a client is discharged from an emergency department; and to clarify the limitation in providing trips for additional off-site mental health activities.

Citation of Existing Rules Affected by this Order: Amending WAC 182-546-5000, 182-546-5100, 182-546-5200, 182-546-5300, 182-546-5400, 182-546-5550, 182-546-5700, and 182-546-6000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-08-104 on April 5, 2016.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: May 20, 2016.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5000 Nonemergency transportation—General. (1) The medicaid agency covers nonemergency nonambulance transportation to and from covered health care services, as provided by the Code of Federal Regulations (42 C.F.R. 431.53 and 42 C.F.R. 440.170) subject to the limitations and requirements under WAC 182-546-5000 through 182-546-6200. See WAC 182-546-1000 for nonemergency ground ambulance transportation.

(2) The agency pays for nonemergency transportation for clients covered under state-funded medical programs subject to funding appropriated by the legislature.

(3) Clients may not select the transportation provider or the mode of transportation.

(4) A client's right to freedom of ((~~access to health care~~)) choice does not require the agency to cover transportation at unusual or exceptional cost in order to meet a client's personal choice of provider.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5100 Nonemergency transportation—Definitions. The following definitions and those found in chapter 182-500 WAC apply to nonemergency medical brokered transportation. Unless otherwise defined in WAC 182-546-5200 through 182-546-6000, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

"Ambulance" - See WAC 182-546-0001.

"Broker" - An organization or entity contracted with the medicaid agency to arrange nonemergency transportation services for clients.

"Drop off point" - The location authorized by the transportation broker for the client's trip to end.

"Escort" - A person authorized by the transportation broker to accompany and be transported with a client to a health care service. An escort's transportation may be authorized depending on the client's age, mental state or capacity, safety requirements, mobility skills, communication skills, or cultural issues.

"Extended stay" - A period of time spanning seven consecutive days or longer for which a client receives health care services outside of his or her local community and for which he or she may request assistance with meals ((~~and/or~~)) and lodging.

"Guardian" - A person who is legally responsible for a client and who may be required to be present when a client is receiving health care services.

"Local community" - The client's city or town of residence or nearest location to residence.

"Local provider" - A provider, as defined in WAC 182-500-0085, who delivers covered health care service within the client's local community, and the treatment facility where the services are delivered ((~~are also~~)) within the client's local community.

"Lodging and meals" - Temporary housing and meals ((~~in support of~~)) provided during a client's out-of-area medical stay.

"Mode" - A method of transportation assistance used by the general public that an individual client can use in a specific situation. Methods that may be considered include, but are not limited to:

- Air transport;
- Bus fares;
- Ferries/water taxis;
- Gas vouchers/gas cards;
- Grouped or shared-ride vehicles;
- Mileage reimbursement;
- Parking;
- Stretcher vans or cars;
- Taxi;
- Tickets;
- Tolls;
- Train;
- Volunteer drivers;
- Walking or other personal conveyance; and
- Wheelchair vans.

"Noncompliance or noncompliant" - When a client:

- Fails to appear at the pickup point of the trip at the scheduled pickup time;
- Misuses or abuses agency-paid medical, transportation, or other services;
- Fails to comply with the rules, procedures, or policies of the agency or those of the agency's transportation brokers, the brokers' subcontracted transportation providers, or health care service providers;
- Poses a direct threat to the health or safety of self or others; or
- Engages in violent, seriously disruptive, or illegal conduct.

"Pickup point" - The location authorized by the agency's transportation broker for the client's trip to begin.

"Return trip" - The return of the client to the client's residence, or another authorized drop-off point, from the location where a covered health care service has occurred.

"Short stay" - A period of time spanning one to six days for which a client receives health care services outside of his or her local community and for which he or she may request assistance with meals ((~~and/or~~)) and lodging.

"Stretcher car or van" - A vehicle that can legally transport a client in a prone or supine position when the client does not require medical attention en route.

"Stretcher trip" - A transportation service that requires a client to be transported in a prone or supine position without medical attention during the trip. This may be by stretcher, board, gurney, or other appropriate device. Medical or safety requirements must be the basis for transporting a client in the prone or supine position.

"Transportation provider" - ((~~An individual~~)) A person or company under contract with a broker((~~, for the provision of trips~~)) to provide trips to eligible clients.

"Trip" - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.

"Urgent care" - An unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5200 Nonemergency transportation broker and provider requirements. (1) The medicaid agency requires:

(a) Brokers and subcontracted transportation providers to be licensed, equipped, and operated in accordance with applicable federal, state, and local laws, and the terms specified in their contracts;

(b) Brokers to:

(i) Screen their employees and subcontracted transportation providers and employees prior to hiring or contracting, and on an ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5; and

(ii) Report immediately to the agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5.

(c) Drivers and passengers to comply with all applicable federal, state, and local laws and regulations during transport.

(2) Brokers:

(a) Must determine the level of assistance needed by the client (e.g., curb-to-curb, door-to-door, door-through-door, hand-to-hand) and the mode of transportation to be used for each authorized trip;

(b) Must select the lowest cost available mode or alternative that is both accessible to the client and appropriate to the client's medical condition and personal capabilities;

(c) Must have subcontracts with transportation providers in order for the providers to be paid by the broker;

(d) Must provide transportation services comparable to those available to the general public in the local community;

(e) May subcontract with licensed ambulance providers for nonemergency trips in licensed ground ambulance vehicles; and

(f) ((~~May~~)) Must negotiate in good faith a contract with a federally recognized tribe that has all or part of its contract health service delivery area, as established by 42 C.F.R. Sec. 136.22, within the broker's service region, to provide transportation services when requested by that tribe. The contract must comply with federal and state requirements for contracts with tribes. When the agency approves the request of a tribe or a tribal agency to administer or provide transportation services under WAC 182-546-5100 through 182-546-6200, tribal members may obtain their transportation services from the tribe or tribal agency with coordination from and payment through the transportation broker.

(3) If the broker is not open for business and is unavailable to give advance approval for transportation to an urgent care appointment or after a hospital discharge, the subcontracted transportation provider must either:

(a) Provide the transportation in accordance with the broker's after-hours instructions and request a retroactive authorization from the broker within two business days of the transport; or

(b) Deny the transportation, if the requirements of this section cannot be met.

(4) If the subcontracted transportation provider provides transportation as described in subsection (3)(a) of this section, the broker may grant retroactive authorization and must document the reason in the client's trip record.

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

WAC 182-546-5300 Nonemergency transportation—Client eligibility. (1) The agency pays for nonemergency transportation for Washington apple health (WAH) clients, including persons enrolled in an agency-contracted managed care organization (MCO), to and from health care services when the health care service(s) meets the requirements in WAC 182-546-5500.

(2) Persons assigned to the patient review and coordination (PRC) program according to WAC 182-501-0135 may be restricted to certain providers.

(a) Brokers may authorize transportation of a PRC client to only those providers to whom the person is assigned or referred by their primary care provider (PCP), or for covered services which do not require referrals.

(b) If a person assigned to PRC chooses to receive service from a provider, pharmacy, ((~~and/or~~)) or hospital that is not in the person's local community, the person's transportation is limited per WAC 182-546-5700.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5400 Nonemergency transportation—Client responsibility. (1) Clients must comply with applicable state, local, and federal laws during transport.

(2) Clients must comply with the rules, procedures and policies of the medicaid agency, brokers, the brokers' subcontracted transportation providers, and health care service providers.

(3) A client who is noncompliant may have limited transportation mode options available.

(4) Clients must request, arrange, and obtain authorization for transportation at least two business days before a health care appointment, except when the request is for an urgent care appointment or a hospital discharge. Requests for trips to urgent care appointments must not be to an emergency department (also known as an emergency room).

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5550 Nonemergency transportation—Exclusions and limitations. (1) The following service categories listed in WAC 182-501-0060 are subject to the following exclusions and limitations:

(a) Adult day health (ADH) - Nonemergency transportation for ADH services is not provided through the brokers. ADH providers are responsible for arranging or providing transportation to ADH services.

(b) Ambulance - Nonemergency ambulance transportation is not provided through the brokers except as specified in WAC 182-546-5200 (2)(e).

(c) Emergency department (ED) - When a client is discharged from the ED, brokers may provide transportation to another medicaid-covered service or to the client's residence only.

(d) Hospice services - Nonemergency transportation is not provided through the brokers when the health care service is related to a client's hospice diagnosis. See WAC 182-551-1210.

(((~~d~~))) (e) Medical equipment, durable (DME) - Nonemergency transportation is not provided through the brokers for DME services, except for complex rehabilitation technology (CRT) and DME equipment that needs to be fitted to the client.

(((~~e~~))) (f) Medical nutrition services - Nonemergency transportation is not provided through the brokers to pick up medical nutrition products.

(((~~f~~))) (g) Medical supplies/equipment, nondurable (MSE) - Nonemergency transportation is not provided through the brokers for MSE services.

(((~~g~~))) (h) Mental health services:

(i) Nonemergency transportation brokers generally provide one round trip per day to or from a mental health service. ((~~Additional trips for off-site activities, such as a visit to a recreational park, are the responsibility of the provider/facility.~~)) The broker must request agency approval for additional trips for off-site activities.

(ii) Nonemergency transportation of an involuntarily detained person under the Involuntary Treatment Act (ITA) is not a service provided or authorized by transportation brokers. Involuntary transportation is a service provided by an ambulance or a designated ITA transportation provider. See WAC 182-546-4000.

(((~~h~~))) (i) Chemical dependency services - Nonemergency transportation is not provided through the brokers to or from the following:

(i) Residential treatment, intensive inpatient, or long-term treatment at certified facilities which are institutes for mental diseases (IMDs)((~~. Transportation may be provided to these services which are identified by the agency as non-IMDs, and therefore eligible to receive medicaid funds (refer to the catalog of federal domestic assistance (CFDA) program number 93.778)~~)), as defined in WAC 182-500-0050;

(ii) Recovery house; and

(iii) Information and assistance services which include:

(A) Alcohol and drug information school;

(B) Information and crisis services; and

(C) Emergency service patrol.

(2) Transportation may be provided to facilities identified by the agency as non-IMDs, and therefore eligible to receive medicaid funds (refer to the Catalog of Federal Domestic Assistance (CFDA) program number 93.778).

(3) The state-funded medical care services (MCS) program has a limitation on trips. Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The medicaid agency does pay for nonemergency transportation to and from medical services listed in WAC 182-501-0060, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules.

(((~~3~~))) (4) The following programs do not have a benefit for brokered nonemergency transportation through the agency:

(a) Federal medicare savings and state-funded medicare buy-in programs (see chapter 182-517 WAC);

(b) Family planning services - Nonemergency transportation is not provided for clients that are enrolled only in TAKE CHARGE or family planning only services; and

(c) Alien emergency medical (AEM) - See WAC 182-507-0115.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5700 Nonemergency transportation—Local provider and trips outside client's local community. (1) A client((~~s~~)) receiving services provided under fee-for-service ((~~and/or~~)) or through a medicaid agency-contracted managed care organization (MCO) ((~~are~~)) may be transported to a local provider only.

(a) A local provider's medical specialty may vary as long as the provider is capable of providing medically necessary care that is the subject of the appointment or treatment;

(b) A ((~~provider's acceptance of the agency's clients may determine if the~~)) provider may be considered ((~~as~~)) an available local provider((~~, along with whether MCO, primary care case management, or third party participation is involved~~)) if:

(i) Providers in the client's local community are not accepting medicaid clients; or

(ii) Providers in the client's local community are not contracted with the client's MCO, primary care case management group, or third-party coverage.

(2) Brokers are responsible for considering and authorizing exceptions. See subsection (3) of this section for exceptions.

(3) A broker may transport a client to a provider outside the client's local community for covered health care services when any of the following apply:

(a) The health care service is not available within the client's local community.

(i) If requested by the broker, the client or the client's provider must provide documentation from the client's primary care provider (PCP), specialist, or other appropriate provider verifying the medical necessity for the client to be served by a health care provider outside of the client's local community.

(ii) If the service is not available in the client's local community, the broker may authorize transportation to the nearest provider where the service may be obtained;

(b) The transportation to a provider outside the client's local community is required for continuity of care.

(i) If requested by the broker, the client or the client's provider must submit documentation from the client's PCP, specialist, or other appropriate provider verifying the existence of ongoing treatment for medically necessary care by the provider and the medical necessity for the client to continue to be served by the health care provider.

(ii) If the broker authorizes transportation to a provider outside the client's local community based on continuity of care, this authorization is for a limited period of time for completion of ongoing care for a specific medical condition. Each transport must be related to the ongoing treatment of the specific condition that requires continuity of care.

(iii) Ongoing treatment of medical conditions that may qualify for transportation based on continuity of care((~~,~~)) include, but are not limited to:

(A) Active cancer treatment;

(B) Recent transplant (within the last twelve months);

(C) Scheduled surgery (within the next sixty days);

(D) Major surgery (within the previous ninety days); or

(E) Third trimester of pregnancy;

(c) The health care service is paid by a third-party payer who requires or refers the client to a specific provider within their network;

(d) The total cost to the agency, including transportation costs, is lower when the health care service is obtained outside of the client's local community; and

(e) A provider outside the client's local community has been issued a global payment by the agency for services the client will receive, and the broker determines it to be cost effective to provide transportation for the client to complete treatment with this provider.

(4) Brokers determine whether an exception should be granted based on documentation from the client's health care providers and program rules. ((~~Brokers may refer requests to transport a client to a provider outside the client's local community for health care services to the agency's medical director or the medical director's designee for review and/or authorization.~~))

(5) When a client or a provider moves to a new community, the existence of a provider-client relationship, independent of other factors, does not constitute a medical need for the broker to authorize and pay for transportation to the previous provider.

(6) The health care service must be provided in the state of Washington or a designated border city, unless the agency specifically authorizes transportation to an out-of-state provider in accordance with WAC 182-546-5800.

(7) If local Washington apple health providers refuse to see a client due to the client's noncompliance, the agency does not authorize or pay more for nonemergency transportation to a provider outside the client's local community.

(a) In this circumstance, the agency pays for the least costly, most appropriate, mode of transportation from one of the following options:

(i) Transit bus fare;

(ii) Commercial bus or train fare;

(iii) Gas voucher/gas card; or

(iv) Mileage reimbursement.

(b) The agency's payment, whether fare, tickets, voucher, or mileage reimbursement, is determined using the number of miles from the client's authorized pickup point (e.g., client residence) to the location of the local health care provider who otherwise would have been available if not for the client's noncompliance.

(8) The agency may grant an exception to subsection (7) of this section for a life-sustaining service or as reviewed and authorized by the agency's medical director or designee in accordance with WAC 182-502-0050 and 182-502-0270.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-6000 Nonemergency transportation—Authorization. (1) The medicaid agency contracts with brokers to authorize or deny requests for transportation services.

(2) ((~~Brokers may refer~~)) Exceptional requests to transport a client ((~~to a provider~~)) may be referred to the agency's medical director or designee for ((~~a~~)) review ((~~or authorization~~)).

(3) Nonemergency medical transportation, other than ambulance, must be prior authorized by the broker. See WAC 182-546-5200 (3) and (4) and 182-546-6200(4) for granting retroactive authorization.

(4) The broker mails a written notice of denial to each client who is denied authorization of transportation.

(5) A client who is denied nonemergency transportation under this chapter may request an administrative hearing, if one is available under state and federal law.

(6) If the agency approves a medical service under exception to rule (ETR), the authorization requirements of this section apply to transportation services related to the ETR service.

WSR 16-12-025
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed May 23, 2016, 11:11 a.m., effective June 23, 2016]

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

Purpose: Creates new section WAC 181-77-081 requirements for endorsement in career and technical education career guidance specialist. Repeals sections on two certifications being replace [replaced] with the career guidance specialist.

Citation of Existing Rules Affected by this Order: Repealing WAC 181-77-075 and 181-77-080.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 16-07-017 on March 7, 2016.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 0, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 20, 2016.

David Brenna
Senior Policy Analyst

NEW SECTION

WAC 181-77-081 Requirements for certification of career guidance specialist. Career guidance specialists must meet the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155:

(1) Probationary certificate.

(a) Beginning July 1, 2018, a candidate is eligible for the probationary career guidance specialist certification if meeting one of the following:

(i) Completion of three years of experience as a certificated career and technical education administrator, career and technical education instructor, or career and technical education counselor, at the initial or continuing certificate level; or

(ii) Hold a valid educational staff associate—counselor certificate as provided in WAC 181-79A-221; or

(iii) Provide documentation of three years (six thousand hours) of full-time paid occupational experience of which two years shall have been in the last six years, dealing with employment, personnel or with placement and evaluation of workers, or experience providing career guidance, employment or career counseling services.

(b) Such a certificate may be issued upon recommendation by the employing school district according to the following:

(i) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by a district career and technical education advisory committee.

(ii) The plan shall develop procedures and timelines for the candidate to meet the requirements for the initial certificate.

(c) The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial certificate.

(2) Initial certificate.

(a) The initial career guidance specialist certificate is valid for four years and may be renewed two times.

(b) Candidates must meet the eligibility requirements for the probationary certificate outlined in this section.

(c) Candidates for the initial certificate shall demonstrate competence through a course of study from a state approved program provider or state approved continuing education provider in the general standards for career guidance specialist which include, but are not limited to, knowledge and skills in the following areas as approved by the professional educator standards board:

(i) Individual and group career guidance skills;

(ii) Individual and group career development assessment;

(iii) Information and resources in providing career guidance;

(iv) Career guidance program planning, implementation, and management;

(v) Diverse populations;

(vi) Student leadership development;

(vii) Ethical/legal issues;

(viii) Technology;

(ix) History and philosophy of career and technical education.

(d) In order to teach worksite learning and career choices courses, candidates must successfully complete requirements per WAC 181-77A-180.

(3) Initial certificate renewal.

(a) Candidates for renewal of the initial career guidance specialist certificate must complete at least six quarter hours of college credit or sixty clock hours since the initial certificate was issued or renewed. Provided, at least two quarter credits or fifteen clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section.

(b) The initial renewal certificate is valid for three years and may be renewed one time.

(4) Continuing certificate.

(a) Candidates for the continuing career guidance specialist certificate shall have in addition to the requirements for the initial certificate at least fifteen quarter hours of college credit or one hundred fifty clock hours completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years as a career guidance specialist with an authorized employer (i.e., school district(s) or skills center(s)).

(c) The continuing career guidance specialist certificate is valid for five years.

(5) Continuing certificate renewal. The continuing career guidance specialist certificate shall be renewed with the completion of fifteen quarter hours of college credit or the equivalent of one hundred fifty clock hours, prior to the lapse date of the first issuance of the continuing certificate and during each five-year period between subsequent lapse dates. Provided, at least four quarter credits or thirty clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section.

(6) Certificates issued under previous standards.

(a) Any person with a valid one-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board shall be eligible for the probationary certificate and must meet the requirements for earning the initial certificate.

(b) Any person with a valid three-year or five-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the continuing occupational information specialist certificate by the expiration date of the original certificate held.

(c) Upon issuance of the probationary initial or continuing career guidance specialist certificate, individuals addressed in this subsection will be subject to certificate renewal requirements of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-77-075	Levels, validity and standards for certification of local career and technical education counselors.
WAC 181-77-080	Levels, validity and standards for certification of occupational information specialist.

WSR 16-12-026
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed May 23, 2016, 11:19 a.m., effective June 23, 2016]

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

Purpose: Amends WAC 181-78A-010 changing the definition of accredited organizations and institutions to be aligned with the Washington student achievement council.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-010.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 16-08-059 on April 4, 2016.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: May 19, 2015 [2016].

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-18-004, filed 8/23/12, effective 9/23/12)

WAC 181-78A-010 Definition of terms. The following definitions shall be used in this chapter:

(1) "College or university" means any ((~~regionally accredited baccalaureate degree granting Washington institution of higher learning or cooperative group of such institutions which has or develops programs of preparation in education which are submitted to the professional educator standards board for approval~~)) accredited institution as defined in WAC 250-61-050 and as amended by the Washington student achievement council.

(2) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.

(3) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.

(4) "Program approval" means the approval by the professional educator standards board of an educator preparation program within Washington state.

(5) "Field experience" means a sequence of learning experiences which occur in actual school settings or clinical or laboratory settings. Such learning experiences are related to specific program outcomes and are designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.

(6) "((~~Regionally~~)) Accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by ((~~one of the following regional accrediting bodies:~~

~~(a) Middle States, Association of Colleges and Schools;~~

~~(b) New England Association of Schools and Colleges;~~

~~(c) North Central Association of Colleges and Schools;~~

~~(d) Northwest Association of Schools and of Colleges and Universities;~~

~~(e) Southern Association of Colleges and Schools;~~

~~(f) Western Association of Schools and Colleges: Accrediting Commission for Junior and Senior Colleges~~)) an organization as provided in WAC 250-61-050 and as amended by the Washington student achievement council.

(7) "Accredited institution of higher education," for purposes of credit on salary schedule per RCW 28A.415.024, means ((~~a regionally~~)) an accredited institution of higher education((~~, or a community college, college, or university, which is a candidate for accreditation or is accredited by the~~

~~distance education and training council (DETC)~~)) by WAC 250-61-050 and as amended by the Washington student achievement council.

(8) "An approved performance-based educator preparation program" means a program that requires the candidate to demonstrate in multiple ways, over time, specific professional educator standards board required standards, criteria, knowledge and skills, including, where appropriate, evidence related to positive impact on student learning.

(9) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(10) "Collaboration" (as used in WAC 181-78A-500 through 181-78A-540) means ongoing communication among the professional growth team members using a variety of formats (e.g., conferences, electronic mail, conference calls, etc.) to reach consensus regarding the content - Course work, experiences, competencies, knowledge and skills - Of the candidate's professional growth plan.

(11) "Professional growth team" for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a program administrator/designee, and a colleague/peer from the same professional role specified by the candidate.

(12) "Professional growth plan" means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207 and 181-78A-540.

(13) "Draft professional growth plan" means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-78A-540.

(14) "Culminating seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance, and positive impact on student learning. The culminating seminar shall meet requirements set forth in WAC 181-78A-535(2).

WSR 16-12-029
PERMANENT RULES
DEPARTMENT OF COMMERCE

[Filed May 23, 2016, 2:15 p.m., effective June 23, 2016]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: As required by RCW 43.330.750 and 43.330.735(3), commerce consulted with the departments of retirement systems and financial services, the Washington state investment board, organizations representing eligible employers, qualified employees, private and nonprofit sector retirement plan administrators and providers, organizations representing private sector financial services firms, and other individuals or entities relevant to the development of an effective and efficient method for operating the Small Business Retirement Marketplace ("marketplace"). These rules were proposed prior to January 1, 2016, and will not be adopted until after the end of the regular 2016 legislative session.

Purpose: The marketplace is a retirement savings program created per ESSB 5826, chapter 296, Laws of 2015, to connect eligible employers and their employees with approved plans to increase retirement savings. RCW 43.330.-750 requires the director of the department of commerce to adopt rules necessary to allow the marketplace to operate. The purpose of these rules, new chapter 365-65 WAC, is to define terms, establish eligibility guidelines, and make other provisions for the effective operation of the marketplace.

Statutory Authority for Adoption: RCW 43.330.750 and 43.330.040 (2)(g).

Adopted under notice filed as WSR 16-02-050 on December 31, 2015.

Changes Other than Editing from Proposed to Adopted Version: This section summarizes differences between the proposed rules and the final adopted rules, pursuant to RCW 34.05.340(3). The differences between the proposed and adopted rule are all technical in nature, reflecting fine-tuning of financial services industry-specific terminology, and edits to improve clarity and internal consistency of rule language.

Section	CR-102	Final	Explanation
WAC 365-65-030(2)	"Balanced fund" means a fund that has an investment mandate to balance its portfolio holdings. A balanced fund generally includes a mix of stocks and bonds in varying proportions according to the fund's investment outlook.	"Balanced fund" means a mutual fund that has an investment mandate to balance its portfolio holdings. A balanced fund generally includes a mix of stocks and bonds in varying proportions according to the fund's investment outlook.	Revised to match statutory definition, RCW 433.330.-732(2) [43.330.732(2)].

Section	CR-102	Final	Explanation
WAC 365-65-030(11)	"Qualified employee" or "employee" means a worker who is eligible to participate in a retirement plan.	"Qualified employee" or "employee" means a worker who is eligible to participate in a retirement plan, consistent with RCW 43.330.732(8).	Revised to reference statutory definition.
WAC 365-65-030(12)	"Retirement plan" or "plan" means a savings vehicle or life insurance plan that is designed for retirement purposes and that receives favorable federal tax treatment pursuant to the Internal Revenue Code.	"Retirement plan" or "plan" means an arrangement that is designed for retirement purposes and that receives favorable federal tax treatment pursuant to the Internal Revenue Code.	Revised to clarify definition based on public comments.
WAC 365-65-030 (14) and (15)	"Verified plan" means retirement plan that has been verified as meeting the requirements of chapter 43.330 RCW by the department of financial institutions and/or the office of the insurance commissioner for inclusion in the marketplace.	"Verified plan" means a retirement plan that has been verified as meeting the requirements of RCW 43.330.735 for inclusion in the marketplace by, as applicable: (a) The department of financial institutions pursuant to its verification process under chapter 208-710 WAC, and/or (b) The office of the insurance commissioner pursuant to its approval process under Section K and other relevant provisions of the Washington state system for electronic rate filing (SERFF) life and disability form filing instructions, including but not limited to any certifications required by the office of insurance commissioner.	Revised to clarify and add more specific reference to statute and DFI and OIC verification processes. *This definition was renumbered as WAC 365-65-030(15) in the final rule.*
WAC 365-65-030 (14) and (15)	"Verified financial services firm" means a person or entity that has been verified as currently meeting the requirements of chapter 43.330 RCW by the department of financial institutions and/or the office of the insurance commissioner to offer verified plans in the marketplace.	"Verified financial services firm" means a person or entity that has been verified as currently meeting the requirements of RCW 43.330.732(7) by, as applicable: (a) The department of financial institutions pursuant to its verification process under chapter 208-710 WAC, and/or	Revised to clarify and add more specific reference to statute and DFI and OIC verification processes. *This definition was renumbered as WAC 365-65-030(14) in the final rule.*

Section	CR-102	Final	Explanation
		(b) The office of the insurance commissioner pursuant to its plan approval process under Section K and other relevant provisions of the Washington state system for electronic rate filing (SERFF) life and disability form filing instructions, including but not limited to any certifications required by the office of insurance commissioner.	
WAC 365-65-050	(1) A financial services firm seeking approval to be a verified financial services firm and offer plans in the marketplace must submit a complete application in a form prescribed by the department. (2) The marketplace shall include at least two verified financial services firms that offer one or more approved plans. (3) A verified financial services firm must offer a minimum of two investment product options in the marketplace: A target date fund or other similar fund, and a balanced fund. (4) A verified financial services firm must provide information about the historical performance of any investment products offered in the marketplace. (5) A verified financial services firm must comply with all applicable federal laws and rules to offer retirement plans. (6) The protocol used by the department and/or the marketplace operator for reviewing, verifying and approving the qualifications of financial services firms for participation in the marketplace shall be based on objective criteria, and shall not provide unfair advantage to any entity.	(1) A verified financial services firm seeking approval for a verified plan to be offered on the marketplace must submit a complete application in a form prescribed by the department. (2) A verified financial services firm must offer a minimum of two investment product options in the marketplace: A target date fund or other similar fund, and a balanced fund. (3) A verified financial services firm must provide information about the historical performance of any investment products offered in the marketplace, consistent with applicable federal laws. (4) A verified financial services firm must comply with all applicable federal laws to offer retirement plans. (5) The protocol used by the department and/or the marketplace operator for reviewing and approving the qualifications of financial services firms for participation in the marketplace shall be based on objective criteria, and shall not provide unfair advantage to any entity.	Removed subsection (2) pertaining to the number of firms operating on the marketplace, as this section pertains to the approval process for individual firms. Other portions revised for clarity based on public comments.

Section	CR-102	Final	Explanation
WAC 365-65-060	(1) The department will approve a diverse array of verified plan options to be offered in the marketplace, including: (a) Life insurance plans; (b) A SIMPLE-IRA type of plan that provides for employer contributions to participant accounts; (c) A payroll deduction individual retirement account type of plan or workplace based individual retirement account open to all workers to which the employer does not contribute; and (d) myRA. (2) A plan that is proposed to be offered in the marketplace must be submitted to the department for review and approval, including all documentation, in a form prescribed by the department. (3) A plan that is proposed to be offered in the marketplace must comply with applicable laws and rules, included but not limited to federal tax laws and rules.	(1) The department will approve a diverse array of verified plan options to be offered in the marketplace, including: (a) Life insurance plans that are designed for retirement purposes; (b) A SIMPLE-IRA type of plan that provides for employer contributions to participant accounts; and (c) A payroll deduction individual retirement account or individual retirement annuity, or a workplace based individual retirement account open to all workers to which the employer does not contribute. (2) The department will approve the myRA retirement program to be offered in the marketplace. (3) A verified plan that is proposed to be offered in the marketplace must be submitted to the department for review and approval, including all documentation, in a form prescribed by the department. (4) A verified plan that is proposed to be offered in the marketplace must comply with applicable laws and rules, included but not limited to federal tax laws.	Revised subsection (1)(a) to reflect statutory language concerning life insurance plans, RCW 43.330.735(5). Other portions revised for clarity and completeness based on public comments.
WAC 365-65-070	Nothing in this chapter shall be construed to limit rollovers, or the portability of an employee's retirement savings into or out of approved plans. An approved plan must include the option for an enrollee to roll pretax contributions into a different individual retirement account or another eligible retirement plan in accordance with federal tax laws providing for tax free rollovers after ceasing participation in the approved plan.	Nothing in this chapter shall be construed to limit rollovers, or the portability of an employee's retirement savings into or out of approved plans. An approved plan must include the option for an enrollee to rollover or transfer amounts into a different retirement arrangement in accordance with federal tax laws providing for tax free rollovers or transfers after ceasing active participation in the approved plan.	Revised for clarity and completeness based on public comments.

Section	CR-102	Final	Explanation
WAC 365-65-095	If any part of these rules are found to conflict with federal or state laws or rules, including those that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of these rules is inoperative solely to the extent of the conflict, and this finding does not affect the operation of the remainder of these rules.	If any part of these rules are found to conflict with federal or state laws, including but not limited to those that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of these rules is inoperative solely to the extent of the conflict, and this finding does not affect the operation of the remainder of these rules.	Revised for clarity and completeness based on public comments.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 10, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 23, 2016.

Brian Bonlender
Director

Chapter 365-65 WAC

SMALL BUSINESS RETIREMENT MARKETPLACE

NEW SECTION

WAC 365-65-010 Authority. These rules are adopted under the authority of RCW 43.330.750.

NEW SECTION

WAC 365-65-020 Purpose. The purpose of this chapter is to define terms, establish eligibility guidelines, and make other provisions for the effective operation of the Washington Small Business Retirement Marketplace.

NEW SECTION

WAC 365-65-030 Definitions. The following words and terms have the following meanings for the purposes of this chapter unless otherwise indicated:

(1) "Approved plan" means:

(a) the myRA retirement program, or

(b) a verified plan offered by a verified financial services firm that has been approved for listing in the marketplace by the department pursuant to this chapter.

(2) "Balanced fund" means a mutual fund that has an investment mandate to balance its portfolio holdings. A balanced fund generally includes a mix of stocks and bonds in varying proportions according to the fund's investment outlook.

(3) "Department" means the Washington State Department of Commerce.

(4) "Director" means the director of the Washington State Department of Commerce, or his or her designee.

(5) "Eligible Employer" means a self-employed individual, sole proprietor, or an employer with fewer than one hundred qualified employees at the time that its first employee enrolls in an approved plan through the marketplace.

(6) "Enrollee" means any employee, self-employed individual, or sole proprietor, who is voluntarily enrolled in an approved plan offered on the marketplace.

(7) "Marketplace" means the Washington small business retirement marketplace.

(8) "Marketplace operator" or "operator" means a private sector entity with which the director has contracted to operate the marketplace pursuant to chapter 43.330 RCW.

(9) "myRA retirement program" or "myRA" means the myRA retirement program administered by the United States department of the treasury.

(10) "Participating employer" means:

(a) a self-employed individual or sole proprietor who voluntarily enrolls in an approved plan, or

(b) an eligible employer or sole proprietor, that offers one or more approved plans to its employees for voluntary enrollment.

(11) "Qualified employee" or "employee" means a worker who is eligible to participate in a retirement plan, consistent with RCW 43.330.732(8).

(12) "Retirement plan" or "plan" means an arrangement that is designed for retirement purposes and that receives favorable federal tax treatment pursuant to the Internal Revenue Code.

(13) "Target date fund" means a hybrid investment fund that automatically adjusts the asset mix according to a selected time frame that is appropriate for a particular investor, based on the investor's age.

(14) "Verified financial services firm" means a person or entity that has been verified as currently meeting the requirements of RCW 43.330.732(7) by, as applicable:

(a) the Department of Financial Institutions pursuant to its verification process under Chapter 208-710 WAC, and/or

(b) the Office of the Insurance Commissioner pursuant to its plan approval process under Section K and other relevant provisions of the Washington State System for Electronic Rate Filing (SERFF) Life and Disability Form Filing Instructions, including but not limited to any certifications required by the Office of Insurance Commissioner.

(15) "Verified plan" means a retirement plan that has been verified as meeting the requirements of RCW 43.330.735 for inclusion in the marketplace by, as applicable:

(a) the Department of Financial Institutions pursuant to its verification process under Chapter 208-710 WAC, and/or

(b) the Office of the Insurance Commissioner pursuant to its approval process under Section K and other relevant provisions of the Washington State System for Electronic Rate Filing (SERFF) Life and Disability Form Filing Instructions, including but not limited to any certifications required by the Office of Insurance Commissioner.

(16) "Voluntary," in regard to an employee's enrollment or participation in an approved plan, means enrollment or participation wherein the amount of any contribution of the employee's wages to the plan is:

(a) affirmatively chosen by the employee, or

(b) established by default by the employer in accordance with applicable federal laws, provided that the employee receives any required notice of the default contribution amount and may affirmatively choose to contribute a different amount or to entirely opt out of contributing.

(17) "Washington small business retirement marketplace" means the retirement savings program created to connect eligible employers and their employees with approved plans to increase retirement savings.

NEW SECTION

WAC 365-65-040 Eligibility. (1) Verified financial services firms, eligible employers, and qualified employees are eligible to participate in the marketplace.

(2) Participation in the marketplace, and enrollment in an approved plan, is voluntary.

(3) Enrollment in an approved plan is not an entitlement.

NEW SECTION

WAC 365-65-050 Approval of verified financial services firms. (1) A verified financial services firm seeking approval for a verified plan to be offered on the marketplace must submit a complete application in a form prescribed by the department.

(2) A verified financial services firm must offer a minimum of two investment product options in the marketplace: a target date fund or other similar fund, and a balanced fund.

(3) A verified financial services firm must provide information about the historical performance of any investment products offered in the marketplace, consistent with applicable federal laws.

(4) A verified financial services firm must comply with all applicable federal laws to offer retirement plans.

(5) The protocol used by the department and/or the marketplace operator for reviewing and approving the qualifications of financial services firms for participation in the marketplace shall be based on objective criteria, and shall not provide unfair advantage to any entity.

NEW SECTION

WAC 365-65-060 Approval of verified plans. (1) The department will approve a diverse array of verified plan options to be offered in the marketplace, including:

(a) Life insurance plans that are designed for retirement purposes;

(b) A SIMPLE-IRA type of plan that provides for employer contributions to participant accounts; and

(c) A payroll deduction individual retirement account or individual retirement annuity, or a workplace based individual retirement account open to all workers to which the employer does not contribute.

(2) The department will approve the myRA retirement program to be offered in the marketplace.

(3) A verified plan that is proposed to be offered in the marketplace must be submitted to the department for review and approval, including all documentation, in a form prescribed by the department.

(4) A verified plan that is proposed to be offered in the marketplace must comply with applicable laws and rules, included but not limited to federal tax laws.

NEW SECTION

WAC 365-65-070 Portability and rollovers. Nothing in this chapter shall be construed to limit rollovers, or the portability of an employee's retirement savings into or out of approved plans. An approved plan must include the option for an enrollee to rollover or transfer amounts into a different retirement arrangement in accordance with federal tax laws providing for tax free rollovers or transfers after ceasing active participation in the approved plan.

NEW SECTION

WAC 365-65-080 Limits on fees. A verified financial services firm that offers approved plans in the marketplace may not charge participating employers an administrative fee, and may not charge enrollees more than one hundred basis points in total annual fees.

NEW SECTION

WAC 365-65-090 Removal of plans. An approved plan shall be removed from the marketplace if the plan, or the financial services firm offering the plan, no longer meets the requirements of this chapter, chapter 43.330 RCW, or any other applicable law or rule.

NEW SECTION

WAC 365-65-095 Conflict with other laws. If any part of these rules are found to conflict with federal or state laws, including but not limited to those that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of these rules is inoperative solely to the extent of the conflict, and this finding does not affect the operation of the remainder of these rules.

WSR 16-12-034
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-03—Filed May 24, 2016, 4:34 p.m., effective June 24, 2016]

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

Purpose: Technical changes to producer continuing education rule.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-17-310; and amending WAC 284-17-278.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, and 48.17.150(1).

Adopted under notice filed as WSR 16-07-081 on March 17, 2016.

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

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

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

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

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

Date Adopted: May 24, 2016.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-278 Approval of an insurance continuing education course. (1) An application for approval of a continuing insurance education course or a new instruction method of a previously approved course must be submitted electronically or via e-mail to the commissioner's education mailbox no fewer than twenty days prior to the first date the course is offered for credit.

(a) If the continuing education provider does not know the first date the course will be offered at the time the provider submits the application, then if the commissioner approves the course, the provider cannot offer the course until twenty days after the commissioner receives the course application;

(b) The provider can advertise a course after the approval date, but cannot offer the course until the effective date;

(c) The commissioner will not process a new course application submitted by a provider until after the commissioner has sent the provider's continuing education course renewal notice. The provider must immediately submit the continuing education course renewal request for processing. After the commissioner processes the provider's course renewal request, the commissioner will continue reviewing the provider's new course application.

(2) The request must include all of the following, as applicable:

(a) **Classroom courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline, including a list of topics that the continuing education provider will cover and an estimate of the amount of time the provider will spend on each topic. The commissioner will not accept video presentation slides in lieu of the detailed course outline;

(iii) Biography or resume of instructor(s); and

(iv) Sample of the attendance register form that the provider will use.

(b) ((~~Webinar courses:~~)) **Webinar courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline, including a list of topics that the provider will cover and an estimate of the amount of time the provider will spend on each topic. The commissioner will not accept video presentation slides in lieu of the detailed course outline;

(iii) Biography or resume of instructor(s);

(iv) Polling questions or verification codes, including two for each credit hour of the course;

(v) Description of the process for monitoring and verifying attendance; and

(vi) Sample of the document the provider will use to record each attendee's attendance and participation.

(c) **Self-study courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline with word count for each chapter, section or module; ((~~and~~))

(iii) If ethics content is included, a separate word count for the ethics content;

(iv) Samples of the course reading material to assist the commissioner in determining course difficulty level;

(v) Sample of video content, if included in the course. If the course includes video exceeding fifty minutes and the

information is mandatory for completing the course, one additional credit hour will be added to the course credit total;

(vi) Description of the verification process the provider will use to confirm that the licensee has completed the course study material before accessing the exam;

(vii) Resume of the course content developer showing education and work experience related to the course subject matter; and

(viii) Copy of the examination. All examination questions must be multiple choice.

(A) The provider must include a minimum of ten exam questions for a one credit hour course, with an additional five exam questions for each subsequent credit hour;

(B) To pass the exam, licensees must achieve a score of seventy percent or higher;

(C) If the licensee does not pass the first exam, the licensee must take a second exam that contains no more than fifty percent of the same questions from the first exam. If the licensee does not pass on the second attempt, the provider must alternate the exams until the licensee passes the exam.

(3) To be eligible for approval, a course must have a direct and specific application to insurance. A course about ethics or about laws and regulations specific to insurance is eligible. The subject matter should increase the producer's technical knowledge of insurance principles, insurance coverage, and insurance laws and regulations. The continuing education provider is responsible for the accuracy of facts and figures used in the course.

(4) The commissioner will not award credit for topics such as personal improvement, general education, sales, marketing, motivation, business management, time management, leadership, supportive office skills, internet use, social media use, automation, and other courses that are not directly and specifically related to insurance.

(5) Insurance prelicensing education courses are not eligible for approval for continuing insurance education credit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-17-310 Content of a course advertisements.

WSR 16-12-039
PERMANENT RULES
COLUMBIA BASIN COLLEGE

[Filed May 25, 2016, 10:54 a.m., effective June 25, 2016]

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

Purpose: The revisions to Title 132S WAC are necessary because many of the current WAC are outdated and needed to be reviewed, updated and/or revised to accommodate current or changed practices and/or changes in local, state and federal laws. The final rules are a product of collaboration across multiple divisions within the college and input from staff.

Citation of Existing Rules Affected by this Order: Repealing chapters 132S-30, 132S-31, 132S-40, 132S-50 and 132S-285 WAC; and amending chapters 132S-01, 132S-05, 132S-10, and 132S-20 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 16-01-007 on December 3, 2015, and WSR 16-091-073 [16-09-073] on April 19 [18], 2016.

Changes Other than Editing from Proposed to Adopted Version: Columbia Basin College, after reviewing the comments, made one change between the proposed rules and the final adopted rules.

WAC 132S-200-140(3), Regulations governing firearms and weapons on or in college facilities: Changed registers the firearm with the campus security office to registers his or her intent to lawfully carry a legal firearm with the campus security office for a specified period of time.

If you would like to receive a copy of the rationale for the changes, the concise explanatory statement is available from Camilla Glatt, 2600 North 20th Avenue, MS-A2, Pasco, WA 99301. You may request a copy at cglatt@columbia basin.edu.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 138, Amended 2, Repealed 177.

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

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

Date Adopted: May 25, 2016.

Camilla Glatt
Vice-President for Human
Resources and Legal Affairs

Chapter 132S-01 WAC

((~~PRACTICE AND PROCEDURE~~)) BOARD OF TRUSTEES

NEW SECTION

WAC 132S-01-015 Organization. Washington state Community College District 19, Columbia Basin College, is established in Title 28B RCW as a public institution of higher education. District 19 is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution and secretary to the board.

NEW SECTION

WAC 132S-01-025 Bylaws of the board of trustees. The bylaws of the board of trustees of Columbia Basin College (CBC) are contained in the CBC board policy manual.

NEW SECTION

WAC 132S-01-035 Regular meetings of the board of trustees. The board of trustees of Columbia Basin College shall hold regular monthly meetings according to a schedule including place, time and date filed with the Washington state code reviser on or before January 1st of each year for publication in the *Washington State Register*. Notice of any change from such meeting schedule shall be published in the *Washington State Register* at least twenty days prior to the rescheduled meeting date.

All regular meetings of the board of trustees shall be held at 2600 North 20th Avenue, Pasco, WA 99301, unless otherwise announced in accordance with chapter 42.30 RCW (the Open Public Meetings Act). Information about specific meeting places and times may be obtained from the president's office or the Columbia Basin College web site.

NEW SECTION

WAC 132S-01-045 Special meetings of the board of trustees. Special meetings of the board of trustees of Columbia Basin College may be called by the chairperson of the board or by a majority of the members of the board by written notice delivered by e-mail, mail or in person to each member at least twenty-four hours before the time of such meeting. Such notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be transacted or official action taken, other than the purpose, or purposes for which the special meeting was called. Notice of such special meetings also shall be provided twenty-four hours prior to such meetings to the local newspaper of general circulation and to each local radio and television station which has on file a written request to be notified of such special meetings or of all meetings of the board.

NEW SECTION

WAC 132S-01-055 Office of the board of trustees. The board of trustees of Columbia Basin College shall maintain an office at 2600 North 20th Avenue, Pasco, WA 99301. All records, minutes and the official college seal shall be kept in the president's office located at 2600 North 20th Avenue, Pasco, WA 99301. The office hours are 7:00 a.m. to 4:30 p.m. Monday through Thursday and 7:00 a.m. to 12:00 p.m. Friday, except for legal holidays and occasional closures as communicated to the local media.

NEW SECTION

WAC 132S-01-065 Correspondence for the board of trustees. Correspondence or other business for the board of trustees of Columbia Basin College shall be sent to the secretary of the board at 2600 North 20th Avenue, Pasco, WA 99301.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132S-01-010	Adoption of model rules of procedure.
WAC 132S-01-020	Appointment of presiding officers.
WAC 132S-01-030	Method of recording.
WAC 132S-01-040	Application for adjudicative proceeding.
WAC 132S-01-050	Brief adjudicative procedures.
WAC 132S-01-060	Discovery.
WAC 132S-01-070	Procedure for closing parts of the hearings.
WAC 132S-01-080	Recording devices.
WAC 132S-01-090	Petitions for stay of effectiveness.

AMENDATORY SECTION (Amending WSR 90-07-006, filed 3/12/90, effective 4/12/90)

WAC 132S-05-010 Rules coordinator. The rules coordinator for Columbia Basin College as designated by the president ((~~Marvin Weiss~~)) is:

((~~Jean Dunn~~
~~Office of the President~~))
The Vice-President for
Human Resources & Legal Affairs
Columbia Basin College
2600 North 20th Avenue
Pasco, WA 99301

AMENDATORY SECTION (Amending WSR 90-07-006, filed 3/12/90, effective 4/12/90)

WAC 132S-05-015 Organization—Operation—Information. (((~~(a)~~))) (1) Organization. Columbia Basin College is established in Title 28B RCW as a public institution of higher education. ((~~The institution is governed by a five member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.~~

(~~(b)~~))) The president is the chief executive officer and as such, establishes the structure of the administration.

(2) Operation. The Columbia Basin College administrative office at the Pasco campus is located at the following address:

Columbia Basin College
2600 North 20th Avenue
Pasco, WA 99301

and is open from ((~~7:30~~)) 7:00 a.m. to 4:30 p.m., Monday through ((~~Friday~~)) Thursday, 7:00 a.m. to 12:00 p.m., except on legal holidays. ((~~Educational operations~~)) College campuses are also located at the following addresses:

((~~Columbia Basin College, Richland Campus 1011~~)) CBC Richland Health Science Center
891 Northgate Drive
Richland, WA 99352

((~~Columbia Basin College,~~))
CBC Chase Center
1600 North 20th Avenue
Pasco, WA 99301

(((~~c~~))) (3) Additional and detailed information concerning the educational offerings may be obtained from ((~~the catalog, copies of which are available at the following address:~~

~~Columbia Basin College~~
~~2600 North 20th Avenue~~
~~Pasco, WA 99301~~)) college web site at www.columbiabasin.edu and at various locations including college libraries, admissions and the counseling office.

((~~BOARD OF TRUSTEES REGULAR MEETING DATE~~))

NEW SECTION

WAC 132S-05-025 Service of process. To protect the interests of Columbia Basin College employees, all process servers (those attempting to deliver summonses, subpoenas, etc.) to employees should be directed to the human resources office on the Pasco campus. When the process server comes to the human resources office, he or she should be connected with the person to whom the papers are being served, if that person can be immediately located and is not instructing a class or performing other services at the time. If the person served is not immediately located, the papers will be left during usual business hours with the vice-president for human resources & legal affairs or his or her executive assistant. If any of the above designees receives the papers from a process server, he or she will arrange a time and place for the individual being served to receive the legal documents in such a way as to minimize embarrassment and preserve confidentiality.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132S-05-020	Regular meeting date, board of trustees.

Chapter 132S-09 WAC

NONDISCRIMINATION AND HARASSMENT POLICY AND GRIEVANCE PROCEDURE

NEW SECTION

WAC 132S-09-010 Introduction. Columbia Basin College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Columbia Basin College has enacted this policy prohibiting discrimination against and harassment of members of these protected classes. Any individual found to be in violation of this policy will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment based on protected class status or gender should report the incident or incidents to the college's Title IX/EEO coordinator identified below. If the complaint is against that coordinator, or his or her relative attending or working for the college, the complainant should report the matter to the president's office for referral to an alternate designee.

Name: Camilla Glatt, Vice-President for Human Resources & Legal Affairs

Title: Title IX/EEO Coordinator

Office: Human Resources Contact Information: 509-542-5548

The Title IX/EEO coordinator or designee:

(1) Will accept all complaints and referrals from college employees, applicants, students, and visitors;

(2) Will make determinations regarding how to handle requests by complainants for confidentiality;

(3) Will keep accurate records of all complaints and referrals for the required time period;

(4) May conduct investigations or delegate and oversee investigations conducted by a designee;

(5) May impose interim remedial measures to protect parties during investigations of discrimination or harassment;

(6) Will issue written findings and recommendations upon completion of an investigation; and

(7) May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For complainants who wish to submit a written complaint, a formal complaint form is available online at https://www.columbiabasin.edu/index.aspx?page=907. Hard copies of the policy and complaint form are available at the following locations on campus: Hawk central, counseling and advising center, human resources-student employment, president's office-administrative wing of A building and vice-president for instruction's office.

NEW SECTION

WAC 132S-09-020 Definitions. (1) **Advisor:** A person of the complainant or respondent's choosing who can accompany the complainant or respondent to any related meeting or proceeding.

(2) **Complainant:** Employee(s), applicant(s), student(s), or visitor(s) of Columbia Basin College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(3) **Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment.

(4) **Consent:** Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. In order to give effective consent one must be of legal age.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(5) **Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

(6) **Force:** Use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion that overcome resistance or produce consent. Sexual activity that is forced is by definition nonconsensual, but nonconsensual sexual activity is not by definition forced.

(7) **Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(a) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(b) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

(c) Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

(8) **Hazing:** Acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to admission, initiation, joining, or any other group - Affiliation activity.

(9) **Hostile environment:** Any situation in which there is harassing conduct that is based on protected class status and is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational or social programs.

The determination of whether an environment is "hostile" must be based on all of the circumstances. These circumstances could include:

(a) The frequency of the conduct;

(b) The nature and severity of the conduct;

(c) Whether the conduct was physically threatening;

(d) Whether the conduct was directed at more than one person;

(e) Whether the conduct arose in the context of other discriminatory conduct;

(f) Whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness;

(g) Whether the speech or conduct deserves the protections of academic freedom or the first amendment.

(10) **Protected class:** Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

(11) **Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation (when appropriate), or the formal imposition of discipline sanction.

(12) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(13) **Sexual exploitation:** Occurs when one person takes nonconsensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

(a) Invasion of sexual privacy;

(b) Engaging in voyeurism;

(c) Nonconsensual video or audio taping of sexual activity;

(d) Sexually based stalking; and/or

(e) Bullying may also be forms of sexual exploitation.

(14) **Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(a) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(b) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors. Examples of conduct that may qualify as sexual harassment include:

(i) Persistent comments or questions of a sexual nature.

(ii) A supervisor who gives an employee a raise in exchange for submitting to sexual advances.

(iii) An instructor who promises a student a better grade in exchange for sexual favors.

(iv) Sexually explicit statements, questions, jokes, or anecdotes.

(v) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.

(vi) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.

(vii) Persistent, unwanted attempts to change a professional relationship to an amorous relationship.

(viii) Direct or indirect propositions for sexual activity.

(ix) Unwelcome letters, e-mails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(15) **Sexual violence:** Is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(16) **Nonconsensual sexual intercourse:** Is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(17) **Nonconsensual sexual contact:** Is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(18) **Domestic violence:** Includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(19) **Dating violence:** Means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(20) **Stalking:** Means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

NEW SECTION

WAC 132S-09-030 Who may file a complaint. Any employee, applicant, student or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally, which will be captured in written form for processing. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at https://www.columbiabasin.edu/index.aspx?page=907. Hard copies of the complaint form are available at the following locations on campus: Hawk central, counseling and advising center, human resources/student employment, president's office/administrative wing of A building and vice-president for instruction's office. Any person submitting a discrimination complaint shall be provided with a written copy of the college's nondiscrimination and harassment policies and grievance procedures.

NEW SECTION

WAC 132S-09-040 Confidentiality and right to privacy. Columbia Basin College will seek to protect the privacy of the complainant to the full extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Columbia Basin College policies and procedures. Although Columbia Basin College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator.

Confidentiality requests and sexual violence complaints. The Title IX/EEO coordinator will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EEO coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EEO coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

(1) The seriousness of the alleged sexual violence;

(2) The age of the complainant;

(3) Whether the sexual violence was perpetrated with a weapon;

(4) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;

(5) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and

(6) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EEO coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO coordinator will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

NEW SECTION

WAC 132S-09-050 Responsible employees and reporting responsibilities. (1) The college is obligated to address acts of sex-based misconduct (including sexual harassment and/or retaliation) of which a responsible employee knew or should have known occurred. A "responsible employee" is any employee who:

(a) Has the authority to take action to redress sex-based misconduct;

(b) Has been given the duty of reporting incidents of sex-based misconduct or any other misconduct by students; or

(c) A student could reasonably believe has this authority or duty.

For student complainants where the alleged offender is another student, "responsible employees" includes administrators (directors, deans, vice-presidents, etc.), athletic director/assistant athletic director, ASCBC director/assistant director, resource center staff, completion coaches, hawk central staff members, security officers, and executive assistants and secretarial staff reporting to positions designated above.

(2) A responsible employee must report to the Title IX/EEO coordinator all relevant details about alleged sex-based misconduct (including sexual harassment and/or retaliation) that the student or other person has shared and that the college will need to determine what occurred and resolve the situation. This includes the names of the alleged respondent, if known, the student complainant or other person who experienced the alleged sex-based misconduct, others involved in the alleged sex-based misconduct, as well as relevant facts, including the date, time and location. If the complaint is against the Title IX/EEO coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

(3) A responsible employee should provide the following information to a complainant:

(a) The reporting obligations (discussed above) of the responsible employee;

(b) Complainant's option to request confidentiality and available confidential resources;

(c) Complainant's right to file a Title IX complaint with the college; and

(d) Complainant's right to report a crime to local law enforcement.

For convenience of student complaint reporting, there are college-designated responsible employees and contact information noted on the college's web page, with all reports referred by the designated responsible employees to the Title IX/EEO coordinator.

For a staff complaint of sex-based misconduct (including sexual harassment and/or retaliation) by a student or another staff member, the staff complaint may be reported to the immediate supervisor, with the supervisor report/referral to the Title IX/EEO coordinator or the human resources director. A direct report to the Title IX/EEO coordinator or human resources director will be more expeditious in terms of processing the complaint. If the complaint is against the Title IX/EEO coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

NEW SECTION

WAC 132S-09-060 Investigation procedure. Upon receiving a discrimination complaint, the Title IX/EEO coordinator will assess the written complaint and determine the appropriate steps necessary to ensure all relevant evidence is obtained and all critical elements are addressed. The Title IX/EEO coordinator shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator shall inform the complainant and respondent(s) of the appointment of an investigator.

(1) **Interim measures.** The Title IX/EEO coordinator may impose interim measures to protect the complainant and/or respondent and/or others pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(2) **Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation the investigator shall set forth his or her findings and recommendations in writing.

If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator. The Title IX/EEO coordinator shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

(3) **Written notice of decision.** The Title IX/EEO coordinator will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations.

(a) **Complainant notice.** The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action.

(b) **Respondent notice.** The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action.

(c) **Request for reconsideration.** Either the complainant or the respondent may seek reconsideration of the finding and/or referral for disciplinary action to the Title IX/EEO coordinator. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If a request for reconsideration is received, the Title IX/EEO coordinator shall respond within ten days. If the Title IX/EEO coordinator determines the request for reconsideration has merit, he or she may issue an amended finding or referral. Any amended decision is final and no further reconsideration is available, with the exception of subsection (5) of this section for appeal/review/grievance of disciplinary action as appropriate.

(4) **Informal dispute resolution.** Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(5) **Appeal for disciplinary action.** If formal disciplinary action is imposed as a result of a finding of violation of this policy, then a respondent may file an appeal. The right to appeal on particular grounds (i.e., the finding is not supported by the evidence, the sanction is substantially disproportionate to the severity of the violation, due process was violated, new evidence is available), if offered to either party, must be equally accessible to the complainant.

(a) **Student conduct appeal.** A student respondent may appeal a disciplinary action taken by the chief student conduct officer or the student conduct board in accordance with chapter 132S-100 WAC. The complainant will receive notice of the appeal and may submit either his or her own appeal or a written response to the student respondent's appeal within ten calendar days, which will be considered.

(b) **Represented employee grievance.** A faculty member or represented classified staff member may file a grievance under the applicable collective bargaining agreement.

(c) **Nonrepresented classified employee appeal.** Nonrepresented classified staff may file an appeal with the personnel resources board under WAC 357-52-020.

(d) **All other employee reviews.** All other employees may request review of the disciplinary action through the supervisory chain of command to the college president within twenty days of the imposition of the discipline. This includes student workers if the discipline imposed resulted from conduct that occurred during the performance of student employment and includes a loss in pay as a sanction (nothing prohibits the Title IX/EEO coordinator and/or investigator from referring findings against a student employee to the chief student conduct officer for additional review under the student conduct code). The request for review must be a signed, written document articulating the grounds for review. The responsible supervisor will respond to the request for review within twenty working days of receipt. If the finding(s) and/or discipline is upheld, then review of the supervisor's decision can be filed with the college president using the same process. If the finding(s) and/or discipline is upheld, the college president's decision will constitute final action and there is no further appeal within the college.

(e) **Volunteer or visitor review.** A volunteer or visitor respondent may request review of sanction(s) imposed in response to any findings under this policy, including temporary or permanent trespass through the president's office.

NEW SECTION

WAC 132S-09-070 Publication of antidiscrimination policies and procedures. The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

NEW SECTION

WAC 132S-09-080 Limits to authority. Nothing in this policy or procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Columbia Basin College policies and procedures,

collective bargaining agreement(s), and federal, state, and municipal rules and regulations.

Nothing in this policy or procedure limits the college from considering applicable policies of the college when investigating complaints including, but not limited to, the college's standards of conduct policy, appropriate use of IT resources policy, code of ethics policy, consensual relations leading to conflicts of interest policy or any other policy or procedure. For complaints involving students, nothing in this policy or procedure limits the college from evaluating the conduct of any student under the student code of conduct.

NEW SECTION

WAC 132S-09-090 Nonretaliation, intimidation or coercion. Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX/EEO coordinator, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation, or any resulting disciplinary proceedings is prohibited, and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO coordinator immediately.

NEW SECTION

WAC 132S-09-100 Criminal complaints. Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

Pasco CBC Campus:
Pasco Police Department
509-545-3481 or emergency 911

Richland CBC Campus:
Richland Police Department
509-628-0333 or emergency 911

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132S-09-110 Other discrimination complaint options. Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission:
http://www.hum.wa.gov/index.html

U.S. Department of Education Office for Civil Rights:
http://www2.ed.gov/about/offices/list/ocr/index.html

Equal Employment Opportunity Commission:
http://www.eeoc.gov/

NEW SECTION

WAC 132S-10-030 Authority and purpose. (1) RCW 42.56.070(1) requires Columbia Basin College to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

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

(3) The purpose of the act is to provide the public access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the college will be guided by the provisions of the act describing its purposes and interpretation.

NEW SECTION

WAC 132S-10-040 Definitions. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

(3) Relating to the conduct of government. To be a public record, a document must relate to the conduct of government or the performance of any governmental or proprietary function. Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having absolutely no relation to the conduct of government is not a public record. Even though a purely personal record might not be a public record, a record of its existence might be. For example, a record showing the existence of a purely personal e-mail sent by an agency employee on an agency computer would probably be a public record, even if the contents of the e-mail itself were not.

(4) Prepared, owned, used, or retained. A public record is a record prepared, owned, used, or retained by an agency. A record can be used by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process, it is a public record. For example, if an agency considered technical specifications of a public

works project and returned the specifications to the contractor in another state, the specifications would be a public record because the agency used the document in its decision-making process. The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.

NEW SECTION

WAC 132S-10-050 Availability of public records. (1) Hours for inspection of records. Public records of Columbia Basin College are available for inspection and copying during normal business hours of the college, Monday through Thursday 7:00 a.m. to 4:30 p.m. and Friday 7:00 a.m. to 12:00 p.m., excluding legal holidays. Records must be inspected at the offices of the college's human resources office.

(2) **Records index.** An index of public records is available for use by members of the public. There may be exemptions that may prohibit the college from releasing certain documents. The index may be accessed online at www.columbiabasin.edu.

(3) **Organization of records.** Columbia Basin College will maintain its records in a reasonably organized manner. The college will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the college's records from Columbia Basin College offices without the permission of the public records officer or designee. A variety of records is available on the Columbia Basin College web site at www.columbiabasin.edu. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

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

(a) Any person wishing to inspect or copy public records of the college should make the request in writing on the college's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any e-mail address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 132S-10-080 standard photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer and online at www.columbiabasin.edu.

(d) The public records officer or designee may accept requests for public records that contain the information in this subsection (4) by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

(e) Commercial purpose: The act does not allow an agency to provide access to "lists of individuals requested for commercial purposes." RCW 42.56.070(9). Columbia Basin College may require a requestor to sign a declaration that he or she will not put a list of individuals in the record to use for a commercial purpose.

NEW SECTION

WAC 132S-10-060 Public records officer. (1) Any person wishing to request access to public records of Columbia Basin College, or seeking assistance in making such a request should contact the public records officer of the college:

Camilla Glatt, Vice-President for
Human Resources & Legal Affairs
Columbia Basin College
2600 North 20th Avenue
Pasco, WA 99301
Phone: 509-542-5548
Fax: 509-544-2029
E-mail: cglatt@columbiabasin.edu

Information is also available at the college's web site at www.columbiabasin.edu.

(2) The public records officer will oversee compliance with the act but another college staff member may process requests. Therefore, these rules will refer to the public records officer or designee.

NEW SECTION

WAC 132S-10-070 Requests for public records. Both requestors and agencies have responsibilities under the act. The public records process can function properly only when both parties perform their respective responsibilities. An agency has a duty to promptly provide access to all nonexempt public records. A requestor has a duty to request identifiable records, inspect the assembled records or pay for the copies, and be respectful to agency staff.

(1) Providing "fullest assistance." Columbia Basin College is charged by statute with adopting rules which provide for how it will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the agency, provide fullest assistance to requestors, and provide the most timely possible action on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

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

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

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

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

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone or in writing. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

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

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

(5) Inspection of records.

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

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

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

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

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that Columbia Basin College has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

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

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

NEW SECTION

WAC 132S-10-080 Costs of providing copies of public records. (1) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for the actual cost per page.

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

(2) Costs for electronic records. The cost of electronic copies of records shall be the actual costs for information on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) Costs of mailing. The college may also charge actual costs of mailing, including the cost of the shipping container.

(4) Payment. Payment may be made by cash, check, or money order to the Columbia Basin College, 2600 North 20th Avenue, Pasco, WA 99301.

NEW SECTION

WAC 132S-10-090 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions provided by law, outside the Public Records Act, that restrict the availability of some documents held by Columbia Basin College for inspection and copying:

(a) Educational records;

(b) Privacy;

(c) Commercial use;

(d) Attorney-client privilege;

(e) Deliberative process;

(f) Personal information;

(g) Investigative;

(h) Employment;

(i) Financial, commercial, and proprietary information.

(2) Columbia Basin College is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 132S-10-100 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the president of Columbia Basin College or his or her designee to conduct the review. The president or his or her designee will immediately consider the petition and either affirm or reverse the denial within two business days following the college's receipt of the petition, or within such other time as the college and the requestor mutually agree to.

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132S-10-010	Designation of legislative liaisons.
WAC 132S-10-016	Public records—Purpose and definitions.
WAC 132S-10-020	Operations and procedures.
WAC 132S-10-021	Public records available.
WAC 132S-10-022	Public records officer.
WAC 132S-10-023	Public records—Office hours.
WAC 132S-10-024	Requests for public records.
WAC 132S-10-025	Public records—Fees.
WAC 132S-10-026	Public records—Exemptions.
WAC 132S-10-027	Review of denials of public records requests.
WAC 132S-10-028	Public records index.
WAC 132S-10-029	Request for public records—Address.

Chapter 132S-20 WAC

PRACTICE AND PROCEDURE((~~— CONTESTED CASES~~))

NEW SECTION

WAC 132S-20-001 Purpose. The purpose of this chapter is to provide process for brief and full adjudicative hearings.

NEW SECTION

WAC 132S-20-025 Model rules of procedure. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use at the Columbia Basin College. These rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and procedural rules adopted in this title, the procedural rules adopted by the college shall govern.

NEW SECTION

WAC 132S-20-035 Brief adjudicative procedures. This rule adopts the provision of RCW 34.05.482 through 34.05.494. Brief adjudicative procedures may, at the election of college, be used in all appeals related to:

(1) Residency determination. Appeals of residency determination under RCW 28B.15.013 are brief adjudicative proceedings conducted by the vice-president for student services;

(2) Outstanding debts of college employees or students;

(3) Loss of eligibility to participate in athletic events;

(4) Contents of educational records;

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the vice-president for student services.

NEW SECTION

WAC 132S-20-045 Appointment of presiding officers. The president or his/her designee shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington Bar Association, a panel of individuals, the president or his/her designee, or any combination listed in this section. Where more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, witness exclusion, means of recording adjudicative proceedings, and similar matters.

NEW SECTION

WAC 132S-20-055 Application for adjudicative proceeding. An application for adjudicative proceeding shall be in writing and should be submitted to the following address within twenty calendar days of the college action giving rise to the application, unless provided for otherwise by statute or rule: President's Office, Columbia Basin College, 2600 N. 20th Avenue, Pasco, WA 99301.

An application shall include the signature of the applicant, the nature of the matter for which an adjudicative proceeding is sought, the applicable statutes regarding rules, and an explanation of the facts involved. The procedures in applicable collective bargaining agreements between the college and representative union in effect and governing the matter will supersede these proceedings.

NEW SECTION

WAC 132S-20-065 Discovery and prehearing conferences. Discovery, including investigation in adjudicative proceeding, may be permitted at the discretion of the presiding officer. In permitting discovery, the presiding officer shall make reference to the civil rules of procedure. The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

Prehearing conferences or other conferences may be held for the settlement or simplification of issues at the discretion of the presiding officer, or pursuant to a motion by either of the parties for a prehearing conference. The prehearing conference may be conducted by telephone, television, or other electronic means, in the discretion of the presiding officer and where the rights of the parties will not be prejudiced. Each participant in the conference shall have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

NEW SECTION

WAC 132S-20-075 Method of recording. Proceedings shall be recorded by a method determined by the presiding officer, among those available pursuant to the model rules of procedure in WAC 10-08-170.

NEW SECTION

WAC 132S-20-085 Recording devices. No camera or recording devices shall be allowed in those parts of proceedings which the presiding officer has determined shall be closed, except for the method of official recording selected by the college.

NEW SECTION

WAC 132S-20-095 Procedure for closing parts of the hearing. The hearing is open to public observation, except as determined by the presiding officer. The presiding officer shall have the authority to close all or part of the proceeding to public observation or impose reasonable conditions upon observation of the proceeding. The presiding officer may also close the proceeding under provision of law expressly authorizing closure or under a protective order entered by the presiding officer. A party may apply for a protective order to close part of a hearing. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed and state the reasons therefore in writing within twenty days of receiving the request.

NEW SECTION

WAC 132S-20-105 Process for excluding witnesses. A party may apply for an order excluding witnesses for good cause. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine and may order, upon a showing of good cause, which, if any, witnesses should be excluded and state the reasons therefore in writing within twenty days of receiving the request.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132S-20-015	Practice and procedure—Formal hearing policy.
WAC 132S-20-020	Practice and procedure—Definitions.
WAC 132S-20-030	Practice and procedure—Appearance and practice before agency.
WAC 132S-20-040	Practice and procedure—Notice and opportunity for hearing in contested cases.
WAC 132S-20-050	Practice and procedure—Service of process—By whom served.
WAC 132S-20-060	Practice and procedure—Service of process—Upon whom served.
WAC 132S-20-070	Practice and procedure—Service of process—Service upon parties.
WAC 132S-20-080	Practice and procedure—Service of process—Method of service.
WAC 132S-20-090	Practice and procedure—Service of process—When service complete.
WAC 132S-20-100	Practice and procedure—Service of process—Filing with agency.
WAC 132S-20-110	Practice and procedure—Depositions and interrogatories in contested cases—Right to take.

WAC 132S-20-120	Practice and procedure—Depositions and interrogatories in contested cases—Scope.
WAC 132S-20-130	Practice and procedure—Depositions and interrogatories in contested cases—Officer before whom taken.
WAC 132S-20-140	Practice and procedure—Depositions and interrogatories in contested cases—Authorization.
WAC 132S-20-150	Practice and procedure—Depositions and interrogatories in contested cases—Protection of parties and deponents.
WAC 132S-20-160	Practice and procedure—Depositions and interrogatories in contested cases—Oral examination and cross-examination.
WAC 132S-20-170	Practice and procedure—Depositions and interrogatories in contested cases—Signing attestation and return.
WAC 132S-20-180	Practice and procedure—Depositions and interrogatories in contested cases—Use and effect.
WAC 132S-20-190	Practice and procedure—Depositions and interrogatories in contested cases—Fees of officers and deponents.
WAC 132S-20-200	Practice and procedure—Depositions upon interrogatories—Submission of interrogatories.
WAC 132S-20-210	Practice and procedure—Depositions upon interrogatories—The interrogation.
WAC 132S-20-220	Practice and procedure—Depositions upon interrogatories—Attestation and return.
WAC 132S-20-230	Practice and procedure—Depositions upon interrogatories—Provisions of deposition rule.
WAC 132S-20-240	Practice and procedure—Hearing officers.
WAC 132S-20-250	Practice and procedure—Hearing procedures.
WAC 132S-20-260	Practice and procedure—Duties of hearing officers.
WAC 132S-20-270	Practice and procedure—Stipulations and admissions of record.
WAC 132S-20-280	Practice and procedure—Definition of issues before hearing.
WAC 132S-20-290	Practice and procedure—Continuances.
WAC 132S-20-300	Practice and procedure—Rules of evidence—Admissibility criteria.
WAC 132S-20-310	Practice and procedure—Tentative admission—Exclusion—Discontinuance—Objections.
WAC 132S-20-320	Practice and procedure—Form and content of decisions in contested cases.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-30-010	Academic employee—Instructional responsibilities.
WAC 132S-30-011	Academic employee—Annual workload standards.
WAC 132S-30-012	Academic employee—Development of written syllabi.
WAC 132S-30-013	Academic employee—Verification of class roster.
WAC 132S-30-014	Academic employee—Extended day duty assignments.
WAC 132S-30-015	Split shift—Librarians and guidance counselors.
WAC 132S-30-016	Recruitment, screening and selection procedures.
WAC 132S-30-020	Employer-employee relations—Definitions.
WAC 132S-30-022	Communications with employees' representatives.
WAC 132S-30-024	Employer-employee relations—Negotiations procedure.
WAC 132S-30-026	Employer-employee relations—Severability.
WAC 132S-30-028	Nondiscrimination.
WAC 132S-30-030	Equal opportunity policy.
WAC 132S-30-032	Affirmative action responsibility—Appointing authority of the college.
WAC 132S-30-034	Grievance procedure.
WAC 132S-30-036	Grievance procedures—Sex discrimination.
WAC 132S-30-037	Grievance procedure—Handicapped.
WAC 132S-30-038	Referrals of complaints—Affirmative action.
WAC 132S-30-040	Contract compliance review officials.
WAC 132S-30-042	Faculty promotion—Generally.
WAC 132S-30-050	Tenure regulations—Purpose.
WAC 132S-30-052	Tenure regulations—Definitions.

WAC 132S-30-054	Tenure regulations—Composition of review committee.
WAC 132S-30-056	Tenure regulations—Duties of review committees.
WAC 132S-30-058	Tenure regulations—Required review committee action.
WAC 132S-30-060	Tenure regulations—Dismissal for cause.
WAC 132S-30-062	Tenure regulations—Dismissal for sufficient cause.
WAC 132S-30-064	Tenure regulations—Nonrenewal of tenured faculty contracts.
WAC 132S-30-066	Tenure regulations—Review committee recommendations.
WAC 132S-30-068	Tenure regulations—Tenure consideration.
WAC 132S-30-070	Grievance procedure—Generally.
WAC 132S-30-072	Academic employee grievance—Policy.
WAC 132S-30-074	Academic employee grievance—Definitions.
WAC 132S-30-076	Academic employee grievance—Procedures.
WAC 132S-30-078	Academic employee grievance—Appeal.
WAC 132S-30-080	Leaves of absence—Introduction.
WAC 132S-30-082	Applications and accounting for absences and benefits, obligations, and reimbursement.
WAC 132S-30-084	Types of leaves.
WAC 132S-30-086	Vacation leave—Administrative and exempt personnel.
WAC 132S-30-088	Procedures.
WAC 132S-30-090	Summary suspension.
WAC 132S-30-092	Hearing.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-31-010	Purpose of rules.
WAC 132S-31-011	Definitions.
WAC 132S-31-012	Initial procedures for reduction in force.
WAC 132S-31-013	Initial order of layoff.
WAC 132S-31-014	Options in lieu of layoff.
WAC 132S-31-015	Procedures for establishing order of layoff and notice of requirements.
WAC 132S-31-016	Distribution of layoff notice.
WAC 132S-31-017	Reemployment rights of laid off employees.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-40-005	Code of conduct, student—Definition.
WAC 132S-40-050	Delegation of disciplinary authority.
WAC 132S-40-085	Civilian prosecution.
WAC 132S-40-090	Disposition of financial obligations of students.
WAC 132S-40-095	Students—Financial obligation—Appeal procedure.
WAC 132S-40-100	Student data—Introduction.
WAC 132S-40-105	Student information which may be released.
WAC 132S-40-110	Student information—Who may request and receive such information.
WAC 132S-40-115	Student access to records.
WAC 132S-40-125	Probation, suspension and expulsion.
WAC 132S-40-130	Scholarships.
WAC 132S-40-135	Financial aid.
WAC 132S-40-195	Grounds for ineligibility.
WAC 132S-40-200	Initiation of ineligibility proceedings.
WAC 132S-40-210	Ineligibility proceedings.
WAC 132S-40-300	Preamble.
WAC 132S-40-310	Definitions.
WAC 132S-40-315	Supplemental definitions.
WAC 132S-40-320	Student rights.
WAC 132S-40-330	Student responsibilities.
WAC 132S-40-340	Student code authority.
WAC 132S-40-350	Proscribed conduct.
WAC 132S-40-360	Student conduct code procedures.
WAC 132S-40-365	Supplemental sexual misconduct procedures.
WAC 132S-40-370	Appeals of disciplinary action.
WAC 132S-40-375	Supplemental appeal rights.
WAC 132S-40-380	Disciplinary sanctions.
WAC 132S-40-390	Interim restriction and suspension procedures.
WAC 132S-40-400	Records of disciplinary action.
WAC 132S-40-410	Rights to brief adjudicative procedures.
WAC 132S-40-420	Procedure for addressing student complaints.
WAC 132S-40-425	Supplemental complaint process.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-50-010	Purpose.
WAC 132S-50-020	Regulations regarding use of college facilities.
WAC 132S-50-024	Commercial activities.
WAC 132S-50-025	Commercial activities defined.
WAC 132S-50-026	Penalties for violations of commercial activities regulations.
WAC 132S-50-027	Distribution of materials.
WAC 132S-50-028	General policies limiting use.
WAC 132S-50-029	Liability for damage.
WAC 132S-50-030	Traffic and parking—Introduction.
WAC 132S-50-040	Traffic and parking—Definitions.
WAC 132S-50-050	Traffic and parking—Purposes of regulations.
WAC 132S-50-055	Traffic and parking—Applicable rules and regulations.
WAC 132S-50-060	Special traffic and parking regulations and restrictions authorized.
WAC 132S-50-065	Exceptions from traffic and parking restrictions.
WAC 132S-50-070	Traffic and parking—Enforcement.
WAC 132S-50-075	[Fines, penalties and] issuance of traffic tickets.
WAC 132S-50-080	Traffic and parking—Fines and penalties.
WAC 132S-50-085	Authorization for issuance of parking permits.
WAC 132S-50-090	Valid parking permit.
WAC 132S-50-095	Display of parking permit.
WAC 132S-50-100	Transfer of parking permits.
WAC 132S-50-110	Parking permit revocation.
WAC 132S-50-115	Parking permit revocation—Hearing provided.
WAC 132S-50-120	Allocation of parking space.
WAC 132S-50-125	Parking within designated spaces.
WAC 132S-50-130	Day parking.
WAC 132S-50-135	Night parking.
WAC 132S-50-140	Regulatory signs and directions.
WAC 132S-50-145	Speed limit.
WAC 132S-50-150	Pedestrian's right of way.
WAC 132S-50-155	Two-wheeled motor bikes or bicycles.
WAC 132S-50-160	Report of accidents.
WAC 132S-50-165	Liability of college.
WAC 132S-50-170	Delegation of authority.
WAC 132S-50-175	Severability.
WAC 132S-50-180	Pets definition.
WAC 132S-50-185	Animal control.
WAC 132S-50-190	Penalties for violations of pet control regulations.
WAC 132S-50-195	Smoke and tobacco-free environment.
WAC 132S-50-280	Regulations governing firearms and weapons on or in college facilities.

Chapter 132S-90 WAC

STUDENT RIGHTS, RESPONSIBILITIES AND STUDENT STATUS

NEW SECTION

WAC 132S-90-010 Student rights. The following enumerated rights which are deemed necessary to achieve the educational goals of the college are guaranteed to each student within the limitations of statutory law and college policy:

Academic freedom.

(1) Students have the right to pursue educational objectives from among the college's curricula, programs, and services subject to the provisions of this chapter.

(2) Students have the right to a learning environment that is free from unlawful and/or discriminatory actions.

(3) Students have the right to present their own views, even though they may differ from those held by faculty members, and will not be subject to adverse action by faculty when such views are expressed in a manner that does not interfere with the rights of others.

(4) Students are protected from academic evaluations which are arbitrary, prejudiced, or capricious.

NEW SECTION

WAC 132S-90-020 Student responsibilities. Students who choose to attend Columbia Basin College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment that includes resources used by students to attain their educational goals. In return each student is responsible to:

(1) Participate actively in the learning process, both in and out of the classroom;

(2) Seek timely assistance in meeting educational goals;

(3) Attend all class sessions;

(4) Prepare adequately to participate fully in class activities;

(5) Meet the standards of academic performance established by each instructor;

(6) Develop skills required for learning; e.g., basic skills, time management, and study skills;

(7) Assume final authority for the selection of appropriate educational goals;

(8) Select courses appropriate for meeting chosen educational goals;

(9) Make appropriate use of services and resources;

(10) Contribute towards improving the college;

(11) Become knowledgeable of and adhere to the college's policies, practices, and procedures;

(12) Meet financial obligations to the college for outstanding tuition, fees, fines or other debts;

(13) Abide by the standards set forth in the student code of conduct.

NEW SECTION

WAC 132S-90-030 Admissions and registration procedures. Columbia Basin College maintains an open door admission policy and grants admission to applicants who are at least eighteen years of age and/or have graduated from high schools accredited by a regional accrediting association or have a GED certificate. Home school graduates and graduates from nonaccredited high schools are required to petition for admissions through the admissions/graduation committee. For further information regarding the petition process, contact the student records office.

Applicants who are less than sixteen years of age and/or do not meet CBC admission requirements must petition for admissions through the admissions/graduation committee. For further information regarding the petition process, contact the student records office.

Admission to CBC does not guarantee admission to all degree or certificate programs. Some programs have special applications and admission procedures and limited entry dates. Students should consult the individual program and/or department for admission requirements.

Admissions and registration regulations and procedures for students wishing to attend Columbia Basin College are published in the college catalog. Copies of the catalog are available online at www.columbiabasin.edu. Questions and inquires about admission and registration regulations and procedures should be directed to the student records office or the college registrar.

NEW SECTION

WAC 132S-90-040 Deadlines and due dates. Deadlines and due dates for students attending and wishing to attend Columbia Basin College are published in the college yearly catalog and quarterly schedules. Copies of the catalog and schedule are available online at www.columbiabasin.edu. Questions and inquires about deadlines and due dates should be directed to the appropriate college administrator.

NEW SECTION

WAC 132S-90-050 Graduation submissions. (1) Candidates for degrees, certificates, and diplomas are advised to meet with their advisor at least two quarters prior to the anticipated completion date to review degree progress and to ensure graduation requirements will be met.

(2) Students must formally apply for graduation the quarter prior to completing all degree, certificate or diploma requirements. Graduation applications for transfer degrees are available from a counselor or completion coach in the counseling and advising center. Graduation applications for the associate in applied science degrees and certificates are available from program department advisors. Students may graduate at the end of any quarter.

(3) To be approved for graduation, a student must:

(a) Complete all degree/certificate program requirements. No one course can fulfill two distribution requirements within a degree.

(b) Complete at least one-third of the credits required for a degree or certificate in residence at CBC.

NEW SECTION

WAC 132S-90-060 Residency. (1) A resident student is one who is a U.S. citizen and has met specific requirements demonstrating permanent residence in the state of Washington. Permanent residence in the state of Washington is evidenced by physical presence in the state as well as having a sufficient number of permanent Washington documents. Documentation should be dated one year and one day prior to the commencement of the quarter for which a student is applying for residency status. These documents include:

(a) Voter's registration;

(b) Washington state driver's license;

(c) Car registration;

(d) Bank accounts;

(e) Federal tax return (required).

(2) Students wishing to change their residency classification must complete a residency questionnaire and provide necessary documentation. Application for reclassification prior to registration into classes is preferred. Residency reclassification must take place within thirty calendar days of the first day of the quarter. Special tuition allowances may apply to some eligible noncitizens, Washington higher education employees, and to military personnel and their dependents stationed in the state of Washington. For further information, contact the student records office.

NEW SECTION

WAC 132S-90-070 Outstanding financial obligations, withholding of services and informal appeal. (1) Outstanding financial obligations.

The college expects that students who receive services for which a financial obligation is incurred will exercise responsibility in meeting those obligations as stated in WAC 132S-90-020(12). Appropriate college staff are empowered to act in accordance with regularly adopted procedures to carry out the intent of this regulation, and if necessary to initiate legal action to ensure that collection matters are brought to a timely and satisfactory conclusion.

To the extent permitted by law, in response to a student or former student's failure to pay a debt owed to the college, the college may:

(a) Initiate collection action;

(b) Make collections from funds received from or on behalf of a student;

(c) Deny or withhold admission to or registration with the college, conferral of degrees or certificates, and/or issuance of academic transcripts;

(d) Refer the matter for discipline under chapter 132S-100 WAC;

(e) Deny any other provisions or other services, including refunds.

(2) Withholding services for outstanding debts. Upon receipt of a request for services where there is an outstanding debt owed to the college from the requesting person, the college shall notify the student by the most expedient means that the services will not be provided since there is an outstanding debt, and further that until that debt is satisfied, no such services will be provided to the student. The notice shall include a statement that he or she has a right to an informal appeal before the debt review committee if he or she believes that no debt is owed. The notice shall state that the request for the informal appeal must be made to the president's office within twenty-one days from the date of notification. The informal appeal request must be in writing and must clearly state error(s) in fact or matter(s) in extenuation or mitigation which justifies the informal appeal. The informal appeal process excludes parking citation appeals heard by the citation review committee (basis for parking citation) or those waived by untimely filing, but includes appeals before the debt review committee on whether the debt(s) for parking citation(s) are owed.

(3) Appeal of decision to withhold services for outstanding debt(s).

The request may be for an in-person presentation of the appeal before the debt review committee or include a submission of a written appeal for review by the debt review committee.

Upon receipt by the president's office of a timely request for an informal appeal, the president or designee will designate three staff members and/or student(s) to a committee for the purpose of hearing or reviewing the informal appeal, depending on the request. The debt review committee will render a decision in writing within five business days of the hearing or review. If the outstanding debt is found to be owed by the student involved, services shall not be provided until the debt is paid or otherwise resolved. If the outstanding debt, and any resulting action taken under WAC 132S-90-070, is found to be an institutional error, steps will be taken to lift the restriction on services.

If the decision made by the debt review committee is not satisfactory to the student, he or she may file a more formal appeal through the brief adjudicative process in chapter 132S-20 WAC.

Chapter 132S-91 WAC

LOSS OF ELIGIBILITY—STUDENT ATHLETE PARTICIPATION

NEW SECTION

WAC 132S-91-010 Loss of eligibility—Student athletic participation. (1) Grounds for ineligibility. Any student found to have violated chapter 69.41 RCW, which prohibits the unlawful sale, delivery or possession of prescription drugs, shall, after hearing, be disqualified from participation in any school-sponsored athletic events or activities.

(2) Initiation of ineligibility proceedings. The dean or designee shall have the authority to request commencement of athletic ineligibility proceedings whenever he or she has reasonable cause to believe that the student has violated chapter 69.41 RCW or has been advised that the student has been convicted of a crime involving the violation of chapter 69.41 RCW. The notice of the alleged violations and proposed suspension and the opportunity for a hearing shall be given to the student at least ten days before the hearing. A student convicted of violating chapter 69.41 RCW in a separate criminal proceeding may be given by the dean or designee an interim suspension pending final determination of any administrative proceeding held under these rules. Should the student desire not to go forward with the hearing, the disqualification for participation in athletic events or activities shall be imposed as set forth in the notice of hearing to the student.

(3) Ineligibility proceedings. The president of the college or designee shall select a presiding officer who shall be a college officer who is not involved with the athletic program to conduct the brief adjudicative hearing. The presiding officer shall promptly conduct the hearing and permit the affected parties to explain both the college's view of the matter and the student's view of the matter. The brief adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act, currently RCW 34.05.482 through 34.05.494. A written decision shall be issued within ten calendar days of the conclusion of the brief adjudicative hearing.

Chapter 132S-92 WAC

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

NEW SECTION

WAC 132S-92-010 The Family Educational Rights and Privacy Act. FERPA policy and procedures are published yearly in the college catalog. Copies of the catalog are available online at www.columbiabasin.edu. Questions and inquiries about FERPA policy and procedures should be directed to the college registrar.

Chapter 132S-100 WAC

STUDENT CODE OF CONDUCT

NEW SECTION

WAC 132S-100-010 Preamble. Columbia Basin College (herein referred to as "CBC" or "the college") is supportive of diversity among ideas, cultures, and student characteristics in the pursuit of advancing one's education. A responsibility to secure, respect, and protect such opportunities and conditions is shared by all members of the academic community.

As a member of this community, students are expected to uphold and be accountable for this student code of conduct both on and off campus, and acknowledge that the college has the authority to take disciplinary action when a student violates these policies.

As an agency of the state of Washington, CBC must respect and adhere to all laws established by local, state, and federal authorities. This student code of conduct has been developed to educate students and protect the welfare of the community.

NEW SECTION

WAC 132S-100-020 Good standing. The award of a degree or certificate is conditioned upon the student's good standing in the college and satisfaction of all program requirements. "Good standing" means the student has resolved any unpaid fees or acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of any misconduct. CBC shall deny award of a degree or certificate if the student is dismissed from the college based on their misconduct.

NEW SECTION

WAC 132S-100-030 Definitions. Assembly - Any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.

Board of trustees - The board of trustees of Community College District No. 19, state of Washington.

Bullying - Physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

College - Columbia Basin College, established within Community College District No. 19, state of Washington.

College facilities - Any and all real property controlled or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto.

College premises - All land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college, including adjacent streets and sidewalks.

Complainant - A person who reports that a violation of the student code of conduct has occurred towards themselves, another person, and/or group of people.

Complaint - A description of facts that allege a violation of student code of conduct or other college policy.

Consent - Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon activity, including sexual activity. A person cannot consent for sexual activity if they are not of legal age, unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

Cyberstalking, cyberbullying, and online harassment - The prohibited behavior of stalking, bullying, and/or harassment through the use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

Disciplinary action - The sanctioning of any student pursuant to WAC 132S-100-430 for the violation of any designated rule or regulation of the college, including rules of student conduct, for which a student is subject to adverse action.

Harassment - Conduct by any means that is severe, persistent, or pervasive, and is of such a nature that it would, or does cause a reasonable person substantial emotional distress and undermine their ability to work, study, or participate in their regular life activities or participate in the activities of the college.

Instructional day - Any regularly scheduled instructional day designated in the academic year calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays are not regularly scheduled instructional days.

Policy - The written regulations of the college as found in, but not limited to, the student code of conduct and any other official regulation written or in electronic form.

Preponderance of the evidence - The standard of proof used with all student disciplinary matters at CBC that fall within the student code of conduct, which means that the amount of evidence needs to be at fifty-one percent or "more likely than not" before a student is found responsible for a violation.

President - The chief executive officer appointed by the board of trustees or, in such president's absence, the acting president or other appointed designee. The president is authorized to delegate any and all of their responsibilities as may be reasonably necessary.

Respondent - The student against whom disciplinary action is being taken or initiated.

Rules of the student conduct code - The rules contained herein as now exist or which may be hereafter amended, the violation of which subject a student to disciplinary action.

Service - The process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is electronically mailed and deposited into the mail.

Stalking - Intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

Student - Any person taking courses either full-time or part-time, or participating in any other educational offerings at CBC, excluding students enrolled in the High School Academy. If a student withdraws after allegedly violating the student code of conduct, but prior to the college reaching a disciplinary decision in the matter, the college can move forward with the disciplinary process, place the process on hold until the student returns, or choose to place the investigation results in the student's file for consideration should they reapply for admittance to reenroll in the college.

Student appeals board - Also referred to as the "SAB" or "appeals board." The SAB presides over the appeal process for the SCO and SCB conduct decisions that a student has timely appealed as set forth herein.

Student conduct board - Also referred to as the "SCB" is a hearing panel for some disciplinary matters as set forth herein.

Student conduct officer - Also referred to as "conduct officer" and/or "SCO" is the person designated by the college president to be responsible for the administration of the student code of conduct or, in such person's absence, the acting SCO or other appointed designee. The SCO is authorized to delegate any and all of his/her responsibilities as may be reasonably necessary.

ARTICLE I

AUTHORITY FOR THE STUDENT CODE OF CONDUCT

NEW SECTION

WAC 132S-100-100 Student code authority. The SCO will develop policies for the administration of the student code of conduct as well as procedural rules for the conduct of SCB hearings that are consistent with the provisions of the student code of conduct as specified herein.

The CBC board of trustees, acting pursuant to RCW 28B.50.140(14), do by written order, delegate to the president of the college, the authority to approve or reject a disciplinary action for which there is a recommendation that a student be expelled or suspended.

NEW SECTION

WAC 132S-100-105 Composition of the student conduct board. The college will have a SCB composed of five members who will serve as a standing committee until a decision is made regarding the case. The membership of the SCB during a hearing will consist of four members chosen and approved by the SCO and vice-president of student services, two students in good standing, and two faculty members. The fifth member is the chairperson, who may be of any category of college employee and who shall be approved by the president of the college. The chairperson will preside at the disciplinary hearing and will provide administrative oversight through the hearing process. The chairperson may participate in committee deliberations but will not vote unless it is necessary to constitute a quorum or the vote of the SCB is tied, at which time the chairperson will cast the deciding vote. Any three persons constitute a quorum of a conduct board and may act, provided that at least one student, one faculty, and the chairperson are present.

NEW SECTION

WAC 132S-100-110 Student appeals board. The college will have a student appeals board (herein referred to as the "SAB" or "appeals board") composed of three members who will serve as a standing committee until a decision is made regarding the appeal and after their following appeal time frame has passed. The membership of the appeals board will consist of three members, two individuals from the staff or faculty and the vice-president of student services or their designee. The two members will be chosen and approved by the SCO and they must possess no direct history or relation to the student that has filed an appeal. The vice-president of student services will act as the chairperson of the appeals board. The chairperson will provide administrative oversight throughout the process and participate in committee deliberations, but they will only vote if the SAB decision is tied, at which time the chairperson will cast the deciding vote.

NEW SECTION

WAC 132S-100-115 Convening boards. The SCO convenes the SCB and/or SAB from the appointed board membership only if a SCB or SAB is needed for disciplinary or appeal procedures.

NEW SECTION

WAC 132S-100-120 Classroom conduct and the learning environment. Instructors have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course. An instructor may exclude a student from any single class/program session during which the student is so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum. The instructor will report any such exclusion from the class/program session to the SCO. The SCO may initiate disciplinary action under the student code of conduct.

NEW SECTION

WAC 132S-100-125 Decisions. Decisions on responsibility by the SCO, the SAB, or the SCB are made using the preponderance of evidence standard of proof. These decisions become final after fifteen calendar days from the date of notification to the student unless a written appeal is filed with the SCO prior to that final date. A decision to drop the charges, issue a warning, and/or to only document the case, are not subject to appeal unless the case involves sexual misconduct (see WAC 132S-100-420 and 132S-100-425). All decision notifications by the SCO, SCB, or SAB will include the outcome for the decision and the procedures for appealing that decision. Decisions on an appeal from the president of the college or their designee are final.

ARTICLE II

PROSCRIBED CONDUCT

NEW SECTION

WAC 132S-100-200 Jurisdiction of the student code of conduct. The CBC student code of conduct will apply to conduct that occurs on college premises, at college-sponsored events and activities, and to off-campus conduct which are violations or alleged violations of local, state, or federal law and which also violate this student code of conduct. Such allegations or violations that occur off-campus can be the subject of college disciplinary action if the SCO determines disciplinary action is necessary. Students are responsible for their conduct from the time of application for admission until thirty instructional days following the actual receipt of a degree and/or certificate, even though conduct may occur before classes begin or after classes end, as well as during the

academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. The SCO will decide whether the code will be applied to conduct occurring off campus, on a case-by-case basis, at their sole discretion.

NEW SECTION

WAC 132S-100-203 Conduct—Rules and regulations. The attendance of a student at CBC is a voluntary entrance into the academic community. By such entrance, the student assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

(1) Conduct themselves in a responsible manner;

(2) Comply with rules and regulations of the college and its departments;

(3) Respect the rights, privileges, and property of other members of the academic community;

(4) Maintain a high standard of integrity and honesty; and

(5) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

Any student or student organization will be subject to disciplinary action who, either as a principal or participator or by aiding or abetting, commits or attempts to commit any of the misconduct per WAC 132S-100-205 through 132S-100-295.

NEW SECTION

WAC 132S-100-205 Abusive conduct. Physical and/or verbal abuse, threats, intimidation, harassment, online harassment, coercion, bullying, cyberbullying, retaliation, stalking, cyberstalking, and/or other conduct which threatens or endangers the health or safety of any person or which has the purpose or effect of creating a hostile or intimidating environment.

NEW SECTION

WAC 132S-100-208 Abuse of the student conduct system. Abuse of the student conduct system which includes, but is not limited to:

(1) Failure to obey any notice from a college official to appear for a meeting or hearing as part of the student conduct system.

(2) Willful falsification, distortion, or misrepresentation of information during the conduct process.

(3) Disruption or interference with the orderly conduct of a college conduct proceeding.

(4) Filing fraudulent charges or initiating a college conduct proceeding in bad faith.

(5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(6) Attempting to influence the impartiality of a member of the college conduct system prior to, during, and/or after any college conduct proceeding.

(7) Harassment (verbal or physical), retaliation, and/or intimidation of any person or persons involved in the conduct process prior to, during, or after any college conduct proceeding.

(8) Failure to comply with the sanction(s) imposed under the student code of conduct.

NEW SECTION

WAC 132S-100-210 Destroying or damaging property. Intentional and/or reckless damage to or misuse of college-owned or controlled property, or the property of any person where such property is located within college owned or controlled premises or at college-sponsored functions.

NEW SECTION

WAC 132S-100-213 Discrimination. Engaging in any unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

NEW SECTION

WAC 132S-100-215 Disorderly conduct. Includes, but is not limited to, the following:

(1) Obstruction of teaching, administration, or other college activities, including its public service function on- or off-campus, or of other authorized noncollege activities when the conduct occurs on college premises or at college-sponsored functions.

(2) Material and substantial interference with the personal rights or privileges of others or of the educational process of the college.

(3) Lewd or indecent conduct, breach of peace, or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored, or participated in, by the college or members of the academic community.

(4) Unauthorized use of electronic or other devices to make an audio or video recording of any person while on college premises without their prior knowledge, or without their effective consent, when such a recording is likely to cause injury or distress. This includes, but is not limited to, covertly taking pictures of another person in a gym, locker room, or restroom.

NEW SECTION

WAC 132S-100-220 Disruption. Includes, but is not limited to, the following:

(1) Participating in an on- or off-campus demonstration, riot, or any activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community.

(2) Intentionally and/or recklessly inciting others to engage in any prohibited conduct as defined herein, when incitement may lead to such conduct.

(3) Obstruction of the free flow of pedestrian or vehicular traffic on college premises or at college-sponsored or supervised functions.

NEW SECTION

WAC 132S-100-225 Drugs and drug paraphernalia. Use, possession, manufacture, or distribution of marijuana, narcotics, or other controlled substances, and drug paraphernalia except as permitted by federal, state, and local law.

NEW SECTION

WAC 132S-100-230 Falsehoods and misrepresentations. Includes, but is not limited to, the following:

(1) The intentional making of false statements and/or knowingly furnishing false information to any college official, faculty member, or office.

(2) Forgery, alteration, or misuse of any college document, record, fund, or instrument of identification with the intent to defraud.

NEW SECTION

WAC 132S-100-235 Hazing. Any method of initiation into a student club or organization, or any pastime or amusement engaged in with respect to such a group or organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the college as described in Washington statute, RCW 28B.10.900.

NEW SECTION

WAC 132S-100-240 Insubordination. Failure to comply with the direction of college officials, campus security officers, or law enforcement officers acting in the legitimate performance of their lawful duties and/or failure to properly identify oneself, provide evidence of student enrollment and/or proper identification to these persons when requested to do so.

NEW SECTION

WAC 132S-100-245 Liquor. Consuming, possessing, furnishing, or selling of alcoholic beverages and/or being under the influence of any alcoholic beverage is prohibited on college premises or at college-sponsored or supervised events except as a participant of legal age in a student program, banquet, or educational program which has the special written authorization of the college president or their designee. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under the state alcohol legal drinking age.

NEW SECTION

WAC 132S-100-250 Misuse of equipment and technology. Misuse of the college's computer, telecommunications, or electronic technology, facilities, or equipment which includes, but is not limited to:

(1) Unauthorized entry into a file to use, read, or change the contents, or for any other purpose.

(2) Unauthorized transfer of a file.

(3) Use of another individual's credentials or password or allowing someone else to use your own credentials and password.

(4) Copyright violations.

(5) Use of the college's computer, telecommunications, or electronic technology facilities and resources:

(a) That interferes with the work of another student, faculty member, or college official.

(b) To send obscene or abusive messages.

(c) For personal profit, advertisement, or illegal purposes.

(d) For purposes other than those necessary to fulfill an assignment or task as part of the student's program of instruction.

(e) To engage in any of the prohibited actions and behaviors listed within the acceptable use of information technology resources policy.

NEW SECTION

WAC 132S-100-255 Safety misconduct. Intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency on college premises or at any college-sponsored activity, or falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

NEW SECTION

WAC 132S-100-260 Sexual misconduct. Engaging in nonconsensual sexual intercourse or nonconsensual sexual contact, requests for sexual favors, or other verbal or physical conduct of a sexual nature where such behavior offends a reasonable, orderly, prudent person under these circumstances. This includes, but is not limited to:

(1) Sexual activity or contact for which clear and voluntary consent has not been given in advance.

(2) Sexual activity with someone who is incapable of giving valid consent because, for example, they are underage, sleeping or otherwise incapacitated due to alcohol or drugs.

(3) Sexual harassment, which includes unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender.

(4) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking.

(5) Nonphysical conduct such as sexual- or gender-based cyberstalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132S-100-265 Theft. The unauthorized taking or removing of college-owned or operated property or of another's property with the intent of depriving the owner of the property.

NEW SECTION

WAC 132S-100-270 Trespass or unauthorized presence. Entering or remaining unlawfully on college premises, as defined by state law. Using college premises, facilities, or property without authority and/or unauthorized possession, duplication or use of keys to any college premises.

NEW SECTION

WAC 132S-100-275 Weapons. Possession of weapons (e.g., firearms, daggers, swords, knives or other cutting or stabbing instruments, clubs) or substances (e.g., explosives) apparently capable of producing bodily harm and/or damage to real or personal property is prohibited on or in college-owned or operated facilities and premises and/or during college-sponsored events.

(1) Carrying of firearms on or in college-owned or operated facilities and/or during college-sponsored events is prohibited except and unless the firearm is registered with the campus security department for a specified period of time.

(2) The aforementioned regulations shall not apply to equipment or materials owned, used or maintained by the college; nor will they apply to law enforcement officers or campus security officers acting in the legitimate performance of their lawful duties.

NEW SECTION

WAC 132S-100-280 Academic dishonesty. Academic dishonesty includes, but is not limited to, cheating, plagiarism, and fabrication or falsification of the information, research, or other findings for the purpose of fulfilling any assignment or task as part of the student's program of instruction. Any student who commits or aids and abets the accomplishment of an act of academic dishonesty will be subject to disciplinary action.

NEW SECTION

WAC 132S-100-285 Classroom misconduct. Being disorderly or disruptive, where such behavior makes it difficult or impossible to continue with the normal functions of the class/program. Bringing any person or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the approval of the instructor or other authorized official, is expressly prohibited.

NEW SECTION

WAC 132S-100-290 Violation of law. Conduct which would constitute a violation of any federal, state, or local law. When traveling abroad, international law will apply.

NEW SECTION

WAC 132S-100-295 Violation of college policy, rule, or regulation. Violation of any college policy, rule, or regulation published electronically on the college web site or in hard copy.

ARTICLE III

RULES AND REGULATIONS

NEW SECTION

WAC 132S-100-300 Responsibility for guests. A student or student organization is responsible for the conduct of guests on or in college property and at functions sponsored by the college or sponsored by any recognized college organization.

NEW SECTION

WAC 132S-100-305 Student clubs and organizations. Any student club or organization shall comply with the student code of conduct. When a member or members of a student club or organization violates the student code of conduct, the members and/or individual member may be subject to appropriate sanctions authorized by this student code of conduct.

NEW SECTION

WAC 132S-100-310 Violation of law and college discipline. College disciplinary proceedings may be instituted against a student charged with conduct that potentially violates the criminal law and this student code (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this student code of conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the SCO. Determination made or sanctions imposed under this student code of conduct will not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

ARTICLE IV

STUDENT CODE OF CONDUCT PROCEDURES

NEW SECTION

WAC 132S-100-400 Student conduct process. (1) Initiation of disciplinary action. A request for disciplinary action of a student for violation(s) of the student code of conduct must be made in writing or in person to the SCO as soon as possible but no later than thirty instructional days after the occurrence or the date the requestor knew or should reasonably have known of the occurrence. The choice to pursue a request for disciplinary action that is submitted after thirty instructional days of the occurrence will be subject to the discretion of the SCO. Any member of the college's administration, faculty, staff, or any student or nonstudent may make such a request and it must be a good faith claim. The SCO may decline the request, implement the request, refer the case to the SCB, or engage in informal negotiations to resolve the situation based on the allegation(s) and the evidence that has

been provided. If the SCO is subject of a complaint initiated by the respondent, the vice-president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the request for disciplinary action.

(2) Notification requirements. Once the SCO has decided to begin the investigation process for the request of disciplinary action, the student will be sent a notice to appear for a disciplinary meeting with the SCO. A written notice to appear will be hand delivered or sent by certified mail to the most recent address in the student's record on file with the college, no later than fifteen instructional days after the decision is made to proceed with an investigation. The notice will not be ineffective if presented later due to the student's absence. Such notice will:

(a) Inform the student that a report has been filed alleging the student violated the student code of conduct.

(b) Set forth those provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violation(s).

(c) Specify the time, date, and location where the student is required to meet with the SCO. The meeting will be scheduled no earlier than three instructional days, but within thirty instructional days of the date on the notice to appear sent to the student. The SCO may modify the time, date, and location of the meeting, either at the student's or college's request, for reasonable cause.

(d) Inform the student that failure to appear at the appointed time and place will not stop the disciplinary process and may result in a transcript/registration hold being placed onto the student's account, and the student receiving disciplinary sanctions, which could include suspension or expulsion from the college.

(e) Inform the student that they may bring an advisor or representative to the meeting with them. The advisor or representative cannot be a college employee.

(3) Student conduct meeting.

(a) When meeting with the SCO, the student will be informed of the following:

(i) The provision(s) of the rules of the student code of conduct or college policy that they are charged with violating;

(ii) The disciplinary process;

(iii) The range of sanctions which might result from the disciplinary process;

(iv) The student's right to appeal.

(b) The student will have the opportunity to respond to the allegation(s) by providing the information to the SCO about their involvement, if any, in the alleged violation(s), explaining the circumstances surrounding the violation(s), and/or defending themselves against the allegations. If the student chooses to have an advisor or representative present at the meeting, the SCO will allow the advisor or representative to make a brief statement.

(c) The advisor or representative is allowed to assist the student with the process. Any questions that are made by the advisor or representative will be addressed through the discretion of the SCO. Any disruptions or failure to follow the conduct process and/or directions made by the SCO may result in the advisor or representative being removed from the meeting.

(4) Decision by the SCO.

(a) After interviewing the student or students involved and/or other individuals as appropriate, and after considering the evidence in the case, the SCO may take any of the following actions:

(i) Terminate the proceedings and thereby exonerate the respondent;

(ii) Impose disciplinary sanctions as provided herein;

(iii) Refer the matter to the SCB for appropriate action.

(b) Notification of the decision by the SCO will be hand delivered to the student or sent by mail to the most recent address in the student's record on file with the college, within thirty instructional days of the meeting. A copy of the notification will be filed with the office of the SCO.

(c) Disciplinary action taken by the SCO is final unless the student exercises the right of appeal.

NEW SECTION

WAC 132S-100-405 Student conduct board process. The SCB will hear, de novo, all disciplinary cases referred to the committee by the SCO.

(1) The respondent and the SCO will be sent written notification within fifteen instructional days from the date the committee received the referral from the SCO. The notification will contain the following:

(a) The time, date, and location of the hearing;

(b) The specific violation(s) alleged against the student;

(c) The SCB procedures;

(d) The names of the members of the acting SCB.

(2) The respondent and complainant has the right to be assisted by one advisor or representative of their choice and at their own expense. The advisor must be someone who is not employed by the college. If the respondent chooses to have an attorney serve as their advisor, the student must provide notice to the SCB no less than five instructional days prior to the hearing. The SCB hearing will not be delayed due to the scheduling conflicts of an advisor and such requests will be subject to the discretion of the SCB chairperson.

The respondent and/or complainant are responsible for presenting their own information, and therefore, during the hearing, advisors are not permitted to address the SCB, witnesses, the SCO, or any party or representative invited by the parties to the hearing, or to participate directly in any college conduct hearing. An advisor may communicate with their advisee and recesses may be allowed for this purpose at the discretion of the SCB chair.

(3) The SCB and respondent will be accorded reasonable access to the case file that will be retained by the SCO.

(4) Any SCB member who has a personal relationship, personal interest, or other interest which would prevent that person from rendering a fair and impartial decision must recuse themselves from the case. They will be replaced by another SCB member if possible.

A respondent may request in writing to the SCB chairperson no less than five instructional days prior to the hearing that a SCB member recuse or disqualify themselves. The request must be for good cause, which must be shown by the

respondent. In the event of such a request, the SCB will consider the request prior to the time schedule for the hearing and will decide whether the SCB member should be disqualified for that hearing.

(5) The parties involved in the hearing will be requested to submit their witness list and any documentary evidence to be discussed at the hearing to the SCB chairperson no less than five instructional days prior to the hearing. The respondent is allowed a maximum of three character witnesses to appear on their behalf. A written statement from each witness regarding their involvement with the case must be turned in with the witness list submitted by the respondent or the witness will not be allowed to participate.

(6) Hearings will be closed to the public except if requested by the respondent and at the discretion of the SCB chairperson. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the SCB.

(7) The SCO may request a special presiding officer to the SCB in complex cases. In these circumstances the special presiding officer will act as the chairperson of the hearing. The president must approve this request.

(8) The chairperson will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the respondent who disrupts a hearing or who fails to adhere to the rulings of the chairperson may be excluded from the proceedings and may be subject to disciplinary action.

(9) Questions suggested by the respondent and/or complainant to be answered by each other or by other witnesses must be made in writing to the SCB chair. The chair, if appropriate and at their sole discretion, will read the question to the individual it is directed to. Questions related to the order of the proceedings are subject to the final decision of the chair and the SCB.

(10) Formal rules of evidence and procedure will not be applicable in disciplinary proceedings conducted pursuant to this student code of conduct. The chairperson will admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.

(11) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will be recorded or transcribed except for the deliberations of the SCB. The record will be the property of the college.

(12) After considering the evidence in the case, the SCB will decide by majority vote whether to terminate the proceedings, thereby exonerating the respondent, or impose disciplinary sanctions as set forth herein.

(13) The SCB's decision is made on the basis of a "preponderance of the evidence" standard of proof, that is, whether it is more likely than not that the respondent violated the student code of conduct.

(14) If the respondent is found responsible for any of the charges brought against them, the SCB may, at that time consider the student's past disciplinary record in determining an appropriate sanction.

(15) The decision of the SCB must include a written summary in sufficient detail to permit appellate review of the violations alleged, testimony and evidence, and conclusions. Decisions of the SCB will be delivered, within thirty instructional days, to the respondent personally or sent by mail to the student's most recent address on file with the college, and a copy filed with the office of the SCO.

(16) Disciplinary action taken by the SCB is final unless the respondent exercises the right of appeal as provided herein.

NEW SECTION

WAC 132S-100-410 Academic dishonesty process. Academic dishonesty minimizes the learning process and threatens the learning environment for all students. As members of the CBC learning community, students are not to engage in any form of academic dishonesty.

(1) The class instructor is responsible for handling each case of academic dishonesty in the classroom and for determining a penalty grade as outlined in the course syllabus.

(2) If, within the instructor's professional judgment, reasonable evidence would suggest a student engaged in academic dishonesty, the instructor will provide notice to the student, either written or verbal, of their assertion of academic dishonesty and of the academic penalty grade within thirty instructional days of the occurrence or when the instructor is made aware of the occurrence.

(3) The instructor will submit a report of the assertion of academic dishonesty, the explanation of the notice or actual notice given to the student and a copy of all applicable evidence to the SCO. At this time, the instructor can request that the incident only be documented with the SCO unofficially, or they can officially refer the matter for disciplinary action. If the student has a previous academic dishonesty record, then the SCO can choose to move forward with the disciplinary process without an official referral.

NEW SECTION

WAC 132S-100-415 Appeal process. A decision by the SCO, SCB, and/or SAB can be appealed if a written request to appeal is received by the SCO within fifteen calendar days of notification of the SCO, SCB, or SAB's decision. Failure to file a written appeal within the time period specified will result in the decision(s) becoming final with no further right of appeal.

(1) The notice of appeal must include a brief statement explaining why they are seeking review and must assign error to specific findings of fact and/or conclusions of law in the initial order and must contain argument regarding why the appeal should be granted.

A respondent, who timely appeals a disciplinary action, has a right to a prompt, fair, and impartial appeals review as provided for in these procedures.

(2) Imposition of the discipline for violation of the student code of conduct shall be stayed pending appeal, unless the respondent has been issued an interim restriction or interim suspension.

(3) The SAB will be convened in private to review all appeals submitted within the appropriate time frames to the SCO. Their appeal decision will be personally delivered or

mailed to the respondent within fifteen instructional days of receiving the appeal from the SCO.

(a) If the respondent and/or complainant wish to explain their views of the matter to the SAB they shall be given an opportunity to do so in writing.

(b) The SAB may not take any action less favorable to the respondent(s), unless notice and an opportunity to explain the matter is first given to the respondent(s). In such cases, the decision notification time frame will be adjusted to thirty instructional days, to allow the respondent time to meet with the SAB.

(c) The SAB shall review the verbatim record of the meeting with the SCO and/or SCB hearing and all information provided by the parties to make a determination to affirm, reverse, or modify the SCO or SCB's decision, and/or affirm, reverse, or modify the sanctions imposed by the SCO or SCB's decision.

(4) An appeal is limited to a review by the SAB for one or more of the following purposes:

(a) To determine if the proceedings were conducted fairly in light of the charges and information presented, and in conformity with proscribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the student code of conduct was violated, and giving the respondent a reasonable opportunity to prepare and to present a response to those allegations. Deviation from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the respondent was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the student code of conduct occurred under the preponderance of evidence standard of proof.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the student code of conduct which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original meeting with the SCO or SCB hearing.

(5) Appeals of disciplinary action(s) will be taken in the following order:

(a) Disciplinary decisions and action taken by the SCO or SCB may be appealed by the respondent to be reviewed by the SAB.

(b) Disciplinary decisions and action taken by the SAB may be appealed by the respondent to be reviewed by the college president.

(c) The president will send notification to the respondent of their decision on the appeal within fifteen instructional days after filing an appeal with the SCO. The president shall make determinations based on the following:

(i) Affirm, reverse, or modify the SAB's decision;

(ii) Affirm, reverse, or modify the sanctions imposed by the SAB's decision; and

(iii) The president's decision is final.

NEW SECTION

WAC 132S-100-420 Sexual misconduct procedures. (1) The college's Title IX coordinator or their designee, shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the substantiated results of the investigation shall be referred to the acting SCO for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in the student discipline matters, including the right to participate in the initial disciplinary decision-making process, to simultaneously receive all notification of the SCO, SCB, SAB, or president's decision, and to appeal any disciplinary decision from the SCO, SCB, or SAB.

(5) Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132S-100-400 through 132S-100-405. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

(6) The SCO, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(7) The SCO or SCB chairperson, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the SCO shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

(8) The SCO, the Title IX coordinator officer and any participating members of the SCB or SAB that are involved with cases alleging sexual misconduct receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and learn how to conduct an

investigative process that protects the safety of victims and promotes accountability.

NEW SECTION

WAC 132S-100-425 Appeal process for complainants of sexual misconduct. (1) The following actions by the SCO, SCB, or SAB may be appealed by the complainant:

(a) Dismissal of a sexual misconduct complaint; or

(b) Disciplinary sanction(s) and condition(s) imposed against a respondent for a sexual misconduct violation, including a disciplinary warning and/or documentation only.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal in writing to the SCO within fifteen days of receiving notification of the disciplinary decision. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) If the complainant appeals the SAB's decision, the appeal will be reviewed by the president or their designee subject to the same procedures and deadlines applicable to other parties.

NEW SECTION

WAC 132S-100-430 Sanctions. The following sanctions may be imposed upon any student found to have violated the student code of conduct:

(1) Warning. A verbal statement or notice in writing to the respondent that they are violating or have violated college rules or regulations and that continued violations may be the cause for further disciplinary action.

(2) Reprimand. Notice in writing that the respondent has violated one or more of the policies outlined in the student code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Loss of privileges. Denial of specified privileges for a designated period of time.

(4) Restitution. An individual student may be required to make restitution for damage, loss, or injury. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution within thirty days or any period set by the SCO, SCB, SAB, or president will result in suspension for an indefinite period of time as set forth in subsection (7) of this section, provided that a student may be reinstated upon payment or upon a written agreed plan of repayment. Failure to strictly comply with the terms of a repayment plan will result in immediate suspension.

(5) Discretionary sanctions. Work assignments, essays, service to the college, or other related discretionary assignments.

(6) Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of college rules or regulations or other failure to meet the college's expectations within the student code of conduct. Written notice of disciplinary probation will specify the period of probation and any condition(s) upon which his/her continued enrollment is contingent. Such conditions may include, but not be limited to, adherence to terms of a behavior contract or limiting the student's participation in extra-curricular activities or access to specific areas of the college's facilities. Disciplinary probation may be for a specified term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.

(7) Suspension. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Students who are suspended may be denied access to all or any part of the campus or other facilities during the duration of the period of suspension. Additionally, conditions for readmission may be specified.

(8) Expulsion. Permanent separation of the student from the college. Students who are expelled may be denied access to all or any part of the campus or other facilities permanently.

(9) Revocation of admission and/or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining admission or the degree, or for other serious violations committed by a student prior to graduation. Revocation of a degree must be approved by the board of trustees.

(10) Withholding degree. The college may withhold awarding a degree otherwise earned until the completion of the process set forth in the student code of conduct, including the completion of all sanctions imposed, if any. Withholding a degree must be approved by the board of trustees.

(11) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the student code of conduct.

(12) Delayed suspension. A probationary amount of time set by the SCO, SCB, SAB, or president in which the student must remain on good terms with the student code of conduct. If the student is found responsible for violating the student code of conduct while still under the delayed suspension guidelines, then the student will be suspended, as set forth in subsection (7) of this section, for their next violation of the student code of conduct.

NEW SECTION

WAC 132S-100-435 Interim measures. (1) If there is cause to believe that a student or student organization poses an imminent threat to themselves, itself, to others, or to property, immediate action may be taken pending an investigation by the SCO. The SCO may take one or more of the following interim actions:

(a) Interim restrictions. A student may be restricted from college-owned or operated property and/or events.

(b) Interim suspension. A student may be suspended pending investigation, action, or prosecution.

(2) Permission to enter or remain on campus. During the period of interim measures, the student will not enter the college or any facility under the operation of the college other than to meet with the SCO or to attend the hearing. However, the SCO may grant the student special permission to enter the campus for the express purpose of meeting with faculty, staff, or students in preparation for the hearing or to participate in the Title IX process.

(3) Notice of interim measure proceedings. If the SCO finds it necessary to exercise the authority to evoke interim measures, they will give the student notice, orally or in writing, stating;

(a) The time, date, place, and nature of the alleged misconduct.

(b) The evidence in support of the charge(s).

(c) The corrective action or punishment which may be imposed against the student.

(d) The possibility that anything the student says to the SCO may be used against the student.

(e) The student's right to either accept the disciplinary action or, within three instructional days following receipt of the above notification, file at the office of the SCO a written request for a review of the interim measure by the SAB. If the request is not filed within the prescribed time, it will be deemed as waived.

(f) Conduct meeting. The meeting will be accomplished according to the procedures set forth in this document and no later than ten instructional days after the actions is taken unless the interim measures are related to a Title IX investigation, in which the conduct meeting will follow the referral of the Title IX coordinator officer upon completion of their investigation. Failure by the student to appear at the conduct meeting will result in the SCO suspending the student from the college.

ARTICLE V

RECORDS

NEW SECTION

WAC 132S-100-500 Records of disciplinary action. (1) Records of all disciplinary cases will be kept by the office of the SCO. Except in proceedings wherein the student is exonerated, all documentary proceedings and all recorded testimony will be preserved insofar as possible for at least seven years. No record of proceedings wherein the student is exonerated, other than the fact of exoneration, will be maintained in the student's file or other college repository after the date of the student's graduation or for one calendar year.

(2) The office of the SCO will keep accurate records of all disciplinary actions taken by, or reported to, that office. Such recordings will be placed in the student's disciplinary records. The SCO is responsible for ordering the removal of any notations of any disciplinary action on the student's record. A student may petition the SCO for removal of such a notation at any time.

(3) The Family Educational Rights and Privacy Act (FERPA) provides that an educational institution may notify a student's parent or legal guardian if the student is under the age of twenty-one and has violated a federal, state, or local law involving the use or possession of alcohol or a controlled substance.

Chapter 132S-200 WAC

HEALTH AND SAFETY REGULATIONS

PART I

NEW SECTION

WAC 132S-200-110 Animal control on campus. In order to assure the health and safety of all persons on properties owned or controlled by Columbia Basin College, the following rules and regulations regarding animals on campus are hereby promulgated: No person will be permitted to bring any animal upon properties owned or controlled by Columbia Basin College unless such animal is a service animal as defined in RCW 70.84.021 and is under the immediate control of such person. Animals are prohibited from being on college grounds and from entering college buildings, with the following exceptions:

(1) Service animals;

(2) Events at which animals are participants;

(3) When animals are part of an academic program.

Owners shall have immediate physical control of their animals (for example: Leashed, caged or carried) while on the grounds of Columbia Basin College.

Exceptions to this section may be authorized by the college president or his or her designee(s).

NEW SECTION

WAC 132S-200-120 Penalties for violations of animal control regulations. Persons violating WAC 132S-200-110 may be trespassed from the college campus and/or referred by administration or campus security to the appropriate police agency for prosecution under the city animal control code for the campus on which the violation occurred.

PART II

NEW SECTION

WAC 132S-200-130 Smoke and tobacco-free environment. (1) Smoking and tobacco products are not allowed inside any building or vehicle operated by Columbia Basin College (CBC).

(2) Smoking materials and related tobacco supplies will not be available for sale or vended on the campuses.

(3) Smoking and tobacco use by staff, students and nonstudents, including visitors, are prohibited within at least fifty feet of building openings (i.e., doors, air intakes, windows) and spaces near outdoor work areas.

(4) Smoking is prohibited in any location where the airflow carries smoke directly into a facility work area.

(5) Smokers must dispose of smoking and tobacco refuse in ash cans or other containers specifically designed and placed for such disposal.

(6) CBC shall ensure through proper posting that outside smoking and tobacco use areas are at least fifty feet from doorways and air intakes.

(7) Any student, staff, or faculty member who violates the college smoking and tobacco-free policy may be subject to disciplinary action. In addition, violations of the college smoking and tobacco-free policy by the public may subject the violator to trespass from campus and/or enforcement by a local law enforcement agency.

PART III

NEW SECTION

WAC 132S-200-140 Regulations governing firearms and weapons on or in college facilities. (1) It shall be the policy of this college that possession of weapons apparently capable of producing bodily harm and/or property damage is prohibited on or in college facilities or college-leased facilities.

(2) Explosives are prohibited on or in college facilities or leased college facilities.

(3) Carrying of firearms on or in college facilities or college-leased facilities is prohibited except when the concealed permit carrier registers his or her intent to lawfully carry a legal firearm with the campus security office for a specified period of time.

(4) The aforementioned regulations shall not apply to equipment or materials owned, used or maintained by the college; nor will they apply to law enforcement officers while on campus.

(5) Violations of these rules may be grounds for immediate suspension for student, staff or faculty pending a hearing. In addition, violations of this policy by a member of the public may subject the violator to trespass from the campus and/or enforcement by a local law enforcement agency.

NEW SECTION

WAC 132S-200-150 Trespass. Columbia Basin College campuses are open to the public, as are the buildings during business hours. To ensure safety of all on the campuses, the student conduct office and the campus security office may at times need to issue a trespass notice to an individual, trespassing that person or their vehicle from college property.

Trespass notices may be issued by the student conduct officer or campus security officers to an individual who has violated the student rights and responsibilities code, college regulations specified in Title 132S WAC, administrative policies, state law or municipal codes, or has willfully jeopardized the safety of others.

When the student conduct officer or any campus security officer deems that any of the above criteria have been met, he or she will issue a trespass notice to the individual. A copy of the notice will be kept on file at the campus security office and may be shown to the local law enforcement agencies if an arrest for violation of the trespass order is necessary in the future.

(1) **Temporary trespass notice.**

(a) A temporary trespass notice of up to twenty-four hours can be issued, without a right to appeal, to any person for whom the college has received a complaint or who has been observed doing any of the following:

(i) Causing harm or inflicting injury to college community members;

(ii) Threatening or intimidating members of the community;

(iii) Disrupting academic and administrative business of the college;

(iv) Causing damage to college or personal property; and/or

(v) Violating college policy, college regulation or the student conduct code.

(b) A temporary trespass notice will be hand delivered to the recipient at the time of the incident or as soon as possible if the recipient has left college grounds. Copies of all written notices are kept on file with the campus security office.

(c) If an individual violates the temporary trespass notice, the student conduct officer or the campus security officer can extend the trespass to remain in effect for up to two weeks.

(d) Individuals have the right to appeal a trespass that is longer than twenty-four hours.

(2) **Permanent trespass notice.**

(a) Individuals who are not current students of the college can be issued a permanent trespass by the campus security office if deemed necessary to protect the campus community. Permanent trespass notices will be hand delivered or sent via U.S. mail (certified receipt) to the individual.

(b) A permanent trespass can be simultaneously administered with the assistance of local law enforcement agencies and their official trespass notification.

(c) Individuals have a right to appeal a permanent trespass.

(3) **Student trespass appeals process.**

(a) Currently enrolled students who wish to appeal a temporary trespass notice must contact the office of student conduct. However, a trespass notice that is in effect for twenty-four hours or less cannot be appealed.

(b) Students, who are permanently trespassed through the student rights and responsibility code process will be notified through the sanction letter from the student conduct officer.

(4) **Nonstudent trespass appeals process.**

(a) Nonstudents who are not currently enrolled who wish to appeal a trespass notice must contact the office for the vice-president of administrative services.

(b) The criteria used for the appeals review include, but are not limited to:

(i) Determination of the threat posed by the individual to the community;

(ii) Review of the individual's need to be present on campus (with limitations when decided as appropriate); and

(iii) Review of the incident or supporting documentation that resulted in the trespass notice being issued.

(c) The vice-president for administrative services will review one appeal or request from the trespassed individual for modification per year and reserves the right to deny any appeal based on the safety of the campus community.

(d) If the vice-president of administrative services considers modifying or rescinding a trespass notice, he may consult with other college personnel as part of the appeal review process, such as the student conduct officer or the vice-president for human resources and legal affairs.

(e) Notification of the outcome of the appeal will be sent to the requestor within thirty days of the request via U.S. mail (certified receipt).

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-285-010	Policy statement.
WAC 132S-285-015	Responsible official for carrying out policy.

Chapter 132S-300 WAC

CAMPUS PARKING AND TRAFFIC REGULATIONS

PART I

TRAFFIC AND PARKING

NEW SECTION

WAC 132S-300-100 Introduction. The rules and regulations provided in this chapter have been established by Columbia Basin College to govern pedestrian traffic, vehicular traffic, and parking on its campuses and upon all state lands devoted to the educational, recreational, and research activities of Columbia Basin College.

NEW SECTION

WAC 132S-300-105 Definitions. The words used in this chapter shall have the meaning given in this section, unless the context clearly indicates otherwise.

(1) "Board" shall mean the board of trustees of Columbia Basin College.

(2) "Campus" shall mean any or all real property owned, operated, or maintained by Columbia Basin College.

(3) "College" shall mean Columbia Basin College.

(4) "Faculty members" shall mean any employee of Columbia Basin College who is employed to teach at Columbia Basin College.

(5) "Campus security officer" shall mean an employed security officer, security guard or communication officer of the college.

(6) "Staff" shall mean the classified, exempt and administrative employees of Columbia Basin College.

(7) "Vehicle" shall mean an automobile, truck, motor driven cycle, scooter, or any vehicle powered by a motor.

(8) "Visitors" shall mean any person or persons, excluding students as defined in WAC 132S-100-030, who come upon the campus as guests, and any person or persons who lawfully visit the campus for the purposes which are in keeping with the college's role as an institution of higher learning in the state of Washington.

(9) "Employee parking permits" shall mean permits which are valid annually and shall be obtained from the plant operations office at the fee set by administration.

(10) "Temporary permits" shall mean permits which are valid for a specific period of time designated on the permit.

NEW SECTION

WAC 132S-300-110 Purposes of regulations. The purposes of the rules and regulations established by this chapter are:

(1) To control parking on college owned parking lots;

(2) To protect and control pedestrian and vehicular traffic;

(3) To assure access at all times for emergency equipment;

(4) To minimize traffic disturbance during class hours;

(5) To expedite Columbia Basin College business, protect state property and to provide maximum safety and convenience.

NEW SECTION

WAC 132S-300-115 Applicable rules and regulations. The traffic and parking regulations which are applicable upon state lands devoted to the educational, recreational and research activities of Columbia Basin College are as follows:

(1) The motor vehicle and other traffic laws of the state of Washington;

(2) The traffic code of Pasco and Richland; and

(3) Special regulations set forth in this chapter.

NEW SECTION

WAC 132S-300-120 Special traffic and parking regulations and restrictions authorized. Upon special occasions causing additional heavy traffic, during emergencies or construction of campus facilities, the vice-president of administrative services or designee is authorized to impose additional traffic and parking regulations or modify the existing rules and regulations for the achievement of the general objectives provided in WAC 132S-300-110.

NEW SECTION

WAC 132S-300-125 Exceptions from traffic and parking restrictions. These rules and regulations shall not apply to city, county, or state-owned emergency vehicles.

NEW SECTION

WAC 132S-300-130 Regulatory signs and directions. The vice-president of administrative services or designee is authorized to erect signs, barricades and other structures and to paint marks or other directions upon the entry ways and streets on campus and upon the various parking lots owned or operated by the college. Such signs, barricades, structures, markings, and directions shall be so made and placed to best effectuate the rules and regulations contained in this chapter. Drivers of vehicles shall observe and obey the signs, barricades, structures, markings and directions erected pursuant to this section. Drivers shall also comply with the directions given them by campus security officers in the control and regulation of traffic.

NEW SECTION

WAC 132S-300-135 Speed limit. No vehicle shall be operated on the campuses at a speed in excess of fifteen miles per hour in parking lots; or such lower speed as is reasonable and prudent in the circumstances. No vehicle of any type shall at any time use the campus parking lots for reckless or negligent driving or unauthorized activities.

NEW SECTION

WAC 132S-300-140 Pedestrian's right of way. (1) The operator of a vehicle shall yield the right of way, slowing down or stopping, if need be to so yield to any pedestrian, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such a vehicle which has slowed or stopped to yield to pedestrian traffic.

(3) Every pedestrian crossing at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles.

(4) Where a sidewalk is provided, pedestrians shall proceed upon such a sidewalk.

NEW SECTION

WAC 132S-300-145 Report of accidents. The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or claimed damage to either or both vehicles shall immediately report such accident to the campus security office.

NEW SECTION

WAC 132S-300-150 Liability of college. The college assumes no liability under any circumstances for vehicles driven or parked on campus.

NEW SECTION

WAC 132S-300-155 Severability. If any provision of this chapter shall be adjudged by a court of record to be unconstitutional, the remaining provisions of this chapter shall continue in effect.

PART II

ENFORCEMENT

NEW SECTION

WAC 132S-300-200 Enforcement authority. The authority and powers conferred upon the vice-president of administrative services by these regulations shall be subject to delegation to appointed designees, including campus security officers or other designated subordinates.

NEW SECTION

WAC 132S-300-205 Enforcement. (1) Enforcement of the parking rules and regulations will begin the first day of the first week of full classes of the fall quarter and will continue until the end of summer quarter. These rules and regulations will not be enforced on Saturdays, Sundays, and official college holidays.

(2) The vice-president of administrative services or designee shall be responsible for the enforcement of the rules and regulations contained in this chapter. The vice-president of administrative services is hereby authorized to delegate this responsibility to the campus security officers or other designated subordinates.

PART III

PARKING PERMITS

NEW SECTION

WAC 132S-300-300 Issuance of parking citations. Citations and fines may be levied for parking violations that occur on Columbia Basin College (CBC) campuses. A schedule of fines shall be published on the college's web site located at www.columbiabasin.edu. A copy of the fine schedule shall also be available in the campus security office. Upon the violations of any of the rules and regulations contained in this chapter, the vice-president of administrative services, and campus security and staff, including student workers, may issue a warning, summons or citation setting forth the date, the approximate time, permit number, license information, infraction, officer, and fines as appropriate. Such warnings, summons or traffic citations may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the operator.

NEW SECTION

WAC 132S-300-305 Authorization for issuance of parking permits. The plant operations office or designee is authorized to issue annually parking permits to faculty, staff members, employees of private parties and students using college facilities pursuant to regulations and the payment of appropriate fees as determined by the college.

NEW SECTION

WAC 132S-300-310 Valid parking permits. A valid parking permit is:

(1) A current parking permit issued by plant operations office and properly displayed;

(2) A temporary or visitor's parking permit from the sponsoring department and properly displayed;

(3) A special parking permit and properly displayed;

(4) A shop permit authorized by a vocational-technical instructor and properly displayed; or

(5) A carpool permit authorized by college security and properly displayed.

NEW SECTION

WAC 132S-300-315 Display of parking permit. (1) All annual parking permits shall be properly displayed and viewable from the front windshield of the vehicle. Temporary, special, visitor, carpool, or shop permits shall be placed in a visible position on the dashboard of the automobile. Additionally, for a vehicle utilizing a carpool space, two or more carpool permits must be displayed on the dashboard in a manner that is visible to campus security officers (e.g., cannot be stacked or overlapping, etc.).

(2) Permits not displayed pursuant to the provisions of this section shall not be valid and the vehicle may be subject to parking violation.

NEW SECTION

WAC 132S-300-320 Transfer of parking permit. Annually issued parking permits purchased by individuals stated in WAC 132S-300-305 are transferable.

NEW SECTION

WAC 132S-300-325 Parking permit revocation. Parking permits are the property of the college and may be recalled by the vice-president of administrative services for any of the following reasons:

(1) When the purpose for which the permit was issued changes or no longer exists;

(2) When a permit is used by an unregistered vehicle or by an unauthorized individual;

(3) Falsification on a parking permit application;

(4) Continued violations of parking regulations; or

(5) Counterfeiting or altering a parking permit.

NEW SECTION

WAC 132S-300-330 Parking permit revocation—Hearing provided. Cancellation or revocation of any parking permit because of any of the causes stated in WAC 132S-300-325 (2) through (5) may be appealed to the vice-president of administrative services. The decision of the vice-president for administrative services or designee may be appealed to the college president.

NEW SECTION

WAC 132S-300-335 Allocation of parking space. The parking space available on campus for annually issued parking permits shall be designated and allocated by the plant operations office or designee in such a manner as will best effectuate the objectives of the rules and regulations in this chapter.

(1) Parking spaces will be designated for use of visitors on campus.

(2) Parking spaces for persons with disabilities will be designated pursuant to RCW 46.61.581. The allocated parking spaces are exclusively for use by those designated, provided that appropriate state of Washington "disabled permit" are displayed properly within their vehicles.

(3) Parking spaces will be designated for use by carpool vehicles.

NEW SECTION

WAC 132S-300-340 Parking within designated spaces. (1) All vehicles shall follow traffic arrows and other markings established for the purpose of directing traffic on campus.

(2) In areas marked for diagonal parking, vehicles shall be parked at a forty-five degree angle with the vehicle facing head in.

(3) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space or stall shall not constitute an excuse for a violation of this section.

NEW SECTION

WAC 132S-300-345 Day parking. The rules and regulations pertaining to the use of certain parking permits in specific areas as contained in WAC 132S-300-340 shall be in force during the hours from 6:00 a.m. to 10:00 p.m.

PART IV

FINES, PENALTIES AND APPEALS

NEW SECTION

WAC 132S-300-400 Fines and penalties. The vice-president of administrative services or designee is authorized to impose fines and penalties for the violation of the rules and regulations contained in this chapter.

(1) **Fines.** A schedule of fines shall be published online at the college's web site located at www.columbiabasin.edu. An individual receiving a parking citation must pay fine(s) imposed in accordance with the schedule of fines. Visitors who have received citations for parking violations may return the citation to the campus security office with name, address, and a brief explanation. The campus safety and security supervisor may void the citation as a courtesy notice. Any individual may file an appeal for any parking citation under

the appeals section of this subchapter and as described in further detail on the college's web site.

(2) **Unpaid fines.** If any parking citation remains unpaid eight days after issuance on the citation or after appeal of the citation, Columbia Basin College may take actions including, but not limited to:

(a) Initiate collection action;

(b) Make collections from funds received from or on behalf of a student;

(c) Deny or withhold admission to or registration with the college, conferral of degrees or certificates, and/or issuance of academic transcripts;

(d) Refer the matter for discipline under chapter 132S-100 WAC;

(e) Deny any other provisions or other services, including refunds.

(3) **Student conduct referral.** An accumulation of unpaid citations or traffic offenses by a student may be referred to the chief student conduct officer for initiation of disciplinary proceedings under chapter 132S-100 WAC as the chief student conduct officer deems appropriate. No disciplinary action for unpaid citations shall be taken until the student has completed the appeal process or waived his or her appeal rights.

(4) **Impoundment.** Vehicles parked on a Columbia Basin College campus in violation of any of the regulations contained in this chapter may be impounded at the discretion of the vice-president of administrative services or the campus safety and security supervisor. If a vehicle is impounded, it may be taken to such place for storage as the vice-president of administrative services or designee selects. The expenses of such impounding and storage shall be charged to the owner or operator of the vehicle and paid by him or her prior to its release. The college and its employees shall not be liable for loss or damage of any kind resulting from such impounding and storage.

(5) **Appeals.** Any fines and penalties for citations under the rules and regulations of this chapter must be appealed in writing, stating fully all grounds for appeal, within five days from the date of the citation, to the campus safety and security supervisor or designee who will:

(a) First level appeal. After review of the appeal the campus safety and security supervisor or designee may uphold, reduce or waive the fine(s) associated with the citation. Any fine(s) still levied against the appellant must be paid in accordance with the schedule of fines unless appellant wishes to pursue a second-level appeal. If the citation remains unpaid thereafter, the college may take actions stated above and/or in chapter 132S-100 WAC. The campus safety and security supervisor will advise the appealing party in writing as soon as practicable of his or her decision, along with second-level appeal rights and location of the appeal form.

(b) Second-level appeal. If the appealing party is dissatisfied with the campus safety and security supervisor's decision, the appealing party may submit the same appeal to the citation review committee within five days of receipt of the campus safety and security supervisor's decision. Failure to appeal in writing within the five-day period constitutes a waiver of right of appeal. The written appeal form completed by the appealing party must either request an appearance before the citation review committee or include a written appeal for the citation review committee to consider. Upon receipt of a request to appear before the committee, the appealing party will be notified in writing of the next scheduled committee meeting at which the appealing party can present his or her appeal. The citation review committee will review the second-level appeal and advise the appealing party as soon as practicable of the committee's decision. The citation review committee hears appeals of citations issued pursuant to the regulations of this chapter and using the following criteria:

(i) Did an institutional error occur?

(ii) Were there extenuating circumstances that caused the error to occur?

(iii) Did the appealing party make a good faith effort to comply with the parking rules?

The campus security department is permitted to provide responsive information for the appeal and/or to provide rebuttal during the appealing party's presentation to the committee. The decision of the citation review committee will be final.

(6) **Composition of citation review committee.** The college president shall appoint no less than eight members to the citation review committee. The committee will be composed of at least one faculty member, one exempt staff, one classified staff and one student with the remaining from the same group type in equal numbers. Each timely filed appeal will be reviewed by a minimum of three available members of the committee and in odd numbers thereafter to avoid a tie for decision making purposes. This composition of the committee will be expected whether the appeal is for the appealing party's presentation or review of the appealing party's written appeal.

(7) **Applicability.** These appeal procedures will be applicable to all students, faculty and staff or other persons utilizing college facilities who receive fines for violations of these rules and regulations.

Chapter 132S-400 WAC

FACILITY USE FOR FIRST AMENDMENT ACTIVITIES

NEW SECTION

WAC 132S-400-100 Title. This chapter shall be known as facility use for first amendment activities.

NEW SECTION

WAC 132S-400-105 Definitions. (1) "College groups" shall mean individuals who are currently enrolled students or current employees of Columbia Basin College or who are affiliated with a recognized student organization or a recognized employee group of the college.

(2) "College facilities" includes all buildings, structures, grounds, office space and parking lots.

(3) "Limited public forum areas" means those areas of each campus that the college has chosen to open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner restrictions.

(4) "First amendment activities" includes, but are not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

(5) "Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

NEW SECTION

WAC 132S-400-110 Statement of purpose. Columbia Basin College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is a designated public forum opened for the limited purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for noncollege groups. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

NEW SECTION

WAC 132S-400-115 Use of facilities. (1) Subject to the regulations and requirements of this policy, noncollege groups may use the campus limited forums for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

(4) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

(5) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(7) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(8) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(9) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department of office or officially chartered student club.

(10) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances and state or federal laws.

(11) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in this policy.

(12) The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus: Mural gathering area (concrete pad north of the A building).

(13) Noncollege groups that seek to use the campus limited forum to engage in First Amendment activities shall provide notice to the campus security office no later than twenty-four hours prior to the event along with the following information:

(a) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization");

(b) The name, address and telephone number of a contact person for the sponsoring organization;

(c) The date, time and requested location of the event;

(d) The nature and purpose of the event;

(e) The type of sound amplification devices to be used in connection with the event, if any; and

(f) The estimated number of people expected to participate in the event.

(14) Noncollege group events shall not last longer than five hours from beginning to end.

NEW SECTION

WAC 132S-400-120 Distribution of materials. Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. Noncollege groups may distribute materials only at the site designated for noncollege groups.

NEW SECTION

WAC 132S-400-125 Criminal trespass. Any person determined to be violating these regulations is subject to an order from the college security office to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.

NEW SECTION

WAC 132S-400-130 Posting a bond and hold harmless statement. When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a noncollege group to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

Chapter 132S-500 WAC

FACILITY USE FOR OTHER THAN FIRST AMENDMENT ACTIVITIES

NEW SECTION

WAC 132S-500-100 Title. WAC 132S-500-100 through 132S-500-140 will be known as facility use for other than first amendment activities.

NEW SECTION

WAC 132S-500-105 Statement of purpose. Columbia Basin College reserves its facilities, buildings and grounds for those activities that are related to its broad educational mission. At other times, the college facilities may be made available to other individuals and organizations as stated in this chapter. The purpose of these regulations is to establish procedures and reasonable controls for the use of college facilities for noncollege groups and for college groups where applicable.

In keeping with this general purpose, and consistent with RCW 28B.50.140 (7) and (9), facilities should be available for a variety of uses which are of benefit to the general public if such general uses substantially relate to and do not interfere with the mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching or public service programs.

Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Such arrangements by both individuals or groups within the college community must be made through the facility use request system through the executive assistant for the vice-president for administrative services.

NEW SECTION

WAC 132S-500-110 Facilities use for first amendment activities. This chapter does not apply to those individuals or groups using the college facilities for first amendment activities. Use of the campus for first amendment activities, as defined by law, is governed by the rules set forth in WAC 132S-400-100 through 132S-400-130.

NEW SECTION

WAC 132S-500-115 Request for use of facilities. Requests to use college facilities shall be made to the executive assistant for the vice-president for administrative services, who shall be the agent of the college in consummating use agreements.

NEW SECTION

WAC 132S-500-120 Scheduling and reservation practices. The primary purpose of college facilities is to serve the instructional programs of the college. However, the facilities, when not required for scheduled college use, may be available for use in accordance with current fee schedules and other relevant terms and conditions for such use.

College facilities may not be used by individuals or groups from outside the college unless the facilities including buildings, equipment and land have been reserved.

In determining whether to accept a request for the use of college facilities, the executive assistant shall use as guidelines the mission of the college and the following items, listed in priority order:

(1) Columbia Basin College instruction, scheduled programs and activities.

(2) Major college events.

(3) Noncollege (outside individual or organization) events.

Arrangements for use of college facilities must be made through the executive assistant. Application for the use of facilities and grounds shall be made no later than ten working days prior to the date the event is scheduled to occur.

NEW SECTION

WAC 132S-500-125 Limitations of use. (1) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service-related activities), groups must obey or comply with directions of an authorized representative of the college.

(2) If at any time actual use of college facilities by an individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate, all persons engaged in such use shall immediately vacate the premises, and leave the college property upon command of the appropriate college official.

(3) Any individual or group granted permission to use college facilities shall agree in advance to abide by all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group whose past conduct indicates likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization which has used the facilities in the past and has damaged college property, left college buildings and grounds in excessive disorder, or failed to cooperate with college staff concerning use of the facilities.

(4) No person may enter onto college grounds or facilities possessing a visible firearm or other dangerous weapon, except specifically as allowed by law under WAC 132S-200-140.

(5) Promotional materials or posting for any event being held in a college facility must follow the same procedure as applies to students outlined in chapter 132S-100 WAC.

(6) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs.

(7) The college facilities may not be used for private or commercial purposes unless such activities clearly serve the educational mission of the college are either sponsored by an appropriate college unit or conducted by contractual agreement with the college.

(8) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities. Rules, regulations, policies, procedures and practices regarding the use of college facilities shall not discriminate or promote discrimination among political parties, groups or candidates solely on the basis of their particular political viewpoint.

(9) Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples or brochures outside rooms or facilities to which access may be granted.

(10) No person may solicit contributions on college property for political uses, except where this limitation conflicts with federal law concerning interference with the mail.

(11) Religious groups shall not, under any circumstances, use the college facilities as a permanent meeting place. Use shall be intermittent only, so as not to imply college endorsement.

(12) Alcoholic beverages will not be served without the approval of the vice-president for administrative services or designee(s). It shall be the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor and cannabis board and adhere to their regulations including all state and local regulations and laws, and those of Columbia Basin College.

(13) Authorization for use of college facilities shall not be considered as endorsement of or approval of any group or organization nor the purposes they represent. The name of the college shall not be associated with any program or activity for which the college facilities are used without specific written approval from the president or his or her designee(s).

(14) Rental of college facilities carries no right of advertising on college premises other than the right to post a sign for the purpose of directing people to the place of assembly.

(15) Unless otherwise provided by contractual agreement, an authorized member of the college staff shall be required to be available at times when college facilities are in use by a group. If service beyond normal business hours is required as a result of any meeting, such time shall be paid by the using organization at the currently established rate. The college may require and charge users for security services at the college's discretion.

(16) Audio-visual equipment and materials are intended to support and supplement the college's curriculum. Equipment shall not be rented to external users, unless official prior approval has been granted and currently established rates are charged. The existence of equipment in a rented space does not mean the user has the right to use it.

NEW SECTION

WAC 132S-500-130 Denial of use. Columbia Basin College is a state agency and exists to serve the public. However, the college may deny use of its facilities to any individual, group or organization if the requested use would:

(1) Interfere or conflict with the college's instructional, student services or support programs;

(2) Interfere with the free flow of pedestrian or vehicular traffic on campus;

(3) Involve illegal activity;

(4) Create a hazard or result in damage to college facilities; or

(5) Create undue stress on college resources.

The college president hereby delegates his or her designee(s) the right to cancel the facilities rental agreement at any time and to refund any payment to the college for the use of college facilities. If imminent danger exists or unlawful activity is practiced by the using organization, or if there is any violation of any term, condition or provision of the use arrangement, the college may terminate an agreement immediately and without notice.

NEW SECTION

WAC 132S-500-135 Other requirements. When using college facilities, an individual or organization may be required to make an advance deposit, post a bond and/or obtain insurance to protect the college against cost or other liability.

When the college grants permission to an individual or organization to use its facilities, it is with the expressed

understanding and condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and indemnify the college against any loss or damage claim arising out of such use.

NEW SECTION

WAC 132S-500-140 Facility rental/use fees. Fees will be charged in accordance with the rates available from the executive assistant for the vice-president of administrative services. The college reserves the right to make pricing changes without prior written notice, except that such price changes shall not apply to facility use agreements already approved by the administration.

The college reserves the right to have trained college staff operate any and all technical equipment at the user's expense. Rates and fees for use of facilities are available online at www.columbiabasin.edu and from the executive assistant for the vice-president of administrative services.

Chapter 132S-600 WAC

POSTING AND LITERATURE DISTRIBUTION

NEW SECTION

WAC 132S-600-100 Distribution of materials. (1) The college reserves the right to control and regulate the distribution of nonfirst amendment materials which might interfere with the college's educational mission.

(2) Permission for the posting, display or distribution of handbills, leaflets, newspapers, posters and similar related matter on college facilities must be obtained from the vice-president of administrative services or designee. Permission for such posting or display will be given only if such material meets the following criteria:

(a) Must not be commercial, obscene or unlawful in nature;

(b) Must not interfere with the ingress and egress of persons, or interfere with the free flow of vehicle or pedestrian traffic, or the orderly administration of college affairs, or cause an interruption of classes;

(c) Each of such handbills, leaflets, newspapers and related matter must bear identification as to the publishing agency and distributing organization or individual, as well as the date when posted materials will be removed from the property.

(3) Students/college employees.

Handbills, leaflets, newspapers and similar related matter may be sold or distributed free of charge by any Columbia Basin College student or students or by members of recognized Columbia Basin College student organizations or by Columbia Basin College employees on or in Columbia Basin College facilities at locations specifically designated by the director of student activities; provided such distribution or sale meets the criteria listed in subsection (2)(a) through (c) of this section.

(4) Nonstudent persons and organizations not connected with the college may not distribute handbills, leaflets, newspapers and similar materials.

(5) Any distribution of materials as authorized by the office of the vice-president for administrative services and regulated by established guidelines shall not be construed as support or approval by the college community or the board of trustees.

Chapter 132S-700 WAC

ENVIRONMENTAL POLICY

NEW SECTION

WAC 132S-700-010 State Environmental Policy Act (SEPA). It is the policy of Community College District No. 19 that capital projects proposed and developed by the district shall be accomplished in compliance with chapter 43-21C RCW, the State Environmental Policy Act (SEPA); and in accordance with chapter 197-11 WAC and all subsequent amendments thereto, and WAC 131-24-030.

In compliance with chapter 197-11 WAC, the president, or a duly appointed administrator designee, shall be the responsible official for implementing this policy.

WSR 16-12-049

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Naturopathy)

[Filed May 25, 2016, 4:20 p.m., effective June 25, 2016]

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

Purpose: WAC 246-836-510 Sexual misconduct, the board of naturopathy has modified the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by naturopathic physicians.

Citation of Existing Rules Affected by this Order: Amending WAC 246-836-510.

Statutory Authority for Adoption: RCW 18.36A.160 and 18.130.050.

Other Authority: RCW 18.130.062 and Executive Order 06-03.

Adopted under notice filed as WSR 16-04-075 on January 29, 2016.

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

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

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

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

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

Date Adopted: April 1, 2016.

Chad Aschtgen, ND
Board Chair

AMENDATORY SECTION (Amending WSR 12-13-104, filed 6/20/12, effective 7/21/12)

WAC 246-836-510 Sexual misconduct. (1) A naturopathic physician shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus, or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis, and treatment and within the naturopathic physician's scope of practice;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling, or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals without using gloves;

(g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient, client, or key party;

(j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity, or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the naturopathic physician;

(l) Masturbation or other sex act by the naturopathic physician in the presence of the patient, client, or key party;

(m) Suggesting or discussing the possibility of a dating, sexual, or romantic relationship after the professional relationship ends;

(n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(o) Soliciting a date with a patient, client, or key party;

(p) Discussing the sexual history, preferences, or fantasies of the naturopathic physician;

(q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(r) Making statements regarding the patient, client, or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening, or harming a patient, client, or key party;

(t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(u) Showing a patient, client, or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(3) A naturopathic physician shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client, or key party for the purpose of engaging in sexual misconduct; or

(c) Use health care information or access to health care information to meet or attempt to meet the naturopathic physician's sexual needs.

((~~(3)~~)) (4) A naturopathic physician shall not engage, or attempt to engage, in activities listed in subsection (1) of this section with a former patient, client, or key party within two years after the provider-patient/client relationship ends.

((~~(4)~~)) (5) After the two-year period of time described in subsection (3) of this section, a naturopathic physician shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client, or key party will seek or require additional services from the naturopathic physician; or

(b) There is an imbalance of power, influence, opportunity, and/or special knowledge of the professional relationship.

((~~(5)~~)) (6) When evaluating whether a naturopathic physician is prohibited from engaging, or attempting to engage, in sexual misconduct, the board will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the naturopathic physician and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the naturopathic physician;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

((~~(6)~~)) (7) Patient, client, or key party initiation or consent does not excuse or negate the naturopathic physician's responsibility.

((~~(7)~~)) (8) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to naturopathic medicine; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the naturopathic physician where there is no evidence of, or potential for, exploiting the patient or client.

WSR 16-12-050
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed May 25, 2016, 4:43 p.m., effective June 25, 2016]

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

Purpose: Updates the deferred compensation program enrollment process and establishes the default investment.

Citation of Existing Rules Affected by this Order: Amending WAC 415-501-110, 415-501-410, and 415-501-475.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 16-09-051 on April 15, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: May 25, 2016.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-110 Definitions. (1) **Accumulated deferrals.** Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Beneficiary.** The person or entity entitled to receive benefits under the plan after the death of a participant.

(3) **Compensation.** All payments made to a participant by the employer as remuneration for services rendered.

(4) **Deferred compensation.** The amount of the participant's compensation that is deferred under a participation agreement. See WAC 415-501-410 and 415-501-450.

(5) **Deferred compensation plan or plan.** A plan that allows employees of the state of Washington and approved political subdivisions of the state of Washington to defer a portion of their compensation according to the provisions of Section 457(b) of the Internal Revenue Code.

(6) **Department.** The department of retirement systems created by RCW 41.50.020 or its designee.

(7) **Eligible employee.** Any person who is employed by and receives any type of compensation from a participating employer for whom services are provided, and who is:

(a) A full-time, part-time, or career seasonal employee of Washington state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service;

(b) An elected or appointed official of the executive branch of the government, including a full-time member of a board, commission, or committee;

(c) A justice of the supreme court, or a judge of the court of appeals or of a superior or district court; or

(d) A member of the state legislature or of the legislative authority of a county, city, or town.

(8) **Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over ten years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

(9) **Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

(10) **Normal retirement age.** An age designated by the participant for purposes of the three-year catch-up provision described in WAC 415-501-430(2). The participant may choose a normal retirement age between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial or similar reduction from his/her retirement plan with the same employer; and

(b) Age seventy and one-half.

(11) **Participant.** An eligible employee:

(a) Who has submitted a participation agreement that is approved by the department; and

(b) Who either:

(i) Is currently deferring compensation under the plan; or

(ii) Has previously deferred compensation and has not received a distribution of his/her entire benefit under the plan.

(12) **Participation agreement.** The agreement executed by an eligible employee to enroll in the plan through methods established by the department. Includes the participant's authorization to defer compensation through payroll deductions pursuant to WAC 415-501-410((~~, in which the eligible employee chooses to become a plan participant~~)) and 415-501-450.

(13) **You,** as used in this chapter, means a participant as defined in subsection (11) of this section.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-410 How do I enroll in the plan? (1) As an eligible employee, you may enroll in the plan by executing a participation agreement according to methods established by the department.

(2) By ((~~signing~~)) executing the participation agreement, you authorize your employer to reduce your gross compensation each month by a specific amount. This amount will be contributed to your deferred compensation account. Your employer will reduce your compensation by the specified amount until you change the amount (WAC 415-501-450) ((~~or suspend contributions (WAC 415-501-470)~~)).

(3) Deferrals from your compensation will start during the calendar month after the month your participation agreement is approved by the department.

(4) Reenrollment. If you transfer from a state agency to another state agency without a separation of employment, your deferred compensation program (DCP) enrollment will be automatically transferred to the new state agency. Your contributions will automatically continue. If you separate from employment with a DCP employer (break in service) and return to employment with a DCP employer, you must reenroll in the program if you want to resume contributions to DCP.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-475 May I choose how I want my deferred compensation invested? (1) ((~~You must designate on your participation agreement the investment option(s) in which you wish to have your deferrals invested.~~

~~(2)~~)) Yes. When you enroll, you may select one or more of the investment options offered.

(2) The department will invest one hundred percent of your future contributions in the Retirement Strategy Fund that assumes you will retire at age sixty-five if any of the following occurs during the enrollment process.

(a) An investment option is not selected.

(b) The total percentage does not equal one hundred percent when multiple investment options are selected.

(3) In general, you may change the investment of your accumulated deferrals, the investment of your future deferrals, or both, through the methods established by the department. However, if necessary to protect the performance results of the DCP program, the department has the right to:

(a) Limit the number of times you change investment options;

(b) Limit the frequency of the changes;

(c) Limit the manner of making changes; or

(d) Impose other restrictions.

In addition, changes must be consistent with any restrictions on trading imposed by the investment options involved.

(((~~3~~))) (4) Beneficiaries over age eighteen and former spouses may change the investment options through the methods established by the department once a separate account has been established for them. The guardian of a minor beneficiary may change the investment options on the minor's account if authorized by the order of guardianship.

WSR 16-12-051
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed May 25, 2016, 4:43 p.m., effective June 25, 2016]

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

Purpose: Clarifies how the department processes stakeholders' petitions for review of administrative decisions.

Citation of Existing Rules Affected by this Order: Repealing WAC 415-04-010; and amending WAC 415-04-040.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 16-09-054 on April 15, 2016.

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

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

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

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

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

Date Adopted: May 25, 2016.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 04-09-042, filed 4/14/04, effective 5/15/04)

WAC 415-04-040 What will the department do after receiving my petition? (((~~(1) A petition examiner will review your petition.~~

~~(2) Within fourteen days from the date that you file a petition with the department, the petition examiner will determine whether you have a sufficient stake in the outcome of the proceeding to have the department consider the issues in your petition.~~

~~(a) If the petition examiner determines that you **do not** have a sufficient stake in the outcome, the petition examiner:~~

~~(i) May refer the matter back to the plan administrator for further investigation.~~

~~(ii) Will notify you of this decision within fourteen days of the date you file the petition. You may appeal this decision to the presiding officer under WAC 415-04-050.~~

~~(b) If the petition examiner determines that **you do** have a sufficient stake in the outcome, the petition examiner:~~

~~(i) Will notify interested parties, such as the member, current or former employer(s), designated beneficiaries, former spouse or the department, that you filed a petition;~~

~~(ii) Will request that the interested parties submit any written response to the petition no later than twenty days from the date of receipt of the notice;~~

~~(iii) May extend the time limit for response if the interested party shows a good reason to need more time.~~

~~(3) The petition examiner may request additional information at any time.~~

~~(4) The petition examiner will forward a copy of an interested party's response to you.~~

~~(a) You will have ten days to reply.~~

~~(b) The petition examiner may extend your time to respond if you demonstrate that you need more time for good reason.~~

~~(c) If an extension is not granted and you do not reply within ten days, you waive the right to reply.~~

~~(5) The petition examiner will issue a written decision within sixty days of:~~

~~(a) The end of your final period to reply under subsection (4) of this section; or~~

~~(b) Receipt of additional information from the department or the office of the attorney general necessary to make a decision.~~

~~(6) In the written decision, the petition examiner will state facts and sources of law used to make the decision. The petition examiner will send a copy to you and to the other parties.~~

~~(7) The petition examiner may refer the petition back to the plan administrator for an administrative determination without issuing a petition decision if:~~

~~(a) The petition adds new issues or facts that have not been addressed in the plan administrator's final determination; or~~

~~(b) The plan administrator did not have access to a petition decision or final order of the department that would have changed the outcome of the administrative determination.~~)) The department's petition examiner will:

(1) Acknowledge receipt of your petition;

(2) Notify persons or entities potentially impacted by the outcome of the process, such as the member, current or former employer(s), designated beneficiaries, or former spouse, that you filed a petition;

(3) If deemed necessary or useful, request additional information at any time;

(4) Issue a written decision within ninety days of the date the department received your petition, unless that deadline is extended for good cause; and

(5) If deemed necessary or useful, and without issuing a petition decision, refer the petition back to the appropriate administrator for a new determination if:

(a) The petition adds new issues or facts that have not been addressed in the plan administrator's final determination; or

(b) The administrator did not have access to information that may have changed the outcome of the administrative determination.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-04-010 Definitions.

WSR 16-12-052
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed May 25, 2016, 4:43 p.m., effective June 25, 2016]

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

Purpose: Clarifies how the department determines whether a member has separated from service or employment, as required by state laws and Internal Revenue Service interpretations.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 16-09-053 on April 15, 2016.

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

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

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

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

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

Date Adopted: May 25, 2016.

Marcie Frost
Director

NEW SECTION

WAC 415-02-115 How is separation determined for retirement eligibility? (1) **Have I separated from service?** All retirement plans administered by the department of retirement systems require a separation from service before you are eligible to begin receiving retirement benefits. This is consistent with Internal Revenue Service (IRS) requirements for distributions from qualified retirement plans. In accordance with the IRS interpretation, you have separated from service only when you have ended the employment relationship without any reasonable expectation between you and your employer that you will return to work for the same employer in any capacity (including in an eligible or ineligible position or as an independent contractor).

(2) **How will the department determine if separation from service occurred?** The department will examine the facts and circumstances on a case-by-case basis to determine

whether separation occurred. No single factor is determinative. Factors to be considered may include, without limitation, the following:

(a) Was there a prior agreement between you and your employer that you would return to work for that employer? If there was an understanding between you and your employer that you would perform services for that employer at a later date, you have not separated from service. Such understanding may be written or unwritten; it may be contractual or noncontractual in nature.

(b) How long was your absence? If your absence from work was less than thirty days, the department will presume that separation did not occur unless the employer provides enough information to disprove the presumption. An absence from work longer than thirty days is not sufficient proof that separation did occur if other factors indicate that an agreement existed for you to return to work for the same employer.

(c) Did your employer conduct a competitive hiring process to fill your vacated position?

(d) Were your actions and your employer's actions consistent with the expectation that your absence from work was total and permanent? For example: Was access to the employer's facilities, computer systems, and your personal e-mail and voice mail accounts terminated? Were your leave accruals cashed out? Did you remove all of your personal belongings from the employer's premises?

(3) **If I terminate from my position with an understanding that I will return to service with the same employer in an ineligible position or as an independent contractor, will I have separated from service?** No. If, at the time of your termination, there was an understanding between you and your employer that you would return to work for that employer in any capacity, including in an ineligible position or as an independent contractor, you have not separated from service and are not eligible to retire.

(4) **What happens if I begin to receive retirement benefits and then it is determined that separation from service did not occur?** If you begin to receive retirement benefits without a valid separation from service, you have received a benefit overpayment that must be repaid to the department pursuant to RCW 41.50.130 and/or 41.50.139.

(5) **May I contest the department's decision?** If the department determines, based on a review of the circumstances, that you did not separate from service, you may petition for review under chapter 415-04 WAC.

(6) **Examples:**

(a) **Example 1.** Mary has met the age and service requirements for retirement eligibility. Aaron is hired to fill the position she will be leaving. Mary submits her retirement application and leaves her job. Shortly thereafter, Aaron resigns and leaves abruptly, causing a vacancy at a critical time. After a separation of only three weeks, Mary returns to perform the work until the position can be filled again. Has a separation occurred?

Yes, if there are no other facts to the contrary, Mary separated from service and is eligible to retire. At the time of her termination, neither Mary nor her employer expected that she would return to employment. However, if Mary returns to work before thirty days have passed, this may cause her monthly retirement benefit to be reduced based on the requirements of her plan.

(b) **Example 2.** Robert is leaving his position as a police officer. Before leaving, he agrees to return to work for the same employer in a capacity that is not eligible for membership in the law enforcement officers' and firefighters' retirement system (LEOFF). He will begin his new position following a six week absence. Has a separation occurred?

No, Robert did not separate from service because there was an agreement that he would return to work for the same employer. Without a valid separation from service, Robert is not eligible to begin receiving LEOFF retirement benefits.

(7) **Is there a difference between "separation from service" and "separation from employment"?** Some of the retirement plans require "separation from service" in order to receive a monthly benefit. Others require "separation from employment." The department interprets these two statutory terms identically for purposes of eligibility for retirement. In this rule the term "separation from service" refers both to:

(a) The requirements for "separation from service" in RCW 41.40.193, 41.32.480, 41.26.090, and 41.26.490; and

(b) The requirements for "separation from employment" in RCW 41.40.680, 41.40.801; 41.32.795, 41.32.855; 41.35.450, 41.35.640; and 41.37.240.

WSR 16-12-057
PERMANENT RULES
OFFICE OF FINANCIAL MANAGEMENT

[Filed May 26, 2016, 8:41 a.m., effective June 26, 2016]

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

Purpose: To establish official pay dates for state officers and employees for calendar year 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 82-50-021.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Adopted under notice filed as WSR 16-03-034 on January 12, 2016.

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

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

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

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

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

Date Adopted: May 26, 2016.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-10-025, filed 4/27/15, effective 5/28/15)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years ((~~2015 and~~)) 2016 and 2017:

((~~CALENDAR YEAR 2015~~ / ~~CALENDAR YEAR 2016~~)

~~Friday - January 9, 2015~~	~~Monday, January 11, 2016~~
~~Monday - January 26, 2015~~	~~Monday, January 25, 2016~~
~~Tuesday - February 10, 2015~~	~~Wednesday, February 10, 2016~~
~~Wednesday - February 25, 2015~~	~~Thursday, February 25, 2016~~
~~Tuesday - March 10, 2015~~	~~Thursday, March 10, 2016~~
~~Wednesday - March 25, 2015~~	~~Friday, March 25, 2016~~
~~Friday - April 10, 2015~~	~~Monday, April 11, 2016~~
~~Friday - April 24, 2015~~	~~Monday, April 25, 2016~~
~~Monday - May 11, 2015~~	~~Tuesday, May 10, 2016~~
~~Friday - May 22, 2015~~	~~Wednesday, May 25, 2016~~
~~Wednesday - June 10, 2015~~	~~Friday, June 10, 2016~~
~~Thursday - June 25, 2015~~	~~Friday, June 24, 2016~~
~~Friday - July 10, 2015~~	~~Monday, July 11, 2016~~
~~Friday - July 24, 2015~~	~~Monday, July 25, 2016~~
~~Monday - August 10, 2015~~	~~Wednesday - August 10, 2016~~
~~Tuesday - August 25, 2015~~	~~Thursday - August 25, 2016~~
~~Thursday - September 10, 2015~~	~~Friday - September 9, 2016~~
~~Friday - September 25, 2015~~	~~Monday - September 26, 2016~~
~~Friday - October 9, 2015~~	~~Friday - October 7, 2016~~
~~Monday - October 26, 2015~~	~~Tuesday - October 25, 2016~~
~~Tuesday - November 10, 2015~~	~~Thursday - November 10, 2016~~
~~Wednesday - November 25, 2015~~	~~Wednesday, November 23, 2016~~
~~Thursday - December 10, 2015~~	~~Friday, December 9, 2016~~
~~Thursday - December 24, 2015~~	~~Friday, December 23, 2016~~))

CALENDAR YEAR 2016	CALENDAR YEAR 2017
Monday, January 11, 2016	Tuesday, January 10, 2017
Monday, January 25, 2016	Wednesday, January 25, 2017
Wednesday, February 10, 2016	Friday, February 10, 2017
Thursday, February 25, 2016	Friday, February 24, 2017
Thursday, March 10, 2016	Friday, March 10, 2017
Friday, March 25, 2016	Friday, March 24, 2017
Monday, April 11, 2016	Monday, April 10, 2017
Monday, April 25, 2016	Tuesday, April 25, 2017
Tuesday, May 10, 2016	Wednesday, May 10, 2017
Wednesday, May 25, 2016	Thursday, May 25, 2017
Friday, June 10, 2016	Friday, June 9, 2017
Friday, June 24, 2016	Monday, June 26, 2017
Monday, July 11, 2016	Monday, July 10, 2017
Monday, July 25, 2016	Tuesday, July 25, 2017
Wednesday, August 10, 2016	Thursday, August 10, 2017
Thursday, August 25, 2016	Friday, August 25, 2017
Friday, September 9, 2016	Monday, September 11, 2017
Monday, September 26, 2016	Monday, September 25, 2017
Friday, October 7, 2016	Tuesday, October 10, 2017
Tuesday, October 25, 2016	Wednesday, October 25, 2017
Thursday, November 10, 2016	Thursday, November 9, 2017
Wednesday, November 23, 2016	Wednesday, November 22, 2017
Friday, December 9, 2016	Monday, December 11, 2017
Friday, December 23, 2016	Friday, December 22, 2017

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

WSR 16-12-060

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed May 26, 2016, 11:14 a.m., effective June 26, 2016]

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

Purpose: The agency is updating eligibility programs, provider types, and existing policies, as well as incorporating specific state plan language.

Citation of Existing Rules Affected by this Order: Amending WAC 185-533-0320, 182-533-0325, 182-533-0327, and 182-533-0375.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-09-081 on April 19, 2016.

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

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

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

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

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

Date Adopted: May 26, 2016.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-12-075, filed 5/29/15, effective 7/1/15)

WAC 182-533-0320 Maternity support services—Client eligibility. (1) To receive maternity support services (MSS), a client must:

(a) Be covered under the alternative benefit plan, categorically needy, medically needy, or state-funded medical programs under Washington apple health; and

(b) Be within the eligibility period of a maternity cycle as defined in WAC 182-533-0315.

(2) Clients who do not agree with an eligibility decision for MSS have a right to a fair hearing under chapter 182-526 WAC.

AMENDATORY SECTION (Amending WSR 15-12-075, filed 5/29/15, effective 7/1/15)

WAC 182-533-0325 Maternity support services—Provider requirements. Maternity support service providers may include community clinics, federally qualified health centers, local health departments, hospitals, nonprofit organizations, and private clinics.

(1) To be paid for providing maternity support services (MSS) and infant case management (ICM) services to eligible clients, a provider must:

(a) Be enrolled as an eligible provider with the medicaid agency (see WAC 182-502-0010).

(b) Be currently approved as an MSS/ICM provider by the medicaid agency.

(c) Meet the requirements in this chapter, chapter 182-502 WAC and the medicaid agency's current billing instructions.

(d) Ensure that professional staff providing services:

(i) Meet the minimum regulatory and educational qualifications for the scope of services provided under WAC 182-533-0327; and

(ii) Follow the requirements in this chapter and the medicaid agency's current billing instructions.

(e) Screen each client for risk factors using the agency's designated MSS screening tool, located on the agency's web site under forms. Agency approval is required for a provider to use an alternate MSS screening tool.

(f) Screen clients for ICM eligibility.

(g) Conduct case conferences under WAC 182-533-0327(2).

(h) Develop and implement an individualized care plan for each client.

(i) Initiate and participate in care coordination activities throughout the maternity cycle with at least MSS interdisciplinary team members, the client's prenatal care provider, and the Women, Infants, and Children (WIC) Nutrition Program.

(j) Comply with Section 1902 (a)(23) of the Social Security Act regarding the client's freedom to choose a provider.

(k) Comply with Section 1915 (g)(1) of the Social Security Act regarding the client's voluntary receipt of services.

(2) MSS providers may provide services in any of the following locations:

(a) A provider's office or clinic.

(b) The client's residence.

(c) An alternate site that is not the client's residence. (The reason for using an alternate site for visitation instead of the home must be documented in the client's record.)

(3) An individual or service organization that has a written contractual agreement with a qualified MSS provider also may provide MSS and ICM services to eligible clients. ((~~(a)~~)) The provider must:

((~~(i)~~)) (a) Keep a copy of the written subcontractor agreement on file;

((~~(ii)~~)) (b) Ensure that an individual or service organization staff member providing MSS/ICM services (the subcontractor) meets the minimum regulatory and educational qualifications required of an MSS/ICM provider;

((~~(iii)~~)) (c) Ensure that the subcontractor provides MSS/ICM services under the requirements of this chapter; ((~~and~~

~~(iv)~~)) (d) Maintain professional, financial, and administrative responsibility for the subcontractor((~~.~~

~~(b) The provider must:~~

~~(i)~~));

(e) Bill for services using the provider's national provider identifier and MSS/ICM taxonomy; and

((~~(ii)~~)) (f) Reimburse the subcontractor for MSS/ICM services provided under the written agreement.

(4) Providers must obtain agency approval of all MSS/ICM outreach-related materials, including web sites and publications, prior to making those materials available to clients.

AMENDATORY SECTION (Amending WSR 14-09-061, filed 4/16/14, effective 5/17/14)

WAC 182-533-0327 Maternity support services—Professional staff qualifications and interdisciplinary team. (1) MSS providers must use qualified professionals, as specified in this section.

(a) Behavioral health specialists who are currently credentialed or licensed in Washington by the department of health under chapters 246-809, 246-810, and 246-924 WAC as one of the following:

(i) Licensed mental health counselor.

(ii) Licensed independent clinical social worker.

(iii) Licensed social worker.

(iv) Licensed marriage and family therapist.

(v) Licensed psychologist.

(vi) Associate mental health counselor.

(vii) Associate independent clinical social worker.

(viii) Associate social worker.

(ix) Associate marriage and family therapist.

(x) Certified counselor.

(xi) Certified chemical dependency professional.

(b) Certified ((~~dieticians~~)) dietitians who are currently registered with the commission on dietetic registration and certified by the Washington state department of health under chapter 246-822 WAC.

(c) Community health nurses who are currently licensed as registered nurses in the state of Washington by the department of health under chapter 246-840 WAC.

(d) Community health workers (CHWs) who have a high school diploma or the equivalent and:

(i) Have a minimum of one year of health care and/or social services experience.

(ii) Carry out all activities under the direction and supervision of a professional member or supervisor of the MSS interdisciplinary team.

(iii) Complete a training plan developed by their provider.

(2) The provider's qualified staff must participate in an MSS interdisciplinary team consisting of at least a community health nurse, a certified registered dietitian, a behavioral health specialist, and, at the discretion of the provider, a community health worker.

(a) The interdisciplinary team must work together to address risk factors identified in a client's care plan.

(b) Each qualified staff member acting within her/his area of expertise must address the variety of client needs identified during the maternity cycle.

(c) An MSS interdisciplinary team case conference is required at least once prenatally for clients who are entering MSS during pregnancy, and are eligible for the maximum level of service. Using clinical judgment and the client's risk factors, the provider may decide which interdisciplinary team members to include in case conferencing.

(3) All Indian health programs, tribes, and any MSS provider within a county with fewer than fifty-five medicaid births per year are ((~~not~~)) required to have ((~~an~~)) at least one MSS interdisciplinary team((~~, although they must meet all the other requirements in this chapter. Instead of the interdisciplinary team, these counties and tribes must have at least one of the following qualified professionals~~)) member, as described in subsection (1) of this section:

(a) A behavioral health specialist;

(b) A registered ((~~dietician~~)) dietitian; or

(c) A community health nurse.

AMENDATORY SECTION (Amending WSR 14-09-061, filed 4/16/14, effective 5/17/14)

WAC 182-533-0375 Infant case management—Provider requirements. (1) Infant case management (ICM) services may be provided only by a qualified infant case manager who is employed by a provider meeting the requirements in WAC 182-533-0325.

(2) The infant case manager must meet at least one of the following qualifications under (a), (b), or (c) of this subsection:

(a) Be a current member of the maternity support services (MSS) interdisciplinary team under WAC 182-533-0327 (1)(a), (b), or (c).

(b) Have a bachelor of arts, bachelor of science, or higher degree in a social service-related field, such as social work, behavioral sciences, psychology, child development, or mental health, plus at least one year of full-time experience working in one or more of the following areas:

(i) Community services;

(ii) Social services;

(iii) Public health services;

(iv) Crisis intervention;

(v) Outreach and referral programs; or

(vi) Other related fields.

(c) Have an associate of arts degree, or an associate's degree in a social service-related field, such as social work, behavioral sciences, psychology, child development, or mental health, plus at least two years of full-time experience working in one or more of the following areas:

(i) Community services;

(ii) Social services;

(iii) Public health services;

(iv) Crisis intervention;

(v) Outreach and referral programs;

(vi) Other related fields.

(3) The medicaid agency requires any staff person qualifying under subsection (2)(c) of this section to be under the supervision of a clinical staff person meeting the criteria in subsection (2)(a) or (b) of this section. Clinical supervision may include face-to-face meetings and/or chart reviews.

WSR 16-12-068
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed May 27, 2016, 11:49 a.m., effective June 27, 2016]

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

Purpose: WAC 458-20-238 (Rule 238) Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents, explains the taxability of nonresident individuals' and entities' temporary use of watercraft in Washington. It explains when a vessel use tax permit, nonresident vessel permit, or nonresident vessel repair affidavit should be applied for.

The department has revised Rule 238 to:

- Add information pertaining to nonresident vessel permits from RCW 88.02.620 from chapter 6, Laws of 2015 3rd sp. sess., (ESSB 6057). This legislation allows nonresident entity owned vessels, at least thirty feet in length but no more than one hundred sixty-four feet in length, to obtain a nonresident permit. The permit must be obtained on or before the sixty-first day of use in Washington state. See subsection (4)(e);
- Rewrite subsection (1) to focus on the subjects covered in a more reader friendly introduction;
- Updated statute references; and
- Bold subsection headings as needed.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents.

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

Adopted under notice filed as WSR 16-07-148 on March 23, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: May 27, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-022, filed 6/20/08, effective 7/21/08)

WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents. (1) **Introduction.** This ((~~section~~)) rule explains ((~~the retail sales tax exemption provided by RCW 82.08.0266 for sales to nonresidents of watercraft requiring United States Coast Guard documentation or state registration; the retail sales tax exemption provided by RCW 82.08.02665 for sales of watercraft to residents of foreign countries; and the retail sales and use tax exemptions contained in Substitute House Bill No. 1002 (SHB 1002), chapter 22, Laws of 2007 relating to sales or use of vessels thirty feet or longer to or by nonresident individuals. These statutes provide the exclusive authority for granting a retail sales tax exemption for sales of such watercraft when delivery is made within Washington. This section explains the requirements to be met, and the documents which must be preserved, to substantiate a claim of exemption. It also discusses use tax exemptions for nonresidents bringing watercraft into Washington for enjoyment and/or repair.~~

~~This section primarily deals with the retail sales and use taxes where delivery takes place or vessel is used in Washington. Sellers should refer to WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property if they deliver the vessel to the purchaser at an out-of-state location. Purchasers also should be aware that there is a watercraft excise tax which may apply to the purchase or use of watercraft in Washington. (See chapter 82.49 RCW et seq.) In addition, purchasers of commercial vessels may have annual liability for personal property tax~~)):

• Nonresident temporary use of watercraft in Washington waters for sales and use tax purposes;

• Purchase and delivery of vessels in Washington by nonresidents, and the application or exemption of retail sales and use taxes;

• The vessel use permit, authorized by RCW 82.08.700 and 82.12.700, for one year in Washington waters by nonresident individuals for vessels thirty feet or longer;

• The nonresident vessel permit, authorized by RCW 88.02.620, for individual persons extending their stay an additional sixty days on Washington waters;

• The nonresident entity vessel permit, authorized by RCW 88.02.620 and 82.32.865, that allows for an additional sixty days on Washington waters; and

• The nonresident vessel repair affidavit required when vessels are in Washington exclusively for repair. RCW 88.02.570.

(a) **Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(b) **Other rules that may be relevant.**

(i) WAC 458-20-136 Manufacturing, processing for hire, fabricating;

(ii) WAC 458-20-178 Use tax and the use of tangible personal property;

(iii) WAC 458-20-193 Interstate sales of tangible personal property; and

(iv) WAC 458-20-19301 Multiple activities tax credits.

(2) **Business and occupation (B&O) tax.** Retailing B&O tax is due on all sales of watercraft to consumers if delivery is made within the state of Washington, even though the sale may qualify for an exemption from ((~~the~~)) retail sales tax. If the seller also manufactures the vessel in Washington, the seller must report under both the manufacturing and wholesaling or retailing classifications of the B&O tax, and claim a multiple activities tax credit (MATC). For additional information on manufacturing and the MATC, manufacturers should ((~~also~~)) refer to WAC 458-20-136 (((~~Manufacturing, processing for hire, fabricating) and WAC~~)) and 458-20-19301 (((~~Multiple activities tax credits~~))).

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of watercraft to consumers when delivery is made within the state of Washington. Under certain conditions, however, retail sales tax exemptions are available for sales of watercraft to nonresidents of Washington, even when delivery is made within Washington.

(a) **Exemptions for sales of watercraft, to nonresidents, requiring United States Coast Guard documentation and certain sales of vessels to residents of foreign countries.** RCW 82.08.0266 provides an exemption from ((~~the~~)) retail sales tax for sales of watercraft to residents of states other than Washington for use outside this state, even when delivery is made within Washington. The exemption provided by RCW 82.08.0266 is limited to sales of watercraft requiring United States Coast Guard ((~~documentation or~~)) registration ((~~with~~)) or registration by the state ((~~in which the vessel will be principally used, but only when that state has assumed the registration and numbering function under~~)) of principal use according to the Federal Boating Act of 1958.

RCW 82.08.02665 provides a retail sales tax exemption for sales of vessels to residents of foreign countries for use outside this state, even when delivery is made in Washington. This exemption is not limited to the types of watercraft qualifying for the exemption provided by RCW 82.08.0266. The term "vessel," for the purposes of RCW 82.08.02665, means

every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(i) **Exemption requirements.** The following requirements must be met to perfect any claim for exemption under RCW 82.08.0266 and 82.08.02665:

(A) The watercraft must ((~~leave Washington waters~~)) not be used within this state for more than forty-five days ((~~of~~)) from delivery;

(B) The seller must examine acceptable proof that the buyer is a resident of another state or a foreign country; and

(C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Buyer's Retail Sales Tax Exemption Certificate," or another certificate with substantially the information as it relates to the exemption provided by RCW 82.08.0266 and 82.08.02665. The certificate must be completed in its entirety, and retained by the seller. A blank certificate ((~~can be obtained via the internet at http://dor.wa.gov, by facsimile by calling Fast Fax at (360) 786-6116 or (800) 647-7706 (using menu options), or by writing to: Taxpayer Services, Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478~~)) is available on the department of revenue's (department) web site at dor.wa.gov.

The seller should not accept an exemption certificate if the seller becomes aware of any information prior to the completion of the sale ((~~which~~)) that is inconsistent with the ((~~purchaser's~~)) buyer's claim of residency, such as a Washington address on a credit application.

(ii) **Component parts and repairs.** The exemptions provided by RCW 82.08.0266 and 82.08.02665 apply only to sales of watercraft. For the purposes of these exemptions, the term "watercraft" includes component parts which are installed in or on the watercraft prior to delivery to and acceptance by the buyer, but only when these parts are sold by the seller of the watercraft. "Component part" means tangible personal property which is attached to and used as an integral part of the operation of the watercraft, even if the item is not required mechanically for the operation of the watercraft. Component parts include, but are not necessarily limited to, motors, navigational equipment, radios, depthfinders, and winches, whether ((~~themselves~~)) they are permanently attached to the watercraft or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the watercraft in a definite and secure manner.

These exemptions do not extend to the sale of boat trailers, repair parts, or repair labor. These exemptions also do not extend to a separate seller of unattached component parts, even though these parts may be manufactured specifically for the watercraft and/or permanently installed in or on the watercraft prior to the watercraft being delivered to and accepted by the buyer.

(b) **((~~Exemption~~)) A one year "use permit" for vessels thirty feet or longer.** ((~~Effective July 1, 2007, SHB 1002, chapter 22, Laws of 2007, a~~)) RCW 82.08.700 and 82.12.700 provide the retail sales and use tax ((~~exemption is available~~)) exemptions for sales of vessels thirty feet or longer to individuals who are nonresidents of Washington.

(i) **Exemption requirements.** The following requirements must be met in order for an individual to claim ((~~this exemption~~)) these exemptions:

(A) The individual must provide valid proof of nonresidency at the time of purchase;

(B) The vessel purchased must measure at least thirty feet in length; and

(C) The individual must obtain a valid use permit from the vessel dealer authorized to sell use permits.

(ii) **Valid proof of nonresidency.** An individual may prove nonresidency with identification that:

(A) Includes a photograph of the individual;

(B) Is issued by the jurisdiction in which the individual claims residency;

(C) Includes the individual's residential address; and

(D) Is issued for the purpose of establishing an individual's residency in a jurisdiction outside Washington state.

Acceptable identification includes a valid out-of-state driver's license.

(iii) **Use permits.** A use permit is not renewable ((~~and~~)). It costs five hundred dollars for vessels thirty to fifty feet, and eight hundred dollars for vessels greater than fifty feet in length. The permit includes an affidavit (affidavit) from the buyer declaring that the purchased vessel will be used in a manner consistent with this exemption. The use permit also includes an adhesive sticker (sticker) that must be displayed on the purchased vessel and ((~~which~~)) is valid for twelve consecutive months from the date of purchase. The sticker serves as proof of a validly issued use permit. Vessel dealers are not obligated to issue use permits to any individual. Buyers must elect this exemption irrevocably and may not elect additional exemptions under RCW 82.08.0266 and 82.08.02665 for the same period. Individuals must wait twenty-four months from the expiration of a use permit before claiming the use tax exemption for their vessel pursuant to RCW 82.12.0251.

(iv) **What are the obligations of vessel dealers?** A vessel dealer ((~~who elects~~)) electing to issue a use permit under this ((~~section has the following obligations~~)) subsection must:

(A) Examine and determine, in good faith, whether the individual has valid proof of nonresidency.

(B) Use ((~~department of revenue's (department)~~)) the department's approved use permits. ((~~Obtain department's~~)) Use permits ((~~from: Taxpayer Account Administration Division, Department of Revenue, P.O. Box 47476, Olympia, Washington 98504-7476, Telephone 360-902-7065~~)) are available on the department's web site at dor.wa.gov.

(C) Retain copies of issued use permits in ((~~his or her~~)) their records for the statutory period. For information about the statutory period and maintaining records, please refer to WAC 458-20-254 ((~~Recordkeeping~~)).

(D) Provide copies of issued use permits to the department on a quarterly basis. Copies of issued permits must be sent to: Taxpayer Account Administration Division, Department of Revenue, P.O. Box 47476, Olympia, Washington 98504-7476.

(E) Collect, remit, and report use permit fees. Dealers report use permit fees on their excise tax returns and remit in accordance with RCW 82.32.045.

(F) Electronically file all returns, as described in RCW ((~~82.32.050~~)) 82.32.080, with the department. Nonelectroni-

cally filed returns are not deemed filed unless approved by the department for good cause shown.

(v) **Liability for retail sales ((~~and use~~)) tax.**

(A) ((~~If an~~)) A nonresident individual may purchase a vessel in Washington without paying retail sales tax and remain in the state for twelve consecutive months, from the date of issuance, by obtaining a use permit under RCW 82.08.700 from the vessel dealer. If the nonresident individual ((~~obtains a use permit for a vessel under this section and~~)) uses that vessel in Washington after the use permit expires, the individual will be liable for retail sales tax on the original selling price of that vessel (along with interest ((~~retroactive to~~)) from the date of purchase at the rate provided in RCW 82.32.050).

(B) Vessel dealers ((~~will be~~)) are personally liable for retail sales tax if the dealer either does not collect retail sales tax when making sales to individuals without valid identification establishing nonresidency, or fails to maintain records of sales as provided under (b)(iv) of this subsection.

(4) **Deferred retail sales or use tax.** If Washington retail sales tax has not been paid, persons using watercraft on Washington waters are required to report and remit to the department ((~~such~~)) sales tax (commonly referred to as deferred retail sales tax) or use tax, unless the use is specifically exempt by law. A credit against Washington's use tax is allowed for retail sales or use tax previously paid by the user or the user's bailor or donor with respect to the property to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of the property in Washington. ((~~RCW 82.12.035. See also~~)) For additional information on use tax refer to WAC 458-20-178 ((~~Use tax~~)).

(a) **Purchased and used within Washington for more than forty-five days.** Tax is due on the use by any nonresident of watercraft purchased from a Washington ((~~vendor~~)) seller and first used within this state for more than forty-five days if retail sales or use tax ((~~has not been~~)) was not paid by the user. Tax is due notwithstanding the watercraft qualified for a retail sales tax exemption at the time of purchase.

(b) **Temporary use.** Use tax does not apply ((~~to the~~)), for the first sixty days, for temporary use or enjoyment of watercraft brought into this state by nonresidents while temporarily within this state.

(i) For watercraft owned by nonresident entities (i.e., corporations, limited liability companies, trusts, partnerships, etc.), it will be presumed that use within Washington exceeding sixty days in any twelve-month period is more than temporary use and use tax is due, except as otherwise provided in this ((~~section~~)) rule. For vessels at least thirty feet in length, but no more than one hundred sixty-four feet in length, see subsection (e) of this subsection.

(ii) Nonresident individuals (whether residents of other states or foreign countries) may temporarily bring watercraft into this state for sixty days before they are required to obtain a nonresident vessel permit, from the department of licensing, to continue their use or enjoyment without incurring liability for the use tax ((~~if~~)). RCW 88.02.620. Such use ((~~does~~)) may not exceed a total of six months in any twelve-month period. To qualify for this six-month exemption period, the watercraft must be issued a valid number under federal law or by an approved authority of the state of principal operation, be documented under the laws of a foreign country, or have a valid United States customs service cruising license. ((~~The watercraft must also satisfy all identification requirements under RCW 88.02.030 for any period after the first sixty days.~~)) Failure to meet the applicable documentation and identification requirements will result in a loss of the exemption.

(c) **Repair, alteration, or reconstruction of watercraft in Washington.** Watercraft owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction are exempt from the use tax if removed from this state within sixty days. RCW 88.02.570 and 82.12.0251. If repair, alteration, or reconstruction cannot be completed within this period, the exemption may be extended by filing with the department's compliance division an affidavit as required by RCW ((~~88.02.030~~)) 88.02.570 verifying the vessel is located ((~~upon~~)) on the waters of this state exclusively for repair, alteration, reconstruction, or testing. This document, titled "Nonresident ((~~Out-of-State~~)) Vessel Repair Affidavit," is effective for sixty days. If additional extensions of the exemption period are needed, additional affidavits must be sent to the department prior to the expiration date. Failure to file this affidavit can result in requiring that the vessel be registered in Washington and subject to the use tax.

(d) **One year "use permit" for nonresident individuals - Use tax exemption for vessels thirty feet or longer.** ((~~Effective July 1, 2007, SHB 1002, chapter 22, Laws of 2007 exempts~~)) RCW 82.12.700 provides an exemption from use tax for the purchase of vessels thirty feet or longer used in Washington by nonresident individuals. This exemption is available to nonresident individuals in any of the three following situations: The vessel is purchased from a vessel dealer and a use permit is obtained in accordance with subsection (3)(b) of this ((~~section~~)) rule; the vessel is purchased in Washington from someone other than a vessel dealer and within fourteen days of purchase the nonresident individual obtains a use permit under this subsection; the vessel is acquired outside Washington and the nonresident individual, within fourteen days of bringing the vessel into Washington, buys a use permit as provided under this subsection. Any vessel dealer that issues permits under subsection (3)(b) of this ((~~section~~)) rule must also issue permits under this subsection.

(i) **What are the obligations of vessel dealers?** Vessel dealers that issue use permits have the same obligations as those described in subsection (3)(b)(iv) of this ((~~section~~)) rule. Vessel dealers may not issue use permits under this subsection where a nonresident individual has already obtained a use permit under subsection (3)(b) of this ((~~section~~)) rule.

(ii) **Valid proof of nonresidency.** Nonresident individuals must meet the same identification requirements described in subsection (3)(b)(ii) of this ((~~section~~)) rule.

(iii) **Use permits.** The use permit is not renewable and costs five hundred dollars for vessels thirty to fifty feet and eight hundred dollars for vessels greater than fifty feet in length. This use permit must be displayed on the vessel and is valid for twelve consecutive months from the date of issuance. Nonresident individuals must obtain a use permit from a vessel dealer; however, vessel dealers are not obligated to issue these use permits. Nonresident individuals must elect

this exemption irrevocably and may not elect exemption under RCW 82.08.0266 and 82.08.02665 for the same period. The nonresident individual must wait twenty-four consecutive months from the expiration of a use permit before claiming exemption for a vessel under RCW 82.12.0251.

(iv) **Liability for use tax.**

(A) If a nonresident ((~~individual continues to use a~~)) individual's vessel is in Washington after ((~~his or her~~)) their use permit expires, that individual ((~~shall be~~)) is liable for use tax under RCW 82.12.020. Liability for use tax will be based ((~~upon~~)) on the value of the vessel at the time it was either purchased or first brought into Washington. Interest will accrue ((~~retroactive to~~)) from the date of purchase or first use in Washington at a rate set by RCW 82.32.050.

(B) Vessel dealers are personally liable for use tax where a dealer either issues a use permit to a nonresident individual who does not hold valid proof of nonresidency, or fails to maintain records for each use permit issued showing the type of identification accepted, the identification numbers, and expiration date.

(e) **Permits for nonresident entity owned vessels 30 feet - 164 feet.** Effective September 1, 2015, a nonresident entity vessel owner that is not a natural person, may qualify to receive a nonresident vessel permit from the department of licensing under RCW 88.02.620.

(i) This permit applies only to vessels at least thirty feet in length, but no more than one hundred sixty-four feet in length.

(ii) An application must be filed, prior to the sixty-first day of use in this state, to obtain a nonresident vessel permit. Application must be made directly to the department for written approval in accordance with RCW 82.32.865.

(iii) To qualify, no Washington resident may be a principal of the nonresident entity. For the purpose of this subsection, "principal" means a natural person that owns, directly or indirectly, including through any tiered ownership structure, more than a one percent interest in the nonresident person applying for a nonresident vessel permit.

(iv) The "Nonresident Vessel Permit Approval Application" can be found on the department's web site at dor.wa.gov.

(5) **Examples.** ((~~The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.~~)) In all applicable examples, retailing B&O tax is due from the seller for all sales of watercraft and parts, and all charges for repair parts and labor.

(a) **Example 1.** Mr. Kelley, a resident of California, pilots his cabin cruiser ((~~which~~)) that is registered in that state into Puget Sound for his enjoyment. On the sixtieth day of his stay, Mr. Kelley obtains ((~~an identification document~~)) a 60-day nonresident vessel permit for the cabin cruiser under RCW ((~~88.02.030~~)) 88.02.620 from the department of licensing. To further extend his stay in Washington waters, he applies for a second ((~~identification document~~)) permit within the prescribed period. In the middle of his fifth month on Puget Sound, Mr. Kelley departs and returns the ((~~craft~~)) cabin cruiser to its home port in California. The stay would not subject Mr. Kelley to use tax. ((~~On the other hand,~~)) The same would be true if Mr. Kelley were a resident of Vancouver, British Columbia, ((~~bringing a vessel~~)) with a cabin cruiser registered in Canada, ((~~he would also have to~~)) as long as he timely obtains and displays the ((~~appropriate identification document~~)) permit required by RCW ((~~88.02.030~~)) 88.02.570 and 88.02.620 to allow his temporary use of the ((~~watercraft~~)) cabin cruiser in Washington.

(b) **Example 2.** Company A sells a yacht to John Doe, an Oregon resident, who takes delivery in Washington. The yacht is required to be registered by the state of Oregon. The vessel is removed from Washington waters within forty-five days of delivery. Company A examines a driver's license confirming John Doe ((~~to be~~)) is an Oregon resident, and records this information in the sales file. Company A does not complete and retain the required exemption certificate.

The sale of the yacht is subject to the retail sales tax. The exclusive authority for granting a retail sales tax exemption for this sale is provided by RCW 82.08.0266. Completion of an exemption certificate is a statutorily imposed condition for obtaining this exemption. Company A has not satisfied the conditions and requirements necessary to grant an exemption under this statute. The exemption provisions under RCW 82.08.0273 for sales to nonresidents of states having less than three percent retail sales tax ((~~can~~)) may not be used for purchases of vessels which require United States Coast Guard documentation, or registration in the state of principal use. If the exemption certificate had been properly completed at the time of sale, this sale would have qualified for the retail sales tax exemption.

(c) **Example 3.** Mr. Jones, a California resident, contracts Company B to manufacture a pleasure yacht. Mr. Jones purchases a boat motor from Company Y with instructions that delivery be made to Company B for installation on the yacht. The yacht is required to be registered with the state of California, which has assumed the registration and numbering function under the Federal Boating Act of 1958. Company B examines Mr. Jones' driver's license to verify Mr. Jones is a nonresident of Washington, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington, and Mr. Jones removes the ((~~vessel~~)) yacht from Washington waters within forty-five days of delivery.

The sale of the yacht by Company B to Mr. Jones is not subject to the retail sales tax, as the requirements and conditions for exemption have been satisfied. Retail sales tax does((~~, however,~~)) apply to the sale of the motor by Company Y to Mr. Jones. The exemption provided by RCW 82.08.-0266 does not extend to a separate seller of unattached component parts, even though the parts are installed in the ((~~watercraft~~)) yacht prior to delivery.

(d) **Example 4.** Mr. Smith, a resident of British Columbia, Canada, brings his yacht into Washington with the intention of temporarily using the yacht for personal enjoyment. Mr. Smith obtains the required ((~~identification document~~)) 60-day nonresident vessel permit issued by the department of licensing. After four months of personal use, the yacht experiences mechanical difficulty. The yacht is taken to a repair facility and due to the extensive nature of the damage the yacht remains at the repair facility for six months being repaired. As explained in subsection (4)(c) of this ((~~section~~)) rule, Mr. Smith ((~~makes a timely filing of~~)) timely files each

required "Nonresident ((~~Out-of-State~~)) Vessel Repair Affidavit." An employee of the repair facility is on board the yacht during all testing, and there is no personal use by Mr. Smith during this period. Upon completion of the repairs and testing, Mr. Smith takes delivery at the repair facility.

Mr. Smith obtains a second 60-day nonresident vessel permit so he may personally use the yacht in Washington waters for up to two months after taking delivery of the repaired yacht. He will not incur liability for use tax because the instate use of the yacht for personal enjoyment will not exceed six months in a twelve-month period. The time the yacht is at the repair facility exclusively for repair does not count against the period of time Mr. Smith is considered to be "temporarily" using the yacht in Washington for personal enjoyment because he properly filed the repair affidavit with the department. Retail sales tax is due, and must be paid, ((~~however,~~)) on all charges for repair parts and labor. The exemption from sales tax for purchases of vessels does not extend to repairs.

WSR 16-12-069
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed May 27, 2016, 1:00 p.m., effective June 27, 2016]

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

Purpose: WAC 458-20-150 (Rule 150) Optometrists, ophthalmologists, and opticians, explains the application of B&O, retail sales, and use taxes for the business activities of optometrists, ophthalmologists, and opticians.

The department has revised Rule 150 to:

- Delete outdated and past statute information;
- Reorganize the rule by moving definitions currently found throughout the rule to the introduction subsection (1)(c); and
- Add additional rules to the list of relevant rules, and update titles to currently listed rules.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-150 Optometrists, ophthalmologists, and opticians.

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

Adopted under notice filed as WSR 16-07-051 on March 14, 2016.

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

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

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

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

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

Date Adopted: May 27, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-069, filed 2/25/10, effective 3/28/10)

WAC 458-20-150 Optometrists, ophthalmologists, and opticians. (1) **Introduction.** This ((~~section~~)) rule explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to the business activities of optometrists, ophthalmologists, and opticians. It explains the tax liability resulting from the rendering of professional services and the sale of prescription lenses, frames, and other optical merchandise. It also discusses the retail sales tax exemption for the sale and repair of prescription lenses and frames, and the B&O tax deduction for prescription drugs administered by a medical service provider.

(a) **Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(b) **Other rules that may be relevant.** The department of revenue (department) has adopted other ((~~sections~~)) rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the rules in the following ((~~sections~~)) list for additional information.

(((~~a~~))) (i) WAC 458-20-102 Reseller permits;

(ii) WAC 458-20-151 (((~~,~~))Dentists, audiologists, and other health care providers((~~,~~))—Dental laboratories((~~,~~)) and dental technicians((~~,~~));

(((~~b~~))) (iii) WAC 458-20-168 (((~~,~~))Hospitals, nursing homes, ((~~boarding homes~~)) assisted living facilities, adult family homes and similar health care facilities((~~,~~));

(((~~c~~))) (iv) WAC 458-20-178 Use tax and the use of tangible personal property;

(v) WAC 458-20-18801 (((~~Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and~~

~~(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations)~~))) Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.

(c) **Definitions for the purpose of this rule are:**

(i) **Optical merchandise.** "Optical merchandise" includes prescription lenses, frames, springs, temples, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses.

(ii) **Prescription lens.** "Prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term includes all ingredients

and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints.

(iii) **Professional services.** "Professional services" includes the examination of the human eye, the examination, identification, and treatment of any defects of the human vision system, and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its functions. It does not include the preparation or dispensing of lenses or eyeglasses.

(2) **Taxability of professional services.** Optometrists and ophthalmologists are subject to ((~~the~~)) service and other activities B&O tax on their gross income from providing professional services. ((~~For the purposes of this section, "professional services" include the examination of the human eye, the examination, identification, and treatment of any defects of the human vision system, and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its functions. It does not include the preparation or dispensing of lenses or eyeglasses.~~))

(3) **Purchases and sales of optical merchandise by optometrists, ophthalmologists, and opticians.** Purchases of optical merchandise by optometrists, ophthalmologists, and opticians for resale without intervening use as a consumer are not subject to ((~~the~~)) retail sales tax. Thus, optometrists, ophthalmologists, and opticians are not required to pay retail sales or use tax on items which will be given to customers as part of a sale of eyeglasses or contact lenses, such as cleaning supplies, carrying cases, and the like. The department considers these items to be sold along with the eyeglasses or contact lenses. An optometrist, ophthalmologist, or optician purchasing tangible personal property for resale must furnish a ((~~resale certificate for purchases made before January 1, 2010, or a~~)) reseller permit ((~~for purchases made on or after January 1, 2010,~~)) to the seller to document the wholesale nature of the sale as provided in ((~~WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014~~)) WAC 458-20-102.

Sales of optical merchandise to consumers are subject to retailing B&O tax. ((~~In addition,~~)) The seller must collect retail sales tax unless the sale is specifically exempt by law. ((~~For the purposes of this section, "optical merchandise" includes prescription lenses, frames, springs, temples, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses.~~

~~For purposes of this section, "prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints.~~))

(a) **Are sales of prescription lenses and frames ((~~exempt from~~)) subject to retail sales tax?** ((~~As a result of legislation to implement the national Streamlined Sales and Use Tax Agreement, effective July 1, 2004~~)) No, sales of prescription lenses and frames for prescription lenses are exempt from retail sales tax as prosthetic devices under RCW 82.08.0283.

((~~Before July 1, 2004, sales of prescription lenses were exempt from retail sales tax under RCW 82.08.0281 if the lenses were dispensed by an optician licensed under chapter 18.34 RCW or by a physician or optometrist under a prescription written by a physician or optometrist. Sales of frames for prescription lenses did not qualify for a sales tax exemption. Thus, before July 1, 2004, when prescription lenses were sold with frames, only the prescription lenses were exempt from sales tax.~~))

(b) **Are repairs of prescription lenses and frames subject to retail sales tax?** ((~~Beginning July 1, 2004~~)) No, charges for the repair of prescription lenses or to prescription eyeglass frames, whether the frames are the original frames or replacement frames, are exempt from retail sales tax as labor and services rendered in respect to prosthetic devices under RCW 82.08.0283. ((~~Before July 1, 2004, charges for the repair of prescription lenses were exempt from retail sales tax. Charges for the repair of frames, however, were subject to retail sales tax.~~))

(c) **Segregation of income from different sources.** To claim a retail sales tax exemption under RCW 82.08.0281 or 82.08.0283, persons providing or selling any combination of professional services, prescription lenses, prescription eyeglass frames, or other optical merchandise must segregate and separately account for the income derived from each source.

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

(i) **Example 1.** Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. All sales of prescription lenses are made under written prescription. Income attributable to the eye examinations, the sale of prescription lenses, and the sale of other optical merchandise is segregated in Taxpayer's books of account.

The income derived from the eye examinations is subject to service and other activities B&O tax. The gross proceeds of sales of the prescription lenses, eyeglass frames with prescription lenses, contact lenses, and other optical merchandise are subject to retailing B&O tax. The sales of prescription lenses, eyeglass frames with prescription lenses, including contact lenses, are exempt from retail sales tax. ((~~Beginning July 1, 2004, sales of eyeglass frames with prescription lenses are exempt from retail sales tax.~~)) Taxpayer((~~, however,~~)) must collect retail sales tax on sales of other optical merchandise((~~, including eyeglass frames sold with prescription lenses before July 1, 2004,~~)) and remit the tax to the department.

(ii) **Example 2.** Taxpayer is a retail drugstore that sells preassembled "off-the-shelf" reading glasses. These eyeglasses have lenses with power or prism correction and are sold without a prescription. In addition, Taxpayer sells magnifiers, binoculars, monoculars, and sunglasses. These items are also sold without a prescription.

The gross proceeds of sales of these items are subject to retailing B&O tax. In addition, Taxpayer must collect retail sales tax on sales of these items and remit the tax to the department. Because these items are not sold under a prescription, nor are they prescribed, fitted, or furnished for the buyer by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, they are not exempt from retail sales tax under either RCW 82.08.0281 or 82.08.0283.

(4) **Equipment and supplies used by optometrists, ophthalmologists, and opticians.** Purchases of equipment and supplies used by optometrists, ophthalmologists, and opticians are purchases at retail and are subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the optometrist, ophthalmologist, or optician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax ((~~should be reported on the buyer's excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax~~)) liability should be reported on the use tax line of the buyer's excise tax return. For detailed information about use tax, refer to WAC 458-20-178 ((~~(Use tax)~~)).

(a) **Prescription drugs.** "Prescription drugs," as defined in RCW 82.08.0281, may be purchased without payment of retail sales or use tax by optometrists and ophthalmologists if all requirements for the exemption are met. For additional information regarding prescription drugs, refer to WAC 458-20-18801.

(b) **Prescription drugs administered by the medical service provider.** ((~~Effective October 1, 2007,~~)) RCW 82.04.620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purposes of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it. RCW 82.04.620.

(B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug charge. If the total amount received by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(c) **Samples.** Optometrists, ophthalmologists, and opticians are required to pay use tax on any samples, with the exception of prescription drug samples, that they acquire unless retail sales or use tax has been previously paid on these samples.

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

(i) **Example 3.** Taxpayer is an ophthalmologist who performs eye examinations, laser surgery, and cataract surgery. Taxpayer purchases equipment and supplies that are used in performing these services such as surgical instruments, eye shields, cotton swabs, sterile dressings, bandages, and gauze. Taxpayer also ((~~purchased~~)) purchases a computer, technical publications, and magazines by mail order and over the internet.

Taxpayer is subject to retail sales tax on these purchases. If the seller does not collect sales tax, Taxpayer is liable for deferred sales tax or use tax and must remit the tax directly to the department.

(ii) **Example 4.** Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. Taxpayer purchases nonprescription saline and cleaning solutions for contact lenses and carrying cases for eyeglasses and contact lenses. The saline and cleaning solutions are consumed when Taxpayer performs eye examinations. The eyeglass and contact lens carrying cases are provided to customers at the time they purchase eyeglasses or contact lenses.

The purchases of the eyeglass and contact lens carrying cases are purchases for resale and are((~~, therefore,~~)) not subject to sales tax if Taxpayer provides the seller with a ((~~resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a~~)) reseller permit (((~~(WAC 458-20-102) for sales made on or after January 1, 2010~~)). The purchases of the saline and cleaning solutions are((~~, however,~~)) subject to ((~~the~~)) retail sales tax. These solutions are consumed while providing professional services and cannot be considered to be purchased for resale. They also do not qualify for a sales tax exemption under RCW 82.08.0281 as prescription drugs. If retail sales tax was not paid on the saline and cleaning solutions at the time of purchase, Taxpayer must remit deferred sales tax or use tax directly to the department.

WSR 16-12-070
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed May 27, 2016, 1:09 p.m., effective June 27, 2016]

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

Purpose: Amends WAC 181-77-071 to correct drafting error: Residency certificates should have been included as eligible for program admission.

Citation of Existing Rules Affected by this Order: Amending WAC 181-77-071.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 16-08-013 on March 25, 2016.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: May 20, 2016.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-11-053, filed 5/16/14, effective 6/16/14)

WAC 181-77-071 Certification of career and technical education administrative personnel. (1) Beginning September 1, 2014, a candidate is eligible for the initial career and technical education administrator certification if meeting one of the following:

(a) Currently holds a valid residency, continuing or professional administrator certificate; or

(b) Completion of three years of experience as a certificated career and technical education supervisor, career and technical education instructor, career and technical education counselor, or occupational information specialist.

(2) Initial certificate.

(a) The individual may apply for an initial career and technical administrator certificate upon:

(i) Completion of the state authorized career and technical education administrator internship program; or

(ii) Completion of a state approved college program for career and technical education administration.

(b) The initial career and technical education administrator certificate is valid for four years and may be renewed two times.

(3) Initial certificate renewal.

(a) In order to renew the initial career and technical education administrator certificate completion of at least six quarter hours of college credit or sixty continuing education credit hours since the initial certificate was issued or renewed is required.

(b) The initial renewal certificate is valid for three years and may be renewed one time.

(4) Continuing certificate. The continuing career and technical education administrator certificate is valid for five years.

(a) In order to receive the continuing career and technical education administrator certificate, in addition to the requirements for the initial certificate, at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate is required.

(b) Individuals shall provide as a condition for the issuance of a continuing certificate documentation of two years of career and technical administration with an authorized employer (i.e., school district(s) or skill center(s)).

(c) Individuals who hold the initial career and technical administrator certificate, but have not been employed in the role of career and technical education administrator, or cannot document two years of career and technical education administration, shall be eligible for a continuing certificate by the following:

(i) In addition to the requirements for the initial certificate at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate; and

(ii) The completion of requirements listed in subsection (2)(a)(i) or (ii) of this section since the issuance of the second initial certificate renewal and prior to the application for the continuing career and technical education administrator certificate.

(5) Continuing certificate renewal. The continuing career and technical education administrator certificate shall be renewed with the completion of fifteen quarter credits of college credit course work or the equivalent of one hundred fifty continuing education credit hours in career and technical education, or supervisory or managerial subjects, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates.

(6) Any person with a valid career and technical education administrator certificate issued prior to September 1, 2014, under previous standards of the professional educator standards board shall meet requirements of, and may apply for, the continuing career and technical education administrator certificate by the expiration date of the original certificate held. Upon issuance of the continuing career and technical education administrator certificate such person will be subject to continuing certificate renewal requirements of subsection (5) of this section.

WSR 16-12-072
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed May 27, 2016, 1:41 p.m., effective June 27, 2016]

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

Purpose: WAC 458-20-268 (Rule 268) defines what a tax preference is, how to determine if a survey must be filed, how to file a survey, and what information must be included in the survey. The department has revised Rule 268 to:

- Delete the partial listing of tax preferences requiring an annual survey;
- Direct readers to the department's web site for a listing of tax preferences requiring an annual survey;
- Add definitions for "new tax preference" and "tax preference";
- Delete past statute information;
- Make general updating.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-268 Annual surveys for certain tax preferences.

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

Adopted under notice filed as WSR 16-07-142 on March 23, 2016.

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

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

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

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

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

Date Adopted: May 27, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-04-002, filed 1/21/15, effective 2/21/15)

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

~~Refer to WAC 458-20-267 (Annual reports for certain tax adjustments) for more information on the annual report requirements for certain tax incentive programs~~)). RCW 82.32.585.

(a) **Definitions.** For the purpose of this rule the following definitions apply:

(i) **New tax preference.** "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending amendment includes any other change to the tax preference. RCW 82.32.805.

(ii) **Tax preference.** "Tax preference" means an exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate administered by the department. RCW 82.32.805.

(b) **Annual reports.** For information on the annual report requirements for certain tax incentive programs see WAC 458-20-267.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) If a new tax preference taking effect after August 1, 2013, meets the requirement found in RCW 82.32.808(5), every taxpayer claiming the new preference must complete an annual survey.)) **Tax preferences requiring an annual survey.** Taxpayers may refer to the department's web site at dor.wa.gov for the "Annual Tax Incentive Survey for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual survey. Taxpayers may also contact the telephone information center (800-647-7706) to determine whether they must file an annual survey.

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

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

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

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

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

(d) ((**Due date.**

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

For)) **Surveys are due by April 30th.** RCW 82.32.585 requires recipients of ((any)) sales tax deferrals ((listed under subsection (2) of this rule or for)), or lessees required to file the annual survey ((as provided in subsection (2)(g) of this

~~rule, the survey must be filed or postmarked by April 30th of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.~~

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

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

~~(iii)~~)), to file the survey every year, by April 30th for eight years following the year in which the project is operationally complete.

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

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

((~~(f)~~)) (g) **Examples.**

(i) **Example 1.** Advanced Computing, Inc. ((~~qualifies~~)) qualified for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year ((~~2010~~)) 2014. Advanced Computing((~~, Inc.~~)) filed an annual survey in March ((~~2010~~)) 2014 for credit claimed under RCW 82.04.4452 in ((~~2009~~)) 2013. Advanced Computing((~~, Inc.~~)) must electronically file an annual survey with the department by April 30, ((~~2011~~)) 2015, for credits taken in calendar year ((~~2010~~)) 2014. The tax preference in this example expired January 1, 2015.

(ii) **Example 2.** In 2011, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The ((~~department certified the~~)) investment project ((~~as being~~)) was operationally complete in 2012. Biotechnology((~~, Inc.~~)) filed an annual survey on April 30, 2013, for ((~~credit claimed under RCW 82.04.4452 in 2012 for~~)) the sales and use tax deferral under chapter 82.63 RCW. ((~~A survey is~~)) Surveys are due from Biotechnology((~~, Inc.~~)) by April 30th each following year, with its last survey due April 30, 2020.

(iii) **Example 3.** Advanced Materials, Inc., a new business in 2014, has been conducting manufacturing activities in a building leased from Property Management Services ((~~since 2014~~)). Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the department certified the building as operationally complete in 2014. ((~~In order~~)) To pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials((~~, Inc.~~)) $5,000 less in rent each year. Advanced Materials((~~, Inc.~~)) is a first-time filer of annual surveys. Advanced Materials((~~, Inc.~~)) must file its annual survey with the department covering the 2014 calendar year by April 30, 2015((~~, assuming all the requirements of subsection (2)(f) of this rule are met. A survey is~~)). Surveys are due from Advanced Materials((~~, Inc.~~)) by April 30th each following year, with its last survey due ((~~by~~)) April 30, 2022.

(iv) **Example 4.** Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in ((~~2010~~)) 2015. Fruit Canning((~~, Inc.~~)) is a first-time filer of annual surveys. Fruit Canning((~~, Inc.~~)) must file an annual survey with the department by April 30, ((~~2011~~)) 2016, covering calendar years ((~~2009 and 2010~~)) 2014 and 2015. If Fruit Canning((~~, Inc.~~)) claims the B&O tax exemption during subsequent years, it must file an annual survey for each of those years by April 30th of each following year.

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

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

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

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

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

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

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

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

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

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

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

The credit provided under RCW 82.04.4452 expired January 1, 2015.

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

(i) The total number of employment positions;

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

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

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

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

(i) ((~~The department is required~~)) RCW 82.32.585 requires the department to report to the legislature summary descriptive statistics by category and the effectiveness of certain tax ((~~adjustments~~)) preferences, such as job creation, company growth, and such other factors as the department selects or as the statutes identify. The department has included questions related to measuring these effects.

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

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

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

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

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

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

(i) **Example 5.** NCE employs two hundred workers in Ridgefield manufacturing construction cranes. NCE employs two hundred fifty workers in Kennewick manufacturing bulldozers and other earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax ((~~adjustments~~)) preferences, NCE's annual survey must report a total of four hundred fifty employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax ((~~adjustments~~)) preferences.

(ii) **Example 6.** On November 20th, NCE lays off seventy-five workers. NCE notifies ten of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The seventy-five employment positions are excluded from NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire ten employees, those employment positions are vacant on December 31st.

(iii) **Example 7.** On December 31st, NCE has one hundred employees on vacation leave, five employees on sick leave, two employees on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of employees on vacation, sick leave, and military leave must be included in NCE's annual survey. The one employee scheduled to retire must be included in the annual survey because the employment position is filled on December 31st. The three vacant positions are not included in the annual survey.

(iv) **Example 8.** In June, NCE hires two employees from a local college to intern in its engineering department. When the academic year begins in September, one employee ends the internship. The other employee's internship continues until the following June. NCE must report one employment position on the annual survey, representing the ((~~one~~)) intern employed on December 31st.

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

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

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

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

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

(e) The service of the employee is performed both within and without the state and the service is not directed or controlled in this state, but the employee's individual residence is in this state.

(f) **Examples.** Assume these facts for the following examples. Acme Computer, Inc. develops computer software and ((~~claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending~~)) receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Acme Computer, headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) **Example 9.** Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee services within ((~~Washington~~)) the state.

(ii) **Example 10.** John is an Acme Computer salesperson. John travels throughout Washington, Oregon, and Idaho promoting sales of new Acme Computer products. John's activities are directed by his manager in Acme Computer's Spokane office. John's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) **Example 11.** Jane, vice-president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position should not be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Although Jane regularly performs services within Washington state, her activities are directed or controlled in Oregon.

(iv) **Example 12.** Roberta, a service technician, travels throughout the United States servicing Acme Computer products. Her activities are directed from Acme Computer's corporate offices in California, but she works from her home office in Tacoma. Roberta's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Although Roberta performs services both within and without the state and the service is not directed or controlled in this state, ((~~but~~)) her residence is in Washington state.

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

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

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

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

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

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

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

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

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

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

(C) Average duration of all staffing company employees.

(c) **Examples.** Assume these facts for the following examples. Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices ((~~at a facility located in Everett, WA~~)). Worldwide Materials ((~~claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending~~)) receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Worldwide Materials has one hundred employees.

(i) **Example 13.** On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked forty hours a week and were expected to work for fifty-two consecutive weeks. Worldwide Materials must report these employees as being employed in a full-time position. Although the five employees are not currently working, they are on workers' compensation leave and Worldwide Materials had intended for the full-time positions to be filled for at least fifty-two consecutive weeks.

(ii) **Example 14.** In September, Worldwide Materials hires two employees on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the position is intended to be filled for a period exceeding twelve consecutive months, Worldwide Materials must report these positions as ((~~two~~)) full-time positions.

(iii) **Example 15.** Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, fifty-two weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) **Example 16.** On November 1st, a Worldwide Materials engineer begins twelve weeks of family and medical leave. The engineer was expected to work forty hours a week for fifty-two consecutive weeks. While the engineer is on leave, Worldwide Materials hires a staffing company to furnish a worker to complete the engineer's projects. Worldwide Materials must report the engineer as a full-time position on the annual survey. Worldwide Materials must also report the worker furnished by the staffing company as a temporary employment position and include the information as required in (b) of this subsection.

(v) **Example 17.** Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week, but are expected to work twelve consecutive months. The three research employees are paid a comparable wage as other research employees who are required to work a set schedule of forty hours a week. Although the three research employees may work fewer

hours, they are receiving comparable wages as other research employees working forty hours a week. Worldwide Materials must report these positions as full-time employment positions, because each position is equivalent to a full-time employment position.

(vi) **Example 18.** Worldwide Materials has a large order to fulfill and hires ten employees for the months of June and July. Five of the employees leave at the end of July. Worldwide Materials decides to have the remaining five employees work on an on-call basis for the remainder of the year. As of December 31st, three of the employees are working for Worldwide Materials on an on-call basis. Worldwide Materials must report three temporary employment positions on the annual survey and include these positions in the information required in subsections (5), (8), and (9) of this rule.

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

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

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

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

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

(i) Health plans include any:

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

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

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

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

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

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

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

(H) Governmental plans; and

(I) Church plans.

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

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

(c) **What are retirement benefits?** "Retirement benefits" means compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. An employer contribution to the retirement plan is not required for a retirement plan to be employer-provided. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods after employment is terminated. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **Examples.** Assume these facts for the following examples. Medical Resource, Inc. is a pharmaceutical manufacturer ((~~located in Spokane, WA. Medical Resource, Inc. claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending~~)) that receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. It employs two hundred full-time employees and fifty part-time employees. Medical Resource((~~, Inc.~~)) also hires a staffing company to furnish seventy-five workers.

(i) **Example 19.** Medical Resource((~~, Inc.~~)) offers its employees two different health plans as a medical benefit. Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Plan A until completing thirty days of employment. Plan B costs employees $200 each month. Full-time and part-time employees are eligible for Plan B after six months of employment. One hundred full-time employees are enrolled in Plan A. One hundred full-time and part-time employees are enrolled in Plan B. Forty full-time and part-time employees chose not to enroll in

either plan. Ten part-time employees are not yet eligible for either Plan A or Plan B. Medical Resource((~~, Inc.~~)) must report two hundred employees as having employer-provided medical benefits, because ((~~this~~)) that is the number of employees enrolled in the health plans it offers.

(ii) **Example 20.** Medical Resource((~~, Inc.~~)) does not offer medical benefits to the employees of the staffing company. However, twenty-five of these workers have enrolled in a health plan through the staffing company. Medical Resource((~~, Inc.~~)) must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) **Example 21.** Medical Resource((~~, Inc.~~)) does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all employees with a 30% discount on any dental care service. ((~~No action, other than~~)) Medical Resource((~~, Inc.~~)) employment((~~, is required by employees~~)) is the sole requirement to receive this benefit. Unlike the medical benefit, employees are eligible for the dental benefit as of the first day of employment. This benefit is not provided to the workers furnished by the staffing company. Medical Resource((~~, Inc.~~)) must report two hundred and fifty employment positions as having dental benefits, because ((~~this~~)) that is the number of employees enrolled in this dental plan.

(iv) **Example 22.** Medical Resource((~~, Inc.~~)) offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource((~~, Inc.~~)) makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, two hundred and twenty-five workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan. One hundred of these workers receive matching contributions. Medical Resource((~~, Inc.~~)) must report two hundred employment positions as having employer-provided retirement benefits, because ((~~this~~)) that is the number of employees enrolled in the 401(k) Plan.

(v) **Example 23.** Medical Resource((~~, Inc.~~)) coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered to bank customers. Employees who open an IRA with the bank can arrange to have their contributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource((~~, Inc.~~)) cannot report that these fifty employees have employer-provided retirement benefits. IRAs are not an employer-provided benefit because the ability to establish the IRA is not dependent on Medical ((~~Resource, Inc.'s~~)) Resource's participation or sponsorship of the benefit.

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

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to ((~~file a complete annual survey as required by law, then the fact that the taxpayer failed to~~)) timely file a complete annual survey ((~~and~~)), then the amount required to be repaid as a result of the taxpayer's failure to file a complete annual survey is not confidential and may be disclosed to the public upon request. RCW 82.32.585.

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

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

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

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

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

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

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

(b) **When annual survey is not submitted timely.** If a person claims a tax ((~~adjustment~~)) preference that requires an annual survey under this rule but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the amount of the tax ((~~adjustment~~)) preference claimed for the previous calendar year becomes immediately due. If the tax ((~~adjustment~~)) preference is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit. Interest, but not penalties, will be assessed on these amounts((~~. The interest will be assessed~~)) at the rate ((~~provided~~)) for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax ((~~adjustment~~)) preference was claimed, and accrues until the taxes for which the tax ((~~adjustment~~)) preference was claimed are repaid.

(c) **Extension for circumstances beyond the control of the taxpayer.** If the department finds ((~~that~~)) the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the survey. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper. RCW 82.32.590.

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

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

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

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

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

WSR 16-12-073
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed May 27, 2016, 2:26 p.m., effective June 27, 2016]

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

Purpose: The rule being amended under this proposal [adoption] is WAC 458-40-670 Timber excise tax—Chipwood and small log destinations.

This proposal [adoption] incorporates new terms used for informal review hearings under recently adopted WAC 458-20-100 Informal administrative reviews. The rule in this proposal [adoption] is having the title "Informal administrative reviews" added for WAC 458-20-100; and the term "appeal" changed to "review."

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-670 Timber excise tax—Chipwood and small log destinations.

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

Adopted under notice filed as WSR 16-07-073 on March 17, 2016.

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

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

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

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

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

Date Adopted: May 27, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-24-068, filed 12/1/00, effective 1/1/01)

WAC 458-40-670 Timber excise tax—Chipwood and small log destinations. (1) **Introduction.** This rule describes the procedure by which businesses that process chipwood, chipwood products, and/or small logs can become approved chipwood or small log destinations.

(2) **Chipwood destinations.** Businesses that process logs to produce chips or chip products may be designated as approved "chipwood destinations." Logs delivered to the log yards approved as "chipwood destinations" for the purpose of being chipped may be reported as chipwood and have the volume measured by weight.

(a) The department of revenue will maintain a current list of approved chipwood destinations. This list will be updated as necessary and will be formally reviewed by the department of revenue at least twice a year. A list of approved chipwood destinations is available from the forest tax section of the department of revenue.

(b) A log processor in the business of processing logs to produce chips or chip products that has not been designated as an approved destination may file an application to be listed as an approved chipwood destination. The application should be submitted to the Department of Revenue, Forest Tax Section, P.O. Box 47472, Olympia, Washington 98504-7472. To qualify as an approved destination, not less than ninety percent of the weight volume of logs delivered to and purchased by the log processor for chipping at a specified log yard or location must be processed to produce chips or chip products.

(c) Any applicant seeking administrative review of the department of revenue's decision made under (b) of this subsection may ((~~appeal~~)) seek review of the decision in accordance with WAC 458-20-100 (((~~Appeals, small claims and settlements~~)) Informal administrative reviews).

(3) **Logs chipped in the woods.** Logs chipped in the woods may also be reported as chipwood. Volume must be measured in net weight of green chips.

(4) **Other chipwood processing locations.** Logs processed at locations other than those listed on the approved list of chipwood destinations maintained by the department of revenue and other than as provided in subsection (3) of this rule may be reported as chipwood volume when scaled as utility grade logs, based on log scaling or upon approved sample log scaling methods.

If a harvester reports chipwood volume that was delivered to a location that is not listed as an approved chipwood destination and there has been no log scaling or approved sample log scaling, the chipwood volume so reported will be converted by the department of revenue to the appropriate sawlog volume in accordance with WAC 458-40-680 for purposes of timber excise taxation.

(5) **Small log destinations.** Businesses that process small logs as defined in WAC 458-40-610 may be designated as approved "small log destinations."

(a) The department of revenue will maintain a current list of approved small log destinations. This list will be updated as necessary and will be formally reviewed by the department of revenue at least twice a year. A list of approved small log destinations is available from the forest tax section of the department of revenue.

(b) A log processor in the business of processing small logs that has not been designated as an approved destination may file an application to be listed as an approved small log destination. The application should be submitted to the Department of Revenue, Forest Tax Section, P.O. Box 47472, Olympia, Washington 98504-7472.

(c) Any applicant seeking administrative review of the department of revenue's decision made under (b) of this subsection may ((~~appeal~~)) seek review of the decision in accordance with WAC 458-20-100 (((~~Appeals, small claims and settlements~~)) Informal administrative reviews).

WSR 16-12-074
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed May 27, 2016, 3:13 p.m., effective June 27, 2016]

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

Purpose: The rules being amended under this proposal [adoption] are WAC 458-61A-100 and 458-61A-301.

This proposal [adoption] incorporates new terms used for informal review hearings under recently adopted WAC 458-20-100 Informal administrative reviews. The two rules in this proposal [adoption] are having the name "Informal administrative reviews" added as the title for WAC 458-20-100; and the term "appeals" changed to "reviews." Also, the term "section" is replaced with "rule."

Citation of Existing Rules Affected by this Order: Amending WAC 458-61A-100 and 458-61A-301.

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

Adopted under notice filed as WSR 16-07-074 on March 17, 2016.

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

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

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

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

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

Date Adopted: May 27, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-16-106, filed 8/3/11, effective 9/3/11)

WAC 458-61A-100 Real estate excise tax—Overview. (1) **Introduction.** Chapter 82.45 RCW imposes an excise tax on every sale of real estate in the state of Washington. All sales of real property in this state are subject to the real estate excise tax unless specifically exempted by chapter 82.45 RCW and these rules. The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, except as provided in RCW 82.45.150. This chapter provides applicable definitions, describes procedures for payment, collection, and reporting of the tax, explains when penalties and interest are imposed on late payment, describes those transactions exempted from imposition of the tax, and explains the procedures for refunds and ((~~appeals~~)) reviews.

Legislation adopted in 2010. Effective May 1, 2010, chapter 23, Laws of 2010 sp. sess. established new requirements regarding:

(a) Sales of real estate that result from the transfer of a controlling interest in an entity that owns real property. See WAC 458-61A-101.

(b) Enforcement of tax liability. See WAC 458-61A-301.

(2) **Imposition of tax.**

(a) The taxes imposed are due at the time the sale occurs, are the obligation of the seller, and, in most instances, are collected by the county upon presentation of the documents of sale for recording in the public records.

(b) If there is a sale of the controlling interest in an entity that owns real property in this state, the tax is paid to the department at the time the interest is transferred. See WAC 458-61A-101.

(3) **Rate of tax.** The rate of the tax is set forth in RCW 82.45.060. Counties, cities, and towns may impose additional taxes on sales of real property on the same incidences, collection, and reporting methods authorized under chapter 82.45 RCW. See chapter 82.46 RCW.

(4) **Nonprofit organizations.** Transfers to or from an organization exempt from ad valorem property taxes under chapter 84.36 RCW, or from federal income tax, because of the organization's nonprofit or charitable status are nevertheless subject to the real estate excise tax unless specifically exempt under chapter 82.45 RCW or these rules.

(5) **Sales in Indian country.** A sale of real property located in Indian country by an enrolled tribe or tribal member is not subject to real estate excise tax. See WAC 458-20-192 for complete information regarding the taxability of transactions involving Indians and Indian country.

AMENDATORY SECTION (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

WAC 458-61A-301 Payment of tax, collection responsibility, audit responsibility, and tax rulings. (1) **Tax imposed.**

(a) The taxes imposed are due at the time the sale occurs and are collected by the county when the documents of sale are presented for recording or, in the case of a transfer of a

controlling interest (see WAC 458-61A-101), by the department.

(b) The tax is imposed upon the seller. Effective May 1, 2010, the parent corporation of a wholly owned subsidiary is the seller, if the subsidiary sells to a third party and the subsidiary is dissolved before paying the tax.

(2) **Payment of tax. Scope of ((~~section~~)) rule.** This ((~~section~~)) rule applies to sales of real property that are evidenced by conveyance, deed, grant, assignment, quitclaim, or transfer of title to real property. See WAC 458-61A-101 for procedures pertaining to transfers or acquisitions of a controlling interest in an entity owning real property in Washington.

(3) **County as agent for state.** Real estate excise tax is paid to and collected by the agent of the county where the property is located (unless the transaction involves the transfer of a controlling interest, in which case the tax is paid to the department).

(4) **Computation of tax.** The tax is computed by multiplying the combined state and local tax rates in effect at the time of sale by the selling price. A current list of the current state and local real estate excise tax rates is available on the department's web site at dor.wa.gov. This information is also available by contacting the county where the property is located.

(5) **Evidence of payment.** The county agent stamps the instrument of conveyance or sale prior to its recording as evidence that the tax has been paid or that an exemption from the tax was claimed. In the case of a used mobile home, the real estate excise tax affidavit is stamped as evidence of payment or a claimed exemption. The stamp references the affidavit number, date, and payment of or exemption from tax, and identifies the person stamping the instrument or affidavit.

(6) **Compliance with property tax statutes.** The county agent will not stamp the instrument of conveyance or sale or affidavit if:

(a) A continuance of use has been applied for but not approved by the county assessor under chapter 84.33 or 84.34 RCW; or

(b) Compensating or additional tax is due but has not been paid as required by RCW 84.33.086, 84.33.140 (5)(c), 84.34.108 (1)(c), 84.36.812, or 84.26.080.

(7) **Prerequisites to recording.** The county auditor will not file or record the instrument of conveyance or sale until all taxes due under this ((~~section~~)) rule have been paid or the transfer is determined to be exempt from tax as indicated by a stamped document.

(8) **Evidence of lien satisfaction.** A receipt issued by the county agent for payment of the tax may be used as evidence of satisfaction of a lien imposed under RCW 82.45.070.

(9) **Audit authority.** All transactions are subject to audit by the department. The department will audit transactions to confirm the proper amount of tax was paid and that any claim for exemption is valid. Failure to provide documentation to the department as requested may result in denial of any exemptions claimed and the assessment of additional tax.

(10) **Tax assessments.**

(a) If the department discovers an underpayment of tax due, it will notify the taxpayer and assess the additional tax due, together with all applicable interest and penalties. The assessment notice will identify the additional tax due and explain the reason for the assessment.

(b) Persons receiving an assessment must respond within thirty days from the date the assessment was mailed. Failure to respond may result in the assessment of additional penalties and interest and enforcement for collection of the deficient tax under the administrative provisions of chapters 82.32 and 82.45 RCW.

(11) **Tax rulings.** Any person may request a written opinion from the department regarding their real estate excise tax liability pertaining to a proposed transfer of real property or a proposed transfer or acquisition of the controlling interest in an entity with an interest in real property. The request should include sufficient facts about the transaction to enable the department to ascertain the proper tax liability. The department will advise the taxpayer in writing of its opinion. The opinion is binding upon both the taxpayer and the department under the facts presented in accordance with WAC 458-20-100 (Informal administrative reviews). To request a ruling, use the form available at the department's web site at dor.wa.gov.

(12) **Refunds.**

(a) **Introduction.** Under certain circumstances, taxpayers (or their authorized representatives) may request a refund of real estate excise tax paid. The request must be filed within four years of the date of sale, and must be accompanied by supporting documents.

(b) **Claims for refunds.** Any person having paid the real estate excise tax in error may apply for a refund of the amount overpaid by submitting a completed refund request form.

(c) **Forms and documentation.** Refund request forms are available from the department or the county. The completed form along with supporting documentation is submitted to the county office where the tax was originally paid. If the tax was originally paid directly to the department, you may apply for a refund using the forms and procedures provided at the department's web site at dor.wa.gov.

(d) **Circumstances under which refunds are authorized.** The authority to issue a refund under this chapter is limited to the following circumstances:

(i) Real estate excise tax was paid on the transfer back to the seller in a transaction that is completely rescinded (as defined in WAC 458-61A-209);

(ii) Real estate excise tax was paid on the transfer back to the seller on a sale rescinded by court order. The county treasurer must attach a copy of the court decision to the department's affidavit copy (see also WAC 458-61A-208, Deeds in lieu of foreclosure);

(iii) Real estate excise tax was paid on the initial transfer recorded in error by an escrow agent before the closing date, provided that the property is conveyed back to the seller;

(iv) Real estate excise tax was paid on the transfer back to the seller in accordance with (d)(iii) of this subsection;

(v) Real estate excise tax was paid on the initial transfer recorded before a purchaser assumes an outstanding loan that represents the only consideration paid for the property, provided:

(A) The purchaser is unable to assume the loan; and

(B) The property is conveyed back to the seller. The refund is allowed because there is a failure of the consideration;

(vi) The transfer back to the seller in (d)(v) of this subsection;

(vii) Double payment of the tax;

(viii) Overpayment of the tax through error of computation; or

(ix) Real estate excise tax paid when the taxpayer was entitled to claim a valid exemption from the tax but failed to do so at the time of transfer.

(e) **Responsibilities of county.**

(i) **Request for refund made prior to disposition of proceeds.** If the taxpayer submits a valid refund request to the county before the county treasurer has remitted the tax to the state treasurer, the county may void the receipted affidavit copies and issue the refund directly. The county will then submit a copy of the initial affidavit, together with a copy of the refund request, to the department. If, after reviewing the request for refund and supporting documentation, the county is unable to determine the validity of the request, the county will send the request, a copy of the affidavit, and all supporting documentation to the department for determination. If the county denies the request for refund, in whole or in part, the taxpayer may ((~~appeal~~)) seek review in writing to the department's miscellaneous tax section within thirty days of the county's denial.

(ii) **Request for refund made after disposition of proceeds.** If the taxpayer submits the refund request after the county treasurer has remitted the tax to the state treasurer, the county will verify the information in the request and forward it to the department with a copy of the affidavit and any other supporting documents provided by the taxpayer. The county or the department may request additional documentation to determine whether the taxpayer qualifies for a refund.

WSR 16-12-075
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed May 27, 2016, 3:20 p.m., effective June 27, 2016]

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

Purpose: The rules being amended under this proposal [adoption] are WAC 458-20-17802, 458-20-19301, 458-20-217, 458-20-229, 458-20-240, 458-20-24001A, 458-20-24003, and 458-20-255.

This proposal [adoption] incorporates new terms used for informal review hearings under recently adopted WAC 458-20-100 Informal administrative reviews. The eight rules in this proposal [adoption] are having the terms "Appeals Division" changed to "Administrative Review and Hearings Division"; and "appeal" changed to "review." Also, the term "section" is replaced with "rule."

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-17802, 458-20-19301, 458-20-217, 458-20-229, 458-20-240, 458-20-24001A, 458-20-24003, and 458-20-255.

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

Adopted under notice filed as WSR 16-07-078 on March 17, 2016.

Changes Other than Editing from Proposed to Adopted Version: The proposal included a repealer for WAC 458-20-252 that was erroneously filed in WSR 16-07-078. Pursuant to RCW 34.05.335, the department of revenue filed WSR 16-08-018 that withdrew the repealer for WAC 458-20-252 and proceeded with the expedited rule-making process for the eight rules being adopted.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

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

Date Adopted: May 27, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-21-104, filed 10/15/14, effective 12/14/14)

WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax. (1) **Introduction.** The department of revenue (department) has authorized county auditors and the department of licensing to collect the use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of title of a vehicle acquired without the payment of sales tax. See RCW 82.12.045. This rule explains how county auditors, their subagents, and the department of licensing determine the measure of the use tax. This rule does not relieve a seller registered with the department of the statutory requirement to collect sales tax when selling tangible personal property, including vehicles. RCW 82.08.020 and 82.08.0251. The use tax reporting responsibilities of Washington residents in other situations and the general nature of the use tax are addressed in WAC 458-20-178 (Use tax). The application of tax to vehicles acquired by Indians and Indian tribes is discussed in WAC 458-20-192 (Indians—Indian country).

Vehicle licensing locations and information about vehicle titles and registration are available from the department of licensing on their web site at: dol.wa.gov. This information is also available by contacting the local county auditor's office listed in the government pages of a telephone directory.

(2) **What is use tax based on?** For purposes of computing the amount of use tax due, the value of the article used is the measure of tax. The value of the article used is generally the purchase price. If the purchase price does not represent the true value of the article used, the value must be deter-

mined as nearly as possible according to the retail selling price at place of use of similar vehicles of like quality and character. RCW 82.12.010.

(3) **Use of automated system to verify measure of tax.** When a person applies to transfer the certificate of title of a vehicle, county auditors, their subagents, or the department of licensing must verify that the purchase price represents the true value. In doing so, county auditors, their subagents, or the department of licensing compare the vehicle's purchase price to the average retail value of comparable vehicles using an automated valuing system. The automated valuing system identifies the average retail value using a data base that is provided by a regional industry standard source specializing in providing valuation services to local, state, and federal governments, and the private sector.

In limited situations, the automated valuing system's data base may not provide the average retail value for a vehicle. For example, the automated valuing system's data base does not provide average retail value information for collectible vehicles or vehicles that are over twenty years of age. In the absence of an average retail value, county auditors, their subagents, or the department of licensing will determine the true value as nearly as possible according to the retail selling price at place of use of similar vehicles of like character and quality. To assist in this process, the department of revenue and the department of licensing may approve the use of alternative valuing authorities as necessary.

(4) **What happens when the purchase price is presumed to represent the true value?** County auditors, their subagents, or the department of licensing will use the purchase price to compute the amount of use tax due when the purchase price represents the vehicle's true value. County auditors, their subagents, or department of licensing will presume the purchase price represents the vehicle's true value if one of the following conditions is met:

(a) The vehicle's average retail value, as provided by the automated valuing system, is less than $5,000.

For example, a person buys a vehicle for $2,800. The automated valuing system indicates that the vehicle's average retail value is $4,900. The purchase price is presumed to represent the vehicle's true value because the average retail value is less than $5,000.

(b) The vehicle's purchase price is not more than $2,000 below the average retail value as provided by the automated valuing system.

For example, a person buys a used vehicle for $10,000. The automated valuing system indicates the vehicle's average retail value is $11,500. When compared to the average retail value, the purchase price is not more than $2,000 below the average retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(5) **What happens when the purchase price is not presumed to represent the true value?** If the vehicle's purchase price is not presumed to be the true value as explained in subsection (4) of this rule, a person may remit use tax based on the average retail value as indicated by the automated valuing system or substantiate the true value of the vehicle using any one of the following methods.

(a) **Industry-accepted pricing guide.** A person applying to transfer a certificate of title may provide the county auditor, a subagent, or the department of licensing with documentation from one of the various industry-accepted pricing guides. The value from the industry-accepted pricing guide must represent the retail value of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The purchase price is presumed to represent the vehicle's true value if the purchase price is not more than $2,000 below the retail value.

For example, a person buys a vehicle for $3,500. The automated valuing system indicates that the vehicle's average retail value is $5,700. An industry-accepted pricing guide shows that the retail value of a similarly-equipped vehicle in a comparable condition of the same make, model, and year is $5,000. When compared to the retail value established by the industry-accepted pricing guide, the purchase price is not more than $2,000 below the retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(b) **Declaration of buyer and seller.** A person applying to transfer a certificate of title may provide to the county auditor, a subagent, or the department of licensing a Declaration of Buyer and Seller Regarding Value of Used Vehicle Sale (REV 32 2501) to substantiate that the purchase price is the true value of the vehicle. The declaration must be signed by both the buyer and the seller and must certify to the purchase price and the vehicle's condition under penalty of perjury. The department may review a declaration and assess additional tax, interest, and penalties. A person may ((~~appeal~~)) seek review of an assessment to the department as provided in WAC 458-20-100 (((~~Appeals~~)) Informal administrative reviews).

The declaration is available on the department's web site at dor.wa.gov. It is also available at all vehicle licensing locations, department's field offices, or by writing:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478

(c) **Written appraisal.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a written appraisal from an automobile dealer, insurance or other vehicle appraiser to substantiate the true value of the vehicle. If an automobile dealer performs the appraisal, the dealer must be currently licensed with the department of ((~~licensing's~~)) licensing dealer services division or be a licensed vehicle dealer in another jurisdiction.

The written appraisal must appear on company stationery or have the business card attached and include the vehicle description, including the vehicle make, model, and identification number (VIN). The person performing the appraisal must certify that the stated value represents the retail selling price of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The department may review an appraisal and assess additional tax, interest, and penalties. A person may ((~~appeal~~)) seek review of an assessment to the department as provided in WAC 458-20-100 (((~~Appeals~~)) Informal administrative reviews).

(d) **Declaration of use tax.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a Declaration of Use Tax (REV 32 2486e) to substantiate the true value of the vehicle. An authorized employee of the department must complete the declaration. Determining the true value may require a visual inspection that is not available at all department locations.

(e) **Repair estimate.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a written repair estimate, prepared by an auto repair or auto body repair business. This estimate will then be used to assist with determining the true value of the vehicle. The written estimate must appear on company stationery or have the business card attached. In addition, the written estimate must include the vehicle description, including the vehicle make, model, and identification number (VIN), and an itemized list of repairs. The department may review an appraisal and assess additional tax, interest, and penalties. A person may ((~~appeal~~)) seek review of an assessment to the department as provided in WAC 458-20-100 (((~~Appeals~~)) Informal administrative reviews).

The purchase price is presumed to represent the true value if the total of the purchase price and the repair estimate is not more than $2,000 below the average retail value. For example, a person purchases a vehicle with extensive bumper damage for $1,700. The automated valuing system indicates that the vehicle's average retail value is $6,000. An estimate from an auto body repair business indicates a cost of $2,500 to repair the bumper damage. The purchase price is presumed to represent the vehicle's true value because when the total of the purchase price and the repair estimate ($1,700 + $2,500 = $4,200) is compared to the average retail value, the total is not more than $2,000 below the average retail value ($6,000).

AMENDATORY SECTION (Amending WSR 87-23-008, filed 11/6/87)

WAC 458-20-19301 Multiple activities tax credits. (1) Introduction. Under the provisions of RCW 82.04.440 as amended effective August 12, 1987, Washington state's business and occupation taxes imposed under chapter 82.04 RCW were adjusted to achieve constitutional equality in the tax treatment of persons engaged in intrastate commerce (within this state only) and interstate commerce (between Washington and other states). The business and occupation tax system taxes the privilege of engaging in specified business activities based upon "gross proceeds of sales" (RCW 82.04.070) and the "value of products" (RCW 82.04.450) produced in this state. In order to maintain the integrity of this taxing system, to eliminate the possibility of discrimination between taxpayers, and to provide equal and uniform treatment of persons engaged in extracting, manufacturing, and/or selling activities regardless of where performed, a statutory system of internal and external tax credits was adopted, effective August 12, 1987. This tax credits system replaces the multiple activities exemption which, formerly, assured that the gross receipts tax would be paid only once by persons engaged in more than one taxable activity in this state in connection with the same end products. Unlike the multiple activities exemption which only prevented multiple taxation from within this state, the credits of the new system apply for gross receipts taxes paid to other taxing jurisdictions outside this state as well.

(2) Definitions. For purposes of this ((~~section~~)) rule the following terms will apply.

(a) "Credits" means the multiple activities tax credit(s) authorized under this statutory system also referred to as MATC.

(b) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is not, pursuant to law or custom, separately stated from the selling price.

(c) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed by RCW 82.04.230 (tax on extractors) and similar gross receipts taxes paid to other states.

(d) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes:

(i) The taxes imposed in RCW 82.04.240 (tax on manufacturers) and subsections (2) through (5) and (7) of RCW 82.04.260 (tax on special manufacturing activities) and

(ii) Similar gross receipts taxes paid to other states.

The term "manufacturing tax," by nature, includes a gross receipts tax upon the combination of printing and publishing activities when performed by the same person.

(e) "Selling tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a wholesaler or retailer of tangible personal property in this state or any other state. The term "selling" has its common and ordinary meaning and includes the acts of making either wholesale sales or retail sales or both.

(f) "State" means:

(i) The state of Washington,

(ii) A state of the United States other than Washington or any political subdivision of such other state,

(iii) The District of Columbia,

(iv) Territories and possessions of the United States, and

(v) Any foreign country or political subdivision thereof.

(g) "Taxes paid" means taxes legally imposed and actually paid in terms of money, credits, or other emoluments to a taxing authority of any "state." The term does not include taxes for which liability for payment has accrued but for which payment has not actually been made. This term also includes business and occupation taxes being paid to Washington state together with the same combined excise tax return upon which MATC are taken.

(h) "Business," "manufacturer," "extractor," and other terms expressly defined in RCW 82.04.020 through 82.04.212 have the meanings given in those statutory sections regardless of how the terms may be used for other states' taxing purposes.

(3) Scope of credits. This integrated tax credits system is intended to assure that gross receipts from sales or the value of products determined by such gross receipts are taxed only one time, whether the activities occur entirely within this state or both within and outside this state. External tax credits arise when activities are taxed in this state and similar activities with respect to the same products produced and sold are also subject to similar taxes outside this state. There are five ways in which external tax credits may arise because of taxes paid in other states.

(a) Products or ingredients are extracted (taken from the ground) in this state and are manufactured or sold and delivered in another state which imposes a gross receipts tax on the latter activity(s). The credit created by payment of the other state's tax may be used to offset the Washington extracting tax liability.

(b) Products are manufactured, in whole or in part, in this state and sold and delivered in another state which imposes a gross receipts tax on the selling activity. Again, payment of the other state's tax may be taken as a credit against the Washington manufacturing tax liability.

(c) Conversely, products or ingredients are extracted outside this state upon which a gross receipts tax is paid in the state of extracting, and which are sold and delivered to buyers here. The other state tax payment may be taken as a credit against Washington's selling taxes.

(d) Similarly, products are manufactured, in whole or in part, outside this state and sold and delivered to buyers here. Any other state's gross receipts tax on manufacturing may be taken as a credit against Washington's selling tax.

(e) Products are partly manufactured in this state and partly in another state and are sold and delivered here or in another state. The combination of all other states' gross receipts taxes paid may be taken as credits against Washington's manufacturing and/or selling taxes.

Thus, the external tax credits may arise in the flow of commerce, either upstream or downstream from the taxable activity in this state, or both. Products extracted in another state, manufactured in Washington state, and sold and delivered in a third state may derive credits for taxes paid on both of the out-of-state activities.

Internal tax credits arise from multiple business activities performed entirely within this state, all of which are now subject to tax, but with the integrated credits offsetting the liabilities so that tax is only paid once on gross receipts. Under this system Washington extractors and manufacturers who sell their products in this state at wholesale and/or retail must report the value of products or gross receipts under each applicable tax classification. Credits may then be taken in the amount of the extracting and/or manufacturing tax paid to offset the selling taxes due. There are three ways in which credits may arise because of taxes paid exclusively in this state.

(f) Products are extracted in Washington and directly sold in Washington. Extracting business and occupation tax and selling business and occupation tax must both be reported but the payment of the former is a credit against the latter.

(g) Similarly, ingredients are extracted in Washington and manufactured into new products in this state. The extracting business and occupation tax reported and paid may be taken as a credit against manufacturing tax reported.

(h) Products manufactured in Washington are sold in Washington. Again, the payment of the manufacturing tax reported may be credited against the selling tax (wholesaling and/or retailing business and occupation tax) reported.

All of the external and internal tax credits derived from any flow of commerce may be used, repeatedly if necessary, to offset other tax liabilities related to the production and sale of the same products.

(4) Eligibility for taking credits. Statutory law places the following eligibility requirements and limitations upon the MATC system.

(a) The amount of the credit(s), however derived, may not exceed the Washington tax liability against which the credit(s) may be used. Any excess of credit(s) over liability may not be carried over or used for any purpose.

(b) The person claiming the credit(s) must be the same person who is legally obligated to pay both the taxes which give rise to the credit(s) and the taxes against which the credit is claimed. The MATC is not assignable.

(c) The taxes which give rise to the credit(s) must be actually paid before credit may be claimed against any other tax liability. Tax liability merely accrued is not creditable.

(d) The business activity subject to tax, and against which credit(s) is claimed, must involve the same ingredients or product upon which the tax giving rise to the credit(s) was paid. The credits must be product-specific.

(e) The effective date for developing and claiming credit(s) for products manufactured in Washington state and sold and delivered in other states which impose gross receipts selling taxes is June 1, 1987.

(f) The effective date for developing and claiming all credits other than those explained in subsection (e) above, is August 12, 1987.

(g) Persons who are engaged only in making wholesale or retail sales of tangible personal property which they have not extracted or manufactured are not entitled to claim MATC. Also, persons engaged in rendering services in this state are not so entitled, even if such services have been defined as "retail sales" under RCW 82.04.050. (See WAC 458-20-194 for rules governing apportionment of gross receipts from interstate services.)

(5) Other states' qualifying taxes. The law defines "gross receipts tax" paid to other states to exclude income taxes, value added taxes, retail sales taxes, use taxes, or other taxes which are generally stated separately from the selling price of products sold. Only those taxes imposed by other states which include gross receipts of a business activity within their measure or base are qualified for these credit(s). The burden rests with the person claiming any MATC for other states' taxes paid to show that the other states' tax was a tax on gross receipts as defined herein. Gross receipts taxes generally include:

(a) Business and occupation privileges taxes upon extracting, manufacturing, and selling activities which are similar to those imposed in Washington state in that the tax measure or base is not reduced by any allocation, apportionment, or other formulary method resulting in a downward adjustment of the tax base. If costs of doing business may be

generally or routinely deducted from the tax base, the tax is not one which is similar to Washington state's gross receipts tax.

(b) Severance taxes measured by the selling price of the ingredients or products severed (oil, logs, minerals, natural products, etc.) rather than measured by costs of production, stumpage values, the volume or number of units produced, or some other formulary tax base.

(c) Business franchise or licensing taxes measured by the gross volume of business in terms of gross receipts or other financial terms rather than units of production or the volume of units sold.

Other states' tax payments claimed for MATC must be identifiable with the same ingredients or products which incurred tax liability in Washington state, i.e., they must be product specific.

(d) The department will periodically publish an excise tax bulletin listing current taxes in other jurisdictions which are either qualified or disqualified for credit under the MATC system.

(6) Deductions in combination with MATC. Effective August 12, 1987, with the enactment of the MATC system, the liability for actual payment of tax by persons who extract, manufacture, and sell products in this state was shifted from the selling activity (wholesaling or retailing) to the production activity (extracting and/or manufacturing). As explained, the payment of the production taxes may now be credited against the liability for selling taxes on the same products. However, the deductions from tax provided by chapter 82.04 RCW (business and occupation tax deductions) may still be taken before tax credits are computed and used, with noted exceptions. In order for the MATC system to result in the correct computation of tax liabilities and credit applications, the tax deductions which may apply for any reporting period must be taken equally against both levels of tax liability reported, i.e., at both the production and selling levels. Failure to report tax deductions in this manner will result in overreporting tax due and may result in overpayment of tax. Thus, with the exceptions noted below, tax deductions formerly reported only against selling activities should now be reported against production activities as well. All such deductions, the result of which is to reduce the measure of tax reported, should be taken against both the production taxes (extracting or manufacturing) and the selling taxes (wholesaling and/or retailing) equally.

(a) Example:

(i) A company manufactures products in Washington which it also sells at wholesale for $5,000 and delivers to a buyer in this state. The buyer defaults on part of the payment and the seller incurs a $2,000 credit loss which it writes off as a bad debt during the tax reporting period. The bad debt deduction provided by RCW 82.04.4284 must be shown on both the manufacturing-other line and the wholesaling-other line of the combined excise tax return. Taking the deduction on only one of those activities results in overreported tax liability on the $2,000 loss.

(b) Exceptions. The deductions generally provided by RCW 82.04.4286, for interstate or foreign sales (where goods are sold and delivered outside this state) may not be taken against tax reported at the production level (extracting or manufacturing). This is because the MATC system itself provides for tax credits instead of tax deductions on gross receipts from transactions involving goods produced in this state and sold in interstate or foreign commerce. Thus, deductions which eliminate transactions from tax reporting may be taken only against selling taxes.

(c) Applicable deductions should be shown on the front of the combined excise tax return (Column #3) on each applicable tax classification line and detailed on the back side of the return, as usual, before MATC is taken.

(d) It is not the intent of the MATC law to invalidate or nullify the business and occupation tax exemption for taxable amounts below minimum (see WAC 458-20-104). Thus any person whose gross receipts or value of products reported under any single tax classification with respect to the production and sale of any product is less than the minimum taxable amount will not incur tax liability merely because of the requirement to report those gross receipts or value of products on the same product under other tax classifications as well.

(i) Example: A person both manufactures and sells at wholesale $2,000 worth of widgets in the first quarter of a tax year. The requirement to report the $2,000 tax measure under both the manufacturing-other classification and the wholesaling-other classification gives the false appearance of $4,000 in gross receipts during this quarter. However, only the amount reported under the manufacturing-other classification need be considered to determine eligibility for the amount-below-minimum exemption.

(7) How and when to take MATC. The credits available under the MATC system are all to be taken on the combined excise tax return beginning in August, 1987 and thereafter. The return form has been modified to accommodate these credits. Each tax return upon which MATC has been taken must be accompanied by a completed Schedule C. This schedule details the business activities and credits computations. The line by line instructions insure that no more or no less credits are claimed than are authorized under the law.

(8) Consolidation of tax liabilities and credits. Under the MATC system a person's Washington tax liability for all activities involved in that person's production and sale of the same ingredients or products (extracting, and/or manufacturing, and/or selling) is to be reported only at the time of the sale of such products or at the time of that person's own use of such products for commercial or industrial consumption. All of the taxable activities are to be reported on that same periodic excise tax return. Also, all external and internal tax credits derived from the payment of any gross receipts taxes on any of these activities are to be taken at that time. Thus, the taxable activities and the tax credits are procedurally consolidated for reporting. This consolidation generally overcomes any need to track ingredients or products from their extraction to their sale. It also overcomes any need to report and pay Washington tax liability during one reporting period and to take credits against that tax liability in a different reporting period. Thus, except as noted below, there can be no credit carryovers or carrybacks under this system.

(a) Exception. Where different tax reporting periods are assigned by Washington state and another state to a company doing business both within and outside Washington state, the

other state's gross receipts tax on the same products may not yet have been paid when the Washington tax is due for reporting and payment. In such cases the Washington tax due must be timely reported and paid during the period in which the sale is made. The external credit arising later, when the other state's tax is paid, may be taken as a credit against any Washington business and occupation tax reported during that later period. Thus, the limitation that the MATC must be product-specific by being limited to the amount of Washington tax paid on the same products does not mean that the credit(s) can only be used against precisely those same Washington taxes paid.

(i) In the situation described in subsection (a) above, if there is not sufficient Washington business and occupation tax due for payment in the later period, when the external tax credit arises, to allow for utilization of the entire credit, the amount of any overage may be carried forward and taken against Washington taxes reported in subsequent reporting periods until fully used.

When filing such exception returns, the full amount of any credits should be claimed, even though that credit amount will exceed the amount of tax liability reported for that period. The department of revenue itself will make the necessary adjustments and will perform the carrying over of any excess credits into future reporting periods.

(ii) In the same situation, if the person entitled to claim such credit overage is no longer engaged in taxable business in this state or for any other reason does not incur sufficient Washington business and occupation tax liability to fully utilize the perfected credit overage, a tax refund will be issued.

(iii) No tax refunds, MATC carryovers, or MATC carrybacks will be allowed under any circumstances other than those explained above.

(b) Special circumstances may arise where it is not possible to specifically identify ingredients or products as they move from production to sale (e.g., fungible commodities from various sources stored in a common warehouse). In such cases the taxpayer should seek advance approval from the department, in writing, for tax reporting and credit taking on a test period, formulary, or volume percentage basis, subject to audit verification.

(9) Recordkeeping requirements. Persons claiming the MATC must keep and preserve such records and documents as may be necessary to prove their entitlement to any credits taken under this system (RCW 82.32.070). It is not required to submit copies of such proofs when credits are claimed or together with the Schedule C detail. Rather, such records must be kept for a period no less than five years from the date of the tax return upon which the related tax credits are claimed. Such records are fully subject to audit for confirmation of the validity and amounts of credits taken. Records which must be preserved by persons claiming external tax credits include:

(a) Copies of sales contracts, or other written or memorialized evidence of any sales agreements, including purchase and billing invoices showing the origin state and destination state of products sold.

(b) Copies of shipping or other delivery documents identifying the products sold and delivered, reconcilable with the selling documents of subsection (a) above, if appropriate.

(c) Copies of production reports, transfer orders, and similar such documents which will reflect the intercompany or interdepartmental movement of extracted ingredients or manufactured products where no sale has occurred.

(d) Copies of tax returns or reports filed with other states' taxing authorities showing the kinds and amounts of taxes paid to such other states for which MATC is claimed.

(e) Copies of ((~~cancelled~~)) canceled checks or other proofs of actual tax payment to the other state(s) giving rise to the MATC claimed.

(f) Copies of any other state(s) taxing statutes, laws, ordinances, and other appropriate legal authorities necessary to establish the nature of the other states' tax as a gross receipts tax, as defined in this ((~~section~~)) rule.

(g) Failure to keep and preserve proofs of entitlement to the MATC will result in the denial of credits claimed and the assessment of all taxes offset or reduced by such credits as well as the additional assessment of interest and penalties as required by law. (See RCW 82.32.050.)

(10) MATC in combination with other credits. The tax credits authorized under this system may be taken in combination with other tax credits available under Washington law. Such other credit programs, however, authorize credit carryovers from reporting period to period until the credits are fully utilized. Thus, the MATC must be computed and used to offset business and occupation tax liabilities during any tax reporting period before any other program credits to which a claimant may be entitled are claimed or applied. Failure to compute and take the MATC before applying other available credits may result in the loss of the other credit benefits.

(11) Superseding provisions. The MATC provisions of this ((~~section~~)) rule supersede and control the provisions of other ((~~sections~~)) rules of chapter 458-20 WAC (other tax rules) relating to intrastate, interstate, and foreign transactions to the extent that such provisions are or appear to be contrary or conflicting.

(12) Unique or special credit situations—((~~Appeals~~)) Reviews. The provisions of this ((~~section~~)) rule generally explain the nature of the MATC system and the tax credit qualifications, limitations, and claiming procedures. The complexity of the integrated tax reporting and credit taking procedures may develop situations or questions which are not addressed herein. Such matters and requests for specialized rulings should be submitted to the department of revenue for prior determination before credits are claimed. Generally, prior determinations will be provided within sixty days after the department receives the information necessary to make such a ruling. Adverse rulings, tax credit denials, or tax assessments resulting from audits or other examinations of returns upon which the MATC is claimed may be administratively ((~~appealed~~)) reviewed under the provisions of chapter 82.32 RCW and WAC 458-20-100.

AMENDATORY SECTION (Amending WSR 14-22-023, filed 10/27/14, effective 11/27/14)

WAC 458-20-217 Lien for taxes. (1) **Introduction.** This rule provides an overview of the administrative collection remedies and procedures available to the department of revenue (department) to collect unpaid and overdue tax lia-

bilities. It discusses tax liens and the liens that apply to probate, insolvency, assignments for the benefit of creditors, bankruptcy and public improvement contracts. The rule also explains the personal liability of persons in control of collected but unpaid sales tax. Although the department may use judicial remedies to collect unpaid tax, most of the department's collection actions are enforced through the administrative collection remedies discussed in this rule.

(2) **Tax liens.** The department is not required to obtain a judgment in court to have a tax lien. A tax lien is created when a warrant issued under RCW 82.32.210 is filed with a superior court clerk who enters it into the judgment docket. A copy of the warrant may be filed in any county in this state in which the department believes the taxpayer has real and/or personal property. The department is not required to give a taxpayer notice prior to filing a tax warrant. *Peters v Sjoholm*, 95 Wn.2d 871, 877, 631 P.2d 937 (1981) *appeal dismissed, cert. denied* 455 U.S. 914 (1982). The tax lien is an encumbrance on property. The department may enforce a tax lien by administrative levy, seizure or through judicial collection remedies.

(a) **Attachment of lien.** The filed warrant becomes a specific lien upon all personal property used in the conduct of the business and a general lien against all other real and personal property owned by the taxpayer against whom the warrant was issued.

(i) The specific lien attaches to all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer. Other personal property includes both tangible and intangible property. For example, the specific lien attaches to business assets such as accounts receivable, chattel paper, royalties, licenses and franchises. The specific lien also attaches to property used in the business which is owned by persons other than the taxpayer who have a beneficial interest, direct or indirect, in the operation of the business. (See subsection (3) of this rule for what constitutes a beneficial interest.) The lien is perfected on the date it is filed with the superior court clerk. The lien does not attach to property used in the business that was transferred prior to the filing of the warrant. It does attach to all property existing at the time the warrant is filed as well as property acquired after the filing of the warrant. No sale or transfer of such personal property affects the lien.

(ii) The general lien attaches to all real and personal nonbusiness property such as the taxpayer's home and nonexempt personal vehicles.

(b) **Lien priorities.** The department does not need to levy or seize property to perfect its lien. The lien is perfected when the warrant is filed. The tax lien is superior to liens that vest after the warrant is filed.

(i) The lien for taxes is superior to bona fide interests of third persons that vested prior to the filing of the warrant if such persons have a beneficial interest in the business.

(ii) The lien for taxes is also superior to any interest of third persons that vested prior to the warrant if the interest is a mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as the trustee for unsecured creditors of the taxpayer mentioned in the warrant.

(iii) In most cases, to have a vested or perfected security interest in personal property, the secured party must file a UCC financing statement indicating its security interest. RCW 62A.9-301. See RCW 62A.9-302 for the exceptions to this general rule. The financing statement must be filed prior to the filing of the tax warrant for the lien to be superior to the department's lien.

(c) **Period of lien.** A filed tax warrant creates a lien that is enforceable for the same period as a judgment in a civil case that is docketed with the clerk of the superior court. RCW 82.32.210(4). A judgment lien expires ten years from the date of filing. RCW 4.56.310. The department may extend the lien for an additional ten years by filing a petition for an order extending the judgment with the clerk of the superior court. The petition must be filed within ninety days of the expiration of the original ten-year period. RCW 6.17.020.

(3) **Persons who have a beneficial interest in a business.** A third party who receives part of the profit, a benefit, or an advantage resulting from a contract or lease with the business has a beneficial interest in the operation of the business. A party whose only interest in the business is securing the payment of debt or receiving regular rental payments on equipment does not have a beneficial interest. Also, the mere loaning of money by a financial institution to a business and securing that debt with a UCC filing does not constitute a beneficial interest in the business. Rather, a party who owns property used by a delinquent taxpayer must also have a beneficial interest in the operation of that business before the lien will attach to the party's property. The definition of the term "beneficial interest" for purposes of determining lien priorities is not the same as the definition used for tax free transfers described in WAC 458-20-106.

(a) **Third party.** A third party is simply a party other than the taxpayer. For example, if the taxpayer is a corporation, an officer or shareholder of that corporation is a "third party" with a beneficial interest in the operation of the business. If the corporate insider has a security interest in property used by the business, the tax lien will be superior even if the corporate insider's lien was filed before the department's lien.

(b) **Beneficial interest of lessor.** In some cases a lessor or franchisor will have a beneficial interest in the leased or franchised business. For example, an oil company that leases a gas station and other equipment to an operator and requires the operator to sell its products is a third party with a beneficial interest in the business. Factors which support a finding of a beneficial interest in a business include the following:

(i) The business operator is required to pay the lessor or franchisor a percentage of gross receipts as rent;

(ii) The lessor or franchisor requires the business operator to use its trade name and restricts the type of business that may be operated on the premises;

(iii) The lease places restrictions on advertising and hours of operation; and/or

(iv) The lease requires the operator to sell the lessor's products.

(c) A third party who has a beneficial interest in a business with a filed lien is not personally liable for the amounts owing. Instead, the amount of tax, interest and penalties as

reflected in the warrant becomes a specific lien upon the third party's property that is used in the business.

(4) **Notice and order to withhold and deliver.** A tax lien is sufficient to support the issuance of a writ of garnishment authorized by chapter 6.27 RCW. RCW 82.32.210(4). A tax lien also allows the department to issue a notice and order to withhold and deliver. A notice and order to withhold and deliver (order) is an administrative garnishment used by the department to obtain property of a taxpayer from a third party such as a bank or employer. See RCW 82.32.235. The department may issue an order when it has reason to believe that a party is in the possession of property that is or shall become due, owing or belonging to any taxpayer against whom a warrant has been filed.

(a) **Service of order.** The department may serve an order to withhold and deliver to any person, or to any political subdivision or department of the state. The order may be served by the sheriff or deputy sheriff of the county where service is made, by any authorized representative of the department, or by certified mail.

(b) **Requirement to answer order.** A person upon whom service has been made is required to answer the order in writing within twenty days of service of the order. The date of mailing or date of personal service is not included when calculating the due date of the answer. All answers must be true and made under oath. If an answer states that it cannot presently be ascertained whether any property is or shall become due, owing, or belonging to such taxpayer, the person served must answer when such fact can be ascertained. RCW 82.32.235.

(i) If the person served with an order possesses property of the taxpayer subject to the claim of the department, the party must deliver the property to the department or its duly authorized representative upon demand. If the indebtedness involved has not been finally determined, the department will hold the property in trust to apply to the indebtedness involved or for return without interest in accordance with the final determination of liability or nonliability. In the alternative, the department must be furnished a satisfactory bond conditioned upon final determination of liability. RCW 82.32.235.

(ii) If the party upon whom service has been made fails to answer an order to withhold and deliver within the time prescribed, the court may enter a default judgment against the party for the full amount claimed owing in the order plus costs. RCW 82.32.235.

(c) **Continuing levy.** A notice and order to withhold and deliver constitutes a continuing levy until released by the department. RCW 82.32.237.

(d) **Assets that may be attached.** Both tangible assets, as a vehicle, and intangible assets may be attached. Examples of intangible assets that may be attached by an order to withhold and deliver include, but are not limited to, checking or savings accounts; accounts receivable; refunds or deposits; contract payments; wages and commissions, including bonuses; liquor license deposits; rental income; dealer reserve accounts held by service stations or auto dealers; and funds held in escrow pending sale of a business. Certain insurance proceeds are subject to attachment such as the cash surrender value of a policy. The department may attach funds in a joint account that are owned by the delinquent taxpayer. Funds in a joint account with the right of survivorship are owned by the depositors in proportion to the amount deposited by each. RCW 30.22.090. The joint tenants have the burden to prove the separate ownership.

(e) **Assets exempt from attachment.** Examples of assets which are not attachable include Social Security, railroad retirement, welfare, and unemployment benefits payable by the federal or state government.

(5) **Levy upon real and/or personal property.** The department may issue an order of execution, pursuant to a filed warrant, directing the sheriff of the county in which the warrant was filed to levy upon and sell the real and/or personal property of the taxpayer in that county. RCW 82.32.220. If the department has reason to believe that a taxpayer has personal property in the taxpayer's possession that is not otherwise exempt from process or execution, the department may obtain a warrant to search for and seize the property. A search warrant is obtained from a superior or district court judge in the county in which the property is located. See RCW 82.32.245.

(6) **Probate, insolvency, assignment for the benefit of creditors or bankruptcy.** In all of these cases or conditions, the claim of the state for unpaid taxes and increases and penalties thereon, is a lien upon all real and personal property of the taxpayer. RCW 82.32.240. All administrators, executors, guardians, receivers, trustees in bankruptcy, or assignees for the benefit of creditors are required to notify the department of such administration, receivership, or assignment within sixty days from the date of their appointment and qualification. In cases of insolvency, this includes the duty of the person who is winding down the business to notify the department.

(a) The state does not have to take any action to perfect its lien. The lien attaches the date of the assignment for the benefit of creditors or of the initiation of the probate or bankruptcy. In cases of insolvency, the lien attaches at the time the business becomes insolvent. The lien, however, does not affect the validity or priority of any earlier lien that may have attached in favor of the state under any other provision of the Revenue Act.

(b) Any administrator, executor, guardian, receiver, or assignee for the benefit of creditors who does not notify the department as provided above is personally liable for payment of the taxes and all increases and penalties thereon. The personal liability is limited to the value of the property subject to administration that otherwise would have been available to pay the unpaid liability.

(c) In probate cases in which a surviving spouse or surviving domestic partner is separately liable for unpaid taxes and increases and penalties thereon, the department does not need to file a probate claim to protect the state's interest against the surviving spouse or surviving domestic partner. The department may collect from the separate property of the surviving spouse or surviving domestic partner and any assets formerly community property or property of the domestic partnership which become the property of the surviving spouse or the surviving domestic partner. If the deceased spouse or deceased domestic partner and/or the community or domestic partnership also was liable for the tax

debt, the claim also could be asserted in the administration of the estate of the deceased spouse or deceased domestic partner.

(7) **Lien on retained percentage of public improvement contracts.** Every public entity engaging a contractor under a public improvement project of thirty-five thousand dollars or more, shall retain five percent of the total contract price, including all change orders, modifications, etc. This retainage is a trust fund held for the benefit of the department and other statutory claimants. In lieu of contract retainage, the public entity may require a bond. All taxes, increases, and penalties due or to become due under Title 82 RCW from a contractor or the contractor's successors or assignees with respect to a public improvement contract of thirty-five thousand dollars or more shall be a lien upon the amount of the retained percentage withheld by the disbursing officer under such contract. RCW 60.28.040.

(a) **Priorities.** The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under the public improvement contract have a first priority lien against the bond or retainage. The department's lien for taxes, increases, and penalties due or to become due under such contract is prior to all other liens. The amount of all other taxes, increases and penalties due from the contractor is a lien upon the balance of the retained percentage after all other statutory lien claims have been paid. RCW 60.28.040.

(b) **Release of funds.** Upon final acceptance by the public entity or completion of the contract, the disbursing officer shall contact the department for its consent to release the funds. The officer cannot make any payment from the retained percentage until the department has certified that all taxes, increases, and penalties due have been paid or are readily collectible without recourse to the state's lien on the retained percentage. RCW 60.28.050 and 60.28.051.

(8) **Personal liability for unpaid trust funds.** The retail sales tax and all spirits taxes under RCW 82.08.150 are to be held in trust. RCW 82.08.050. As a trust fund, the retail sales tax and spirits taxes are not to be used to pay other corporate or personal debts.

Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid retail sales tax funds or spirits taxes funds collected and held in trust under RCW 82.08.050 from a limited liability business entity and that entity is terminated, dissolved, abandoned, or insolvent, RCW 82.32.145 authorizes the department to impose personal liability against any or all of the responsible individuals. For a responsible individual who is the current or a former chief executive or chief financial officer, personal liability may be imposed regardless of fault or whether the individual was or should have been aware of the unpaid retail sales tax or spirits taxes liability. Collection authority and procedures prescribed in chapter 82.32 RCW apply to the collection of personal liability assessments.

(a) **Responsible individual.**

(i) A responsible individual includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(A) "Officer" means any officer or assistant officer of a corporation, including the president, vice-president, secretary, and treasurer.

(B) "Manager" has the same meaning as in RCW 25.15.-005.

(C) "Member" has the same meaning as in RCW 25.15.-005, except that the term only includes members of member-managed limited liability companies.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid sales tax liability reflected in a tax warrant issued by the department.

(A) A responsible individual may have "control and supervision" of collected retail sales tax or spirits taxes or the responsibility to report the tax under corporate bylaws, job description, or other proper delegation of authority. The delegation of authority may be established by written documentation or by conduct.

(B) Except for the current or a former chief executive or chief financial officer of a limited liability business entity, a responsible individual must have significant but not necessarily exclusive control or supervision of the trust funds. Neither a sales clerk who only collects the tax from the customer nor an employee who only deposits the funds in the bank has significant supervision or control of the retail sales tax or spirits taxes. An employee who has the responsibility to collect, account for, and deposit trust funds does have significant supervision or control of the tax.

(C) A person is not required to be a corporate officer or have a proprietary interest in the business to be a responsible individual.

(D) A member of the board of directors, a shareholder, or an officer may have trust fund liability if that person has the authority and discretion to determine which corporate debts should be paid and approves the payment of corporate debts out of the collected retail sales or spirits taxes trust funds.

(E) More than one person may have personal liability for the trust funds if the requirements for liability are present for each person.

(iii) Whenever a limited liability business entity with an unpaid tax warrant issued against it by the department has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the limited liability business entity with an unpaid tax warrant issued against it by the department.

(b) **Chief executive or chief financial officer.**

(i) For a responsible individual who is the current or a former chief executive or chief financial officer of a limited liability business entity, liability under this rule applies regardless of fault or whether the individual was or should have been aware of the unpaid retail sales tax or spirits taxes liability of the limited liability business entity. There is no "willfully fails to pay" requirement for chief executive officers and chief financial officers.

(ii) A responsible individual who is the current or a former chief executive or chief financial officer is liable under

this rule only for retail sales tax or spirits taxes liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's retail sales tax or spirits taxes to the department during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for retail sales tax or spirits taxes liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the department but was not the chief executive or chief financial officer.

(iii) "Chief executive" means: The president of a corporation; or for other entities or organizations other than corporations or if a corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(iv) "Chief financial officer" means: The treasurer of a corporation; or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(c) **Other responsible individuals.**

(i) For any other responsible individual, liability under this rule applies only if he or she willfully fails to pay or to cause to be paid to the department the retail sales tax or spirits taxes due from the limited liability business entity.

(A) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action. Intent to defraud or bad motive is not required. For example, using collected retail sales tax or spirits taxes to pay other corporate obligations is a willful failure to pay the trust funds to the state.

(B) Depositing retail sales tax or spirits taxes funds in a bank account knowing that the bank might use the funds to off-set amounts owing to it is engaging in a voluntary course of action. It is a willful failure to pay if the bank exercises its right of set-off which results in insufficient funds to pay the corporate retail sales tax or spirits taxes that were collected and deposited in the account. To avoid personal liability in such a case, the responsible individual can set aside the collected retail sales tax or spirits taxes and not commingle it with other funds that are subject to attachment or set-off.

(C) If the failure to pay the trust funds to the state was due to reasons beyond an individual's control, the failure to pay is not willful. For example, if evidence is provided that the trust funds were unknowingly stolen or embezzled by another employee, the failure to pay is not considered willful. To find that a failure to pay the trust funds to the state was due to reasons beyond an individual's control, the facts must show both that the circumstances caused the failure to pay the tax and that the circumstances were beyond the individual's control.

(D) If a responsible individual instructs an employee or hires a third party to remit the collected retail sales tax or spirits taxes, the responsible individual is not relieved of personal liability for the tax if the tax is not paid.

(ii) Responsible individuals other than a current or former chief executive or chief financial officer of the limited liability business entity are liable under this rule only for retail sales tax or spirits taxes liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the department.

(d) **Limited liability business entity.**

(i) A "limited liability business entity" is a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(ii) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid retail sales tax or spirits taxes funds collected and held in trust under RCW 82.08.050 from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid state and local sales taxes, including penalties and interest on those taxes, against any or all of the responsible individuals.

(e) **Requirements for liability.** In order for a responsible individual to be held personally liable for collected and unpaid retail sales tax or spirits taxes:

(i) The tax must be the liability of a limited liability business entity.

(ii) The limited liability business entity must be terminated, dissolved, abandoned, or insolvent. Insolvent means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(f) **Extent of liability.** Trust fund liability includes the collected but unpaid retail sales tax or spirits taxes as well as the interest and penalties due on the tax.

(g) Except for the current or a former chief executive or chief financial officer of a limited liability business entity, an individual is only liable for trust funds collected during the period he or she had the requisite control, supervision, responsibility, or duty to remit the tax, plus interest and penalties on those taxes.

(h) **((~~Appeal~~)) Review of personal liability assessment.** Any person who receives a personal liability assessment is encouraged to request a supervisory conference if the person disagrees with the assessment. The request for the conference should be made to the department representative that issued the assessment or the representative's supervisor at the department's field office. A supervisory conference provides an opportunity to resolve issues with the assessment without further action. If unable to resolve the issue, the person receiving the assessment is entitled to administrative and

judicial appeal procedures. RCW 82.32.145(4). See also RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

While encouraged to request a supervisory conference, any person receiving a personal liability assessment may elect to forego the supervisory conference and proceed directly with an ((~~appeal~~)) administrative review of the assessment. Refer to WAC 458-20-100 for information about the department's informal administrative ((~~appeal procedures~~)) reviews, including how to timely file a petition for ((~~appeal~~)) review.

(9) **Notice of lien.** Under RCW 82.32.212, the department may issue a notice of lien to secure payment of a tax warrant issued under RCW 82.32.210. The notice of lien is an alternative to filing a lien under RCW 82.32.210. The notice of lien is against any real property in which the taxpayer has an ownership interest.

(a) To file a notice of lien the amount of the tax warrant at issue must exceed twenty-five thousand dollars. The department must determine that issuing the notice of tax lien would best protect the state's interest in collecting the amount due on the warrant.

(b) The notice of tax lien is recorded with a county auditor in lieu of filing a warrant with the clerk of a county superior court. A general lien authorized in RCW 82.32.210 can be filed (or refiled) if the department determines that filing or refiling the warrant is in the best interest of collecting the amount due on the tax warrant, or the warrant remains unpaid six months after the notice of lien is issued.

AMENDATORY SECTION (Amending WSR 08-14-038, filed 6/23/08, effective 7/24/08)

WAC 458-20-229 Refunds. (1) **Introduction.** This ((~~section~~)) rule explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes the statutory time limits for refunds and the interest rates that apply to those refunds.

References to a "refund application" in this ((~~section~~)) rule include a request for a credit against future tax liability as well as a refund to the taxpayer.

Examples provided in this ((~~section~~)) rule should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What are the time limits for a tax refund or credit?**

(a) **Time limits.** No refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made or examination of records by the department is completed. See RCW 82.32.060. This is a nonclaim statute rather than a statute of limitations. This means a valid application must be filed within the statutory period, which may not be extended or tolled, unless a waiver extending the time for assessment has been entered into as described in (c) of this subsection.

For example, a refund or credit may be granted for any overpayment made in a shaded year in the following chart:

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
					Refund application is filed no later than December 31st

(b) **Relation back to date paid.** Because the time limits relate to the date the taxes, penalties, or interest is paid, a refund application can be timely even though the payment concerned liabilities for a tax year normally outside the time limits. For example, Taxpayer P owes $1,000 in B&O tax for activity undertaken in December 2000. In January 2001, Taxpayer P makes an arithmetic error and submits a payment of $1,500 with its December 2000 tax return. In December 2005, Taxpayer P requests a refund of $500 for the overpayment of taxes for the December 2000 period. This request is timely because the overpayment occurred within the time limits, even though the payment concerned tax liabilities incurred (December 2000) outside the time limits.

Fact situations can be complicated. For example, Taxpayer P pays B&O taxes in Years 1 through 4. The department subsequently conducts an audit of Taxpayer P that includes Years 1-4. The audit is completed in Year 5. As a result of the audit, the department issues an assessment in Year 5 for $50,000 in additional retail sales taxes that were due from Years 1-4. Taxpayer P pays the assessment in full in Year 6. In Year 10, Taxpayer P files an application requesting a refund of B&O taxes. Taxpayer P's application is timely because it relates to a payment (payment of the assessment in Year 6) made no more than four years before the year in which the application is filed. It does not matter that the taxes relate to years outside the time limits; the actual payment occurred within four years before the refund application. Nor does it matter that the refund is based on an overpayment of B&O taxes while the assessment involved retail sales taxes, because both taxes relate to the same tax years. However, the amount of any refund is limited to $50,000 - the amount of the payment that occurred within the time limits.

Assume the same facts as described above. When the department reviews Taxpayer P's refund application, it determines that the refund is valid. After reviewing the new information, however, the department also determines that Tax-

payer P should have paid $20,000 in additional B&O taxes during Years 1-4. Because Taxpayer P paid $30,000 more than the amount properly due ($50,000 overpayment less $20,000 underpayment), the amount of the refund will be $30,000.

(c) **Waiver.** Under RCW 82.32.050 or 82.32.100, a taxpayer may agree to waive the time limits and extend the time for the assessment of taxes, penalties and interest. If the taxpayer executes such a waiver, the time limits for a refund or credit are extended for the same period.

(3) **How do I get a refund or credit?**

(a) **Departmental examination of returns.** If the department performs an examination of the taxpayer's records and determines that the taxpayer has overpaid taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. In this situation, the taxpayer does not need to apply for a refund.

(b) **Taxpayer application.**

(i) If a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may apply for a refund or credit. Refund application forms are available from the following sources:

• The department's internet web site at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

The application form should be submitted to the department at the following location:

Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476.

Taxpayers are encouraged to use the department's refund application form to ensure that all necessary information is provided for a timely valid application. However, while use of the department's application form is encouraged, it is not mandatory and any written request for refund or credit meeting the requirements of this ((~~section~~)) rule shall constitute a valid application. Filing an amended return showing an overpayment will also constitute an application for refund or credit, provided that the taxpayer also specifically identifies the basis for the refund or credit.

(ii) A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this ((~~section~~)) rule. An application must contain the following five elements:

(A) The taxpayer's name and UBI/TRA number must be on the application.

(B) The amount of the claim must be stated. Where the exact amount of the claim cannot be specifically ascertained at time of filing, the taxpayer may submit an application containing an estimated claim amount. Taxpayers must explain why the amount of the claim cannot be stated with specificity and how the estimated amount of the claim was determined.

(C) The tax type and taxable period must be on the application.

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this ((~~section~~)) rule expire.

(E) The signature of the taxpayer or the taxpayer's representative must be on the application. If the taxpayer is represented, the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an entity, every member or employee of that entity is authorized to represent the taxpayer. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an individual, only that individual is authorized to represent the taxpayer.

(iii) If the nonclaim statute has run prior to the filing of the application, the department will deny the application and notify the taxpayer.

(iv) If the department determines that the taxpayer is not entitled to a refund as a matter of law, the application may be denied without requiring substantiation. The taxpayer shall be responsible for maintaining substantiation as may eventually be needed should taxpayer ((~~appeal~~)) seek review.

(v) The taxpayer is encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must submit sufficient substantiation to support the claim for refund or credit before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within ninety days after such notice is sent, unless the documentation is under the control of a third party, not affiliated with or under the control of the taxpayer, in which case the taxpayer will have one hundred eighty days to provide the documentation. The department may request any other books, records, invoices or electronic equivalents and, where appropriate, federal and state tax returns to determine whether to accept or deny the claimed refund and to assess an existing deficiency.

(vi) In its discretion and upon good cause shown, the department may extend the period for providing substantiation upon its own or the taxpayer's request, which may not be unreasonably denied.

(vii) If the department does not receive the necessary substantiation within the applicable time period, the department shall deny the claim for lack of adequate substantiation and shall so notify the taxpayer. Any application denied for lack of adequate substantiation may be filed again with additional substantiation at any time before the time limits in subsection (2) of this ((~~section~~)) rule expire. Once the department determines that substantiation is sufficient, the department shall process the refund claim within ninety days, except that the department may extend the time of processing such claim upon notice to the taxpayer and explanation of why the claim cannot be completed within such time.

(viii) The following examples illustrate the refund application process:

(A) A taxpayer discovers in January 2005 that its June 2004 excise tax return was prepared using incorrect figures that overstated its sales, resulting in an overpayment of tax. The taxpayer files an amended June 2004 tax return with the department's taxpayer account administration division. The department will treat the taxpayer's amended June 2004 tax return as an application for a refund or credit of the amounts overpaid during that tax period, except that the taxpayer must also specifically identify the basis for the refund or credit and provide sufficient substantiation to support the claim for refund or credit. The taxpayer may satisfy this obligation by submitting a completed refund application form with its amended return or providing the additional required substantiation by other means.

(B) On December 31, 2005, a taxpayer files an amended return for the 2001 calendar year. The return includes changed figures indicating that an overpayment occurred, but does not provide any supporting substantiation. No written waiver of the time limits, under subsection (2)(c) of this ((~~section~~)) rule, for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ninety days or the application will be denied. If the taxpayer does not provide the necessary substantiation by the stated date, the claim will be denied and, if refiled, will not be granted because it is then past the nonclaim limit of the statute.

(C) Taxpayer submits a refund application on December 31, 2004, claiming that taxpayer overpaid use tax in 2000 on certain machinery and equipment obtained by the taxpayer at that time. No substantiation is provided with the application and no written waiver of the time limit, under subsection (2)(c) of this ((~~section~~)) rule, for this taxable period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ninety days or the application will be denied. The taxpayer does not respond by the stated date. The claim will be denied and, if refiled, will not be granted since it is then past the nonclaim limit of the statute.

(D) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that within ninety days from the date the department sent the letter the taxpayer submits substantiation, which the department deems sufficient. The taxpayer's claim is valid, notwithstanding that the substantiation was provided after the nonclaim limit expired.

(E) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that before the ninety-day period expires, the taxpayer requests an additional fifteen days in which to respond, explaining why the substantiation will require the additional time to assemble. The department agrees to the extended deadline. If the taxpayer submits the requested substantiation within the resulting one hundred five-day period, the department will not deny the claim for failure to provide timely substantiation.

(F) Assume the same facts as in (b)(iii)(B) and (C) of this subsection, except that the taxpayer submits substantiation within ninety days. The department reviews the substantiation and finds that it is still insufficient. The department, in its discretion, may extend the deadline and request additional substantiation from the taxpayer or may deny the refund claim as not substantiated.

(4) **May I get a refund of retail sales tax paid in error?**

(a) **Refund from seller.** Except as provided for in RCW 82.08.130 regarding deductions for tax paid at source, if a buyer pays retail sales tax on a transaction that the buyer later believes was not taxable, the buyer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the buyer, the seller may seek its own refund from the department. It is better for a buyer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the buyer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the buyer concerning the product, and may already be aware of the circumstances as to why a refund of sales tax is or is not appropriate. If a seller questions whether he or she should refund sales tax to a buyer, the seller may request advice from the department's telephone information center at 1-800-647-7706.

(b) **Refund from department.** In certain situations where the buyer has not received a refund from the seller, the department will refund retail sales tax directly to a buyer. The buyer must file a complete refund application as described in subsection (3)(b) of this ((~~section~~)) rule and either a seller's declaration or a buyer's declaration, under penalty of perjury, must be provided for each seller.

(i) If the buyer is able to obtain a waiver from the seller of the seller's right to claim the refund, the buyer should file a seller's declaration, under penalty of perjury, with the refund application. A seller's declaration substantiates that:

(A) Retail sales tax was collected and paid to the department on the purchase for which a refund is sought;

(B) The seller has not refunded the retail sales tax to the buyer or claimed a refund from the department; and

(C) The seller will not seek a refund of the sales tax from the department.

(ii) If the seller no longer exists, the seller refuses to sign the declaration, under penalty of perjury, or the buyer is unable to locate the seller, the buyer should file a buyer's declaration, under penalty of perjury, with the refund application. The buyer's declaration explains why the buyer is unable to obtain a seller's declaration and provides information about the seller and declares that the buyer has not obtained and will not in the future seek a refund from the seller for that claim.

(iii) Seller's declaration, under penalty of perjury, and buyer's declaration, under penalty of perjury, forms are available from the following sources:

• The department's internet web site at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(5) **May I use statistical sampling to substantiate a refund?** Sampling will only be used when a detailed audit is not possible. However, if your applications for refund or credit involve voluminous documents, the preferred method for substantiating your application is the use of statistical sampling. Alternative methods of sampling, including but not limited to, random sampling, time period sampling, transaction sampling, and block sampling, may be used when the department agrees that such methods are appropriate.

When using statistical sampling or an alternative method to substantiate an application for refund or credit, the applicant must contact the department prior to preparing the sampling to obtain the department's approval of the sampling plan. The sampling plan will describe the following:

• Population and sampling frame;

• Sampling unit;

• Source of the random numbers;

• Who will physically locate the sample units and how and where they will be presented for review;

• Any special instructions to those who were involved in reviewing the sample units;

• Special valuation guidelines to any of the sample units selected in the sample;

• How the sample will be evaluated, including the precision and confidence levels; and

• The applicant must obtain a seller's declaration from those sellers identified in the sample and separately certify, under penalty of perjury, that applicant will not otherwise request or accept a refund or credit for sales or deferred sales tax paid to any seller or any use tax remitted during the taxable period covered by the audit.

Failure to contact the department before preparing the sampling may result in the department rejecting the application on the grounds that the results are not statistically valid.

Contact the department prior to performing a statistical sampling at these locations:

• The department's internet web site at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(6) **Is my refund final?** The department may review a refund or credit provided on the basis of a taxpayer application without an examination by audit. If the refund or credit is granted and the department subsequently determines that the refund or credit exceeded the amount properly due the taxpayer, the department may issue an assessment to recover the excess amount. This assessment must be made within the time limits of RCW 82.32.050.

(7) **Refunds made as a result of a court decision.** The department will grant refunds or credits required by a court or Board of Tax Appeals decision, if the decision is not under appeal.

If the court action requires the refund or credit of retail sales taxes, the department will not require that buyers attempt to obtain a refund directly from the seller if it would be unreasonable and an undue burden on the buyer. In such a case, the department may refund the retail sales tax directly to the buyer and may use the public media to notify persons that they may be entitled to refunds or credits. The department will make available special refund application forms that buyers must use for these situations. The application will request the appropriate information needed to identify the buyer, item purchased, amount of sales tax to be refunded, and the seller. The department may, at its discretion, request additional documentation that the buyer could reasonably be expected to retain, based on the particular circumstances and value of the transaction. The department will approve or deny such refund requests within ninety days after the buyer has submitted all documentation.

(8) **What interest is due on my refund?** Interest is due on a refund or credit granted to a taxpayer as provided in this subsection.

(a) **Rate for overpayments made between 1992 through 1998.** For amounts overpaid by a taxpayer between January 31, 1991 and December 31, 1998, the rate of interest on refunds and credits is:

(i) Computed the same way as the rate provided under (b) of this subsection minus one percent, for interest allowed through December 31, 1998; and

(ii) Computed the same way as the rate provided under (b) of this subsection, for interest allowed after December 31, 1998.

(b) **Rate for overpayments after 1998.** For amounts overpaid by a taxpayer after December 31, 1998, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate is adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April and July of the immediately preceding calendar year and October of the previous preceding year, as published by the United States Secretary of Treasury.

(c) **Start date for the calculation of interest.** If the taxpayer made all overpayments for each calendar year and all reporting periods ending with the final month included in a credit notice or refund on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund, interest is computed from either:

(i) January 31st following each calendar year included in a notice or refund; or

(ii) The last day of the month following the final month included in a notice or refund.

If the taxpayer did not make all overpayments for each calendar year and all reporting periods ending with the final month included in the notice or refund, interest is computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(d) **Calculation of interest on credits.** The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return. If a taxpayer requests that a credit notice be converted to a refund, interest is recomputed to the date the refund (warrant) is issued, but not to exceed the interest that would have been granted through the credit notice.

(9) **May the department apply my refund against other taxes I owe?** The department may apply overpayments against existing deficiencies and/or future assessments for the same legal entity. However, if preliminary schedules have not been issued regarding existing deficiencies or future assessments and the taxpayer is not presently under audit, the refund of an overpayment may not be delayed when the department determines a refund is due. The following examples illustrate the application of overpayments against existing deficiencies:

(a) The taxpayer's records are audited for the period Year 1 through Year 4. The audit disclosed underpayments in Year 2 and overpayments in Year 4. The department will apply the overpayments in Year 4 to the deficiencies in Year 2. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional tax.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the refund of the real estate excise tax while it schedules and performs an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The audit disclosed underpayments of B&O tax and overpayments of timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may apply the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

(10) **How do I ((~~appeal~~)) seek review of the department's decision?** The taxpayer may ((~~appeal~~)) seek review of the denial of: A refund claim (or any part thereof, including tax, penalties, or interest overpayments), a request for an extension for providing substantiation, or a request to use a specific sampling technique. Taxpayer may ((~~appeal~~)) seek review to either:

(a) The department as provided in WAC 458-20-100((~~, Appeals, small claims and settlements~~)) (Informal administrative reviews); or

(b) Directly to Thurston County superior court.

(11) **Application.** This ((~~section~~)) rule applies to refund applications or amended returns showing overpayments, where the taxpayer has also specifically identified the basis for the refund or credit, that are received by the department on or after the effective date of this ((~~section~~)) rule.

AMENDATORY SECTION (Amending WSR 15-15-033, filed 7/8/15, effective 8/8/15)

WAC 458-20-240 Manufacturer's new employee tax credits—Applications filed after June 30, 2010. (1) **Introduction.** Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as $4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue (department) within ninety consecutive days after the first qualified employment position is filled. See subsection (6) of this rule for additional information regarding this application requirement.

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means:

(i) Manufacturing, commercial testing, or research and development activities conducted by an applicant;

(ii) In an eligible area at a specific facility;

(iii) Where employment increases as described under subsection (3) of this rule; and

(iv) Does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must increase by fifteen percent in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

New businesses meeting all requirement of the program, whether new to Washington or newly formed, are eligible for all qualified employment positions filled during the four consecutive full calendar quarters immediately preceding the quarter during which the first qualified employment position is filled.

(b) **What is an eligible area?** An "eligible area" is:

(i) A rural county, which is a county with fewer than one hundred persons per square mile or, a county smaller than two hundred twenty-five square miles, as determined annually by the office of financial management and published by the department effective for the period of July 1st through June 30th (see RCW 82.14.370); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of commerce. For a business located in a CEZ, credit is only earned for those employees, who at the time of hire, are residents of the CEZ in which the project is located.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet web site at www.ofm.wa.gov/pop/popden/rural.asp. The department has instituted a geographic information system (GIS), referred to as the Tax Rate Lookup Tool, to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at dor.wa.gov.

(c) **What are manufacturing and research and development activities?**

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW, "manufacturing" also includes the activities performed by research and development laboratories and commercial testing laboratories.

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. "Commercial sales" does not include sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility will be at least fifteen percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for four consecutive full calendar quarters. Once a full-time position is established and filled it will continue to be considered "filled" even during periods of vacancy, provided the cumulative period of any vacancies in that position is not more than one hundred twenty days in the four quarter period and the employer is training or actively recruiting a permanent replacement, full-time employee for the position.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than fifty percent of their employees to work on a seasonal basis, a "permanent full-time employee" is a permanent full-time employee as described above or an employee(s) that works the equivalent amount of hours on a seasonal basis.

(4) **How to determine if the fifteen percent employment increase requirement is met.** The credit is only available to applicants who satisfy the fifteen percent employment increase.

(a) **Determining the fifteen percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the fifteen percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the four consecutive full calendar quarters immediately preceding the calendar quarter for which the first qualified employment position is filled.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or fifteen percent. The resulting number equals the number of new positions that must be filled to meet the fifteen percent increase. Numbers are rounded down to the nearest whole number.

(b) **When does hiring have to occur?** All hiring increases must occur during the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled for purposes of meeting the fifteen percent threshold test. Positions hired in the four consecutive full calendar quarters prior to the first qualified employment position being filled are not eligible for a credit but the positions are used as a base when calculating whether the fifteen percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the fifteen percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

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

(i) ABC Company anticipates increasing employment at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions for the four consecutive full calendar quarters immediately preceding the calendar quarter for which the first qualified employment position is filled was 98. To qualify for the tax credit program, the minimum average number of full-time qualified employment positions required for the four consecutive full calendar quarters after the calendar quarter for which the first qualified positions is filled is 98 x .15 = 14.7 (rounding down to 14 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employees satisfies the 15% employment increase requirement.

(ii) ABC anticipates increasing employment positions at this same manufacturing facility by an average of 15 addi-

tional full-time qualified employment positions during the following four consecutive full calendar quarters for a total of 128 positions. To qualify for the tax credit program, the minimum average number of full-time qualified employment positions required for these four consecutive full calendar quarters is 16 (113 x .15 = 16.95, rounding down to 16). Therefore, ABC Company's plan to hire 15 full-time qualified employees does not satisfy the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus, the average expected increase of employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at other locations in Washington but outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department to receive tax credits under this program. A new application must be submitted after each group of four consecutive full calendar quarters that you project employment to increase over 15%. RCW 82.62.020 requires that application for the tax credits be filed within the first ninety days after the first qualified employment position is filled. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** Application forms will be provided by the department upon request either by calling 360-902-7175 or from the department's internet web site at dor.wa.gov under the option for forms. The completed application may be sent by fax to 360-586-0527 or mailed to the following address:

Taxpayer Account Administration
Washington State Department of Revenue
((~~State of Washington~~))
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of application.

(b) **Confidentiality.** Applications, reports, or any other information received by the department in connection with this tax credit program, except applications not approved by the department, are not confidential and are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within sixty days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within sixty days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100((~~, Appeals~~)) (Informal administrative reviews).

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment of the application will be made for the four calendar quarters for which the application was approved.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of qualified employment positions created and the wages and benefits paid to these qualified employees.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays forty thousand dollars or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than forty thousand dollars in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on excise tax returns filed using the department's Efile system. These tax credits may not exceed the B&O tax liability.

(a) **When can credits be used?** The credits cannot be used until the department has approved the application. After approval, a recipient may use $2,000 or $4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next reporting period(s), until used.

(9) **Report to be filed by recipient.** A recipient of tax credits under this program must complete and submit a report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit is earned. Based upon this report,

the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. The completed report may be sent by fax to 360-586-0527 or mailed to the following address:

Taxpayer Account Administration
Washington State Department of Revenue
((~~State of Washington~~))
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of filing.

(a) **Verification of report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the four consecutive full calendar quarters prior to the quarter for which the first qualified employment position is filled, the five calendar quarters for which the credits are claimed (this includes the quarter for which the first qualified employment position is filled), and the four consecutive full calendar quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for four consecutive full calendar quarters.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's web site at dor.wa.gov or by calling the department's information center at 1-800-647-7706.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed seven million five hundred thousand dollars in any fiscal year. RCW 82.62.030. A "fiscal year" is the twelve-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

AMENDATORY SECTION (Amending WSR 10-21-052, filed 10/14/10, effective 11/14/10)

WAC 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed prior to July 1, 2010. (1) **Introduction.** Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and for those circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

The program applies to sales and use taxes on materials and labor and services rendered in the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

(2) **Program background.** This program was enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, 1999, 2004, 2009, and 2010, specifically to the definitions of "eligible area," "eligible investment project," "qualified building," and "qualifying county." Each revision created additional criteria for prospective applicants. This rule is written in five parts and covers applications made prior to July 1, 2010. Each part sets forth the requirements on the basis of the period of time in which application is made. Refer to the year during which application was made for information on an individual application. For applications made after June 30, 2010, see WAC 458-20-24001.

The employment security department and the department of community, trade, and economic development administer additional programs for distressed areas and job training and should be contacted directly for information concerning these programs.

PART I

Applications from March 31, 2004, to June 30, 2010

(101) **Who is eligible for the sales and use tax deferral program?** A person engaged in manufacturing or research and development activity is eligible for this deferral program for its eligible investment project.

(a) **What does the term "person" mean for purposes of this ((~~section~~)) rule?** "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW.

(i) The lessor or owner of the qualified building is not eligible for deferral unless:

(A) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(B) All of the following conditions are met:

(I) The lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee;

(II) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070;

(III) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor; and

(IV) Upon request, the lessor must provide the department with written documentation to support the eligibility of the deferral, including any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, economic benefit of the deferral is passed through to the lessee when evidenced by written documentation that the amounts paid to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred, or that the lessee receives more tenant improvements through a credit for tenant improvements or other mechanism in the lease equal to the amount of the sales tax deferred.

(ii) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.60 RCW are met. At the time of application, the lessor must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified research and development or pilot scale manufacturing once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified research and development or pilot scale manufacturing. Otherwise, deferred taxes will be immediately due to the lessor, and interest will be assessed retroactively from the date of deferral.

(b) **What is "manufacturing" for purposes of this ((~~section~~)) rule?** "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, in addition, includes:

(i) Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article or tangible personal property for sale (chapter 16, Laws of 2010);

(ii) The activities performed by research and development laboratories and commercial testing laboratories; and

(iii) Effective July 1, 2006, manufacturing also includes the conditioning of vegetable seeds.

For purposes of this ((~~section~~)) rule, both manufacturers and processors for hire may qualify for the deferral program as being engaged in manufacturing activities. Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information on processors for hire.

For purposes of this ((~~section~~)) rule, "computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

For purposes of this ((~~section~~)) rule, "vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state. "Vegetable seeds" includes, but is not limited to, cabbage seeds, carrot seeds, onion seeds, tomato seeds, and spinach seeds. Vegetable seeds do not include grain seeds, cereal seeds, fruit seeds, flower seeds, tree seeds, and other similar properties.

(c) **What is "research and development" for purposes of this ((~~section~~)) rule?** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property. (Chapter 16, Laws of 2010.) For purposes of this ((~~section~~)) rule, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(102) **What is eligible for the sales and use tax deferral program?** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings and acquisition of qualified machinery and equipment.

(a) **What is an "eligible investment project" for purposes of this ((~~section~~)) rule?** "Eligible investment project" means an investment project in an eligible area. Refer to (g) of this subsection for more information on eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(b) **What is an "investment project" for purposes of this ((~~section~~)) rule?** "Investment project" means an investment in qualified buildings or qualified machinery and equip-

ment, including labor and services rendered in the planning, installation, and construction of the project.

(c) **What is "qualified buildings" for purposes of this ((~~section~~)) rule?** "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing or research and development activities.

(i) "Qualified buildings" is limited to structures used for manufacturing and research and development activities. "Qualified buildings" includes plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development.

(A) "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. An office may be located in a separate building from the building used for manufacturing or research and development activities, but the office must be located at the same site as the qualified building in order to qualify. Each individual office may only qualify or disqualify in its entirety.

(B) "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods. A warehouse may be located in a separate building from the building used for manufacturing or research and development activities, but the warehouse must be located at the same site as the qualified building in order to qualify. Warehouse space may be apportioned based upon its qualifying use.

(C) A site is one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(ii) "Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

However, "qualified buildings" includes construction of specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for manufacturing or research and development.

Also, "qualified buildings" includes construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing manufacturing or research and development in the building. Parking lots may be apportioned based upon its qualifying use.

(d) **When is apportionment of qualified buildings appropriate?** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing building used in manufacturing or research and development. Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this ((~~section~~)) rule, apportionment is necessary.

(e) **What are the apportionment methods?** The deferral is determined by one of the following two apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas, and it is primarily used by those industries with specialized building requirements.

(i) **First method.** The applicable tax deferral can be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways, bathrooms, and conference rooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Costs x Tax Rate = Eligible Tax Deferred.

(ii) **Second method.** If the applicable tax deferral is not determined by the first method, it will be determined by tracking the cost of construction of qualifying/nonqualifying areas as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing or research and development may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing or research and development may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing or research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing or research and development, excluding areas used in common, to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

Square feet devoted to manufacturing or research and development, excluding square feet of common areas	=	Percentage of total cost of construction of common areas eligible for deferral
Total square feet, excluding square feet of common areas		

(f) **What is "qualified machinery and equipment" for purposes of this ((~~section~~)) rule?** "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

For purposes of this ((~~section~~)) rule, "industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(i) **Are qualified machinery and equipment subject to apportionment?** Qualified machinery and equipment are not subject to apportionment.

(ii) **To what extent is leased equipment eligible for the deferral?** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date, the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(g) **What is an "eligible area" for purposes of this ((~~section~~)) rule?** "Eligible area" means:

(i) **Rural county.** A rural county is a county with fewer than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) **Community empowerment zone (CEZ).** A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of commerce, or a county containing a CEZ.

(h) **What if an investment project is located in an area that qualifies both as a rural county and as a CEZ?** If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 2004, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than one hundred persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements. Refer to subsection (104) of this ((~~section~~)) rule for more information on the application process.

(i) **Are there any hiring requirements for an investment project?** There may or may not be a hiring requirement, depending on the location of the project.

(i) **Rural county.** There are no hiring requirements for qualifying projects located in rural counties.

(ii) **Community empowerment zone (CEZ).** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

Number of qualified employment positions to be hired x $750,000 = amount of investment eligible for deferral

Applicants must make good faith estimates of anticipated hiring. Refer to subsection (104) of this ((~~section~~)) rule for more information on the application process. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at http://www.dor.wa.gov. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. Refer to subsection (107) of this ((~~section~~)) rule for more information on certification of an investment project as operationally complete. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(A) **What is a "qualified employment position" for purposes of this ((~~section~~)) rule?** "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(B) **Who are residents of the CEZ?** "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(103) **What are the application and review processes?** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. When an application for sales and use tax deferral is timely submitted, costs incurred before the appli-

cation date are allowable, if they otherwise qualify. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) **What is "initiation of construction" for purposes of this ((~~section~~)) rule?** "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(b) **What is "acquisition of machinery and equipment" for purposes of this ((~~section~~)) rule?** "Acquisition of machinery and equipment" means the machinery and equipment is under the dominion and control of the recipient or its agent.

(c) **How may a taxpayer obtain an application form?** Application forms may be obtained at department of revenue district offices, by downloading from the department's web site (dor.wa.gov), by telephoning the telephone information center at 1-800-647-7706, or by contacting the department's special programs division at:

Washington State Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax 360-586-2163

Applicants must mail or fax applications to the special programs division at the address or fax number given above. Applications received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. RCW 82.60.100.

For purposes of this ((~~section~~)) rule, "applicant" means a person applying for a tax deferral under chapter 82.60 RCW, and "department" means the department of revenue.

(d) **Will the department approve the deferral application?** In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) The applicant shows proof that, if the construction will not begin within one year of construction, there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s). Refer to subsection (106) of this ((~~section~~)) rule for more information on the use of tax deferral certificate.

(e) **What is the date of application?** "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) **When will the department notify approval or disapproval of the deferral application?** The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(g) **May an applicant request a review of department disapproval of the deferral application?** The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-10001 (((~~Appeals~~)) Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation). The filing of a petition for review with the department starts a review of departmental action.

(104) **What happens after the department approves the deferral application?** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

For purposes of this ((~~section~~)) rule, "recipient" means a person receiving a tax deferral under this program.

(105) **How should a tax deferral certificate be used?** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this ((~~section~~)) rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

For purposes of this ((~~section~~)) rule, "certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(106) **What are the processes of an investment project that is certified by the department as operationally complete?** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

For purposes of this ((~~section~~)) rule, "operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(a) **What should a certificate holder do if its investment project reaches the estimated costs but the project is not yet operationally complete?** If a certificate holder has an investment project that has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) **What should a certificate holder do when its investment project is operationally complete?** The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The certificate holder of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(107) **Is a recipient of tax deferral required to submit annual surveys?** Each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(108) **Is a recipient of tax deferral required to repay deferred taxes?** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) **Is repayment required for machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565?** Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) **When is repayment required?** The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-10001 (((~~Appeals~~)) Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation). The filing of a petition for review with the department starts a review of departmental action.

(i) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual survey or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this ((~~section~~)) rule is a facility not being used for a manufacturing or research and development operation. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(ii) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual survey or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions under subsection (102)(i) of this ((~~section~~)) rule, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(109) **When will the tax deferral program expire?** No applications for deferral of taxes will be accepted after June 30, 2010.

(110) **Is debt extinguishable because of insolvency or sale?** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes.

(111) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment proj-

ect is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

PART II

Applications from August 1, 1999, to March 31, 2004

(201) **Definitions.** The following definitions apply to applications made on and after August 1, 1999, and before April 1, 2004:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) "Department" means the department of revenue.

(g) "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) Community empowerment zone (CEZ). A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development or a county containing a CEZ.

(h) "Eligible investment project" means an investment project in an eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(i) "Industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(j) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" means construction of new structures and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. Full-time means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified

machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(t) "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(202) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(203) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in counties with fewer than one hundred persons per square mile. Monitoring and reporting procedures are explained in subsection (210) of this ((~~section~~)) rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (204) of this ((~~section~~)) rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

Number of qualified employment positions to be hired x $750,000 = amount of investment eligible for deferral

Applicants must make good faith estimates of anticipated hiring. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at http://www.dor.wa.gov. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(204) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by one of the following apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas and is primarily used by those industries with specialized building requirements.

(i) The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(ii) If a building is used partly for manufacturing, research and development, or commercial testing and partly for other purposes, the applicable tax deferral shall be determined as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing, research and development, or commercial testing may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing, research and development, or commercial testing may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing, research and development, or commercial testing and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of

the square feet of the construction, expansion, or renovation devoted to manufacturing, research and development, or commercial testing, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing, research and development, or commercial testing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(205) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(206) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

((~~State of Washington~~))
Washington State Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98504-7477

Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

(b) In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) If the construction will not begin within one year of application, the applicant shows proof that there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s).

(c) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(207) **Eligible area criteria.** The office of financial management will determine annually the counties with fewer than one hundred persons per square mile. The department will update and distribute the list each year. The list will be effective on July 1 of each year.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 1999, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than one hundred persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

(208) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in Part I. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a

copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(209) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(210) **Reporting and monitoring procedure.**

(a) **Requirement to submit annual reports.** Each recipient of a tax deferral under chapter 82.60 RCW must submit a report on December 31st of the year in which the investment project is certified by the department as having been operationally completed and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) **Requirement to submit annual surveys.** Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report.** If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(211) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this ((~~section~~)) rule is a facility not being used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(212) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the

full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

(213) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART III
Applications from July 1, 1995, to July 31, 1999

(301) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1995, and before August 1, 1999:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Department" means the department of revenue.

(f) "Eligible area" means one of the areas designated according to the following classifications:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. In making this calculation, the department will compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) Median income county. On and after June 6, 1996, a county that has a median household income that is less than seventy-five percent of the state median income for the previous three years;

(iii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iv) CEZ and county containing a CEZ. A designated community empowerment zone (CEZ) approved under RCW 43.63A.700 or a county containing such a community empowerment zone;

(v) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in Part I;

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047; or

(vii) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county.

(g)(i) "Eligible investment project" means:

(A) An investment project in an unemployment county, a median income county, an MSA, a timber impact area town, or a governor's designation county; or

(B) That portion of an investment project in a CEZ, a county containing a CEZ, or a contiguous county, that is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment.

(ii) "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Land clearing prior to excavation of the building site does not commence construction nor does planning commence construction.

(j) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(k) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program**,** also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined under RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(l) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(m) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(n) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(o) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(p) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(q) "Recipient" means a person receiving a tax deferral under this program.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(302) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(303) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in distressed counties, MSAs, median income counties, governor-designated counties, or timber impact towns. Monitoring and reporting procedures are explained in subsection (310) of this ((~~section~~)) rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (304) of this ((~~section~~)) rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs, in counties containing CEZs, or in contiguous counties. Total qualifying project costs, including any part of the project that would qualify under RCW 82.08.02565 and 82.12.02565, must be examined to determine the number of positions associated with the project. An applicant who knows at the time of application that he or she will not fill the required qualified employment positions is not eligible for the deferral. Applicants must make good faith estimates of anticipated hiring. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired. The investment must include the sales price of machinery and equipment eligible for the sales and use tax exemption under RCW 82.08.02565 and 82.12.02565. An applicant can amend the number of persons hired until completion of the project. The qualified employment positions filled by December 31 of the year of completion are the benchmark to be used during the next seven years in determining hiring compliance.

(i) Total qualifying project costs are divided by seven hundred fifty thousand, the result being the qualified employment positions.

(ii) In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This reduction requires a reexamination of whether the seventy-five percent hiring requirement (as explained below) is met.

(iii) This number, which is the result of (i) and (ii) of this subsection, is the number of positions used as the benchmark over the life of the deferral. For recipients locating in a CEZ or a county containing a CEZ, seventy-five percent of the new positions must be filled by residents of a CEZ located in the county where the project is located. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at http://www.dor.wa.gov. For recipients located in a contiguous county, residents of an adjacent unemployment or governor-

designated county must fill seventy-five percent of the new positions.

(iv) The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. If the recipient has failed to create the requisite number of positions, the department will issue an assessment as explained under subsection (311) of this ((~~section~~)) rule.

(v) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years.

(vi) Qualified employment positions do not include those positions filled by persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee, so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(304) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing.

(a) Where a building(s) is used partly for manufacturing, research and development, or commercial testing and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing, research and development, or commercial testing purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

(305) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(306) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

((~~State of Washington~~))
Washington State Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98504-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(307) **Eligible area criteria.** The statewide and county unemployment statistics last published by the department will be used to determine eligible areas based on unemployment. Median income county designation is based on data produced by the office of financial management and made available to the department on November 1 of each year. The timber impact town designation is based on information provided by the department of employment security.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on May 1, 1998, the city of Yakima qualifies as a CEZ, and the entire county of Yakima qualifies as an unemployment county. The CEZ requirements are more restrictive than the unemployment county requirements. The department will assign the project to the distressed area eligible area unless the applicant elected to be bound by the CEZ requirements.

(308) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in subsection (301) of this ((~~section~~)) rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller is relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(309) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(310) **Reporting and monitoring procedure.**

(a) Requirement to submit annual reports. Each recipient of a deferral granted after July 1, 1995, must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) **Requirement to submit annual surveys.** Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report.** If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(311) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection, on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood product industries, and sales of or charges made for labor and services, of the type which qualified for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action. See subsection (24)(d) of this ((~~section~~)) rule for repayment and waiver for deferrals with hiring requirements.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facilities are not used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date the application was filed). There is no proration of the amount owed under this subsection. No penalties will be assessed.

(e) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date the application was filed. Each year the employment requirement is met, twelve and one-half percent of the deferred tax will be waived, if all other program requirements are met. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection.

(312) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(313) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART IV

Applications from July 1, 1994, to June 30, 1995

(401) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1994, and before July 1, 1995.

(a) "Acquisition of equipment or machinery" means the date the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iii) CEZ. A designated community empowerment zone approved under RCW 43.63A.700;

(iv) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in this subsection;

(v) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county; or

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, equipping, or renovating an existing facility with costs in excess of twenty-five percent of the true and fair value of the facility prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing facility, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing facility prior to the initiation of the

expansion or renovation. The term "improvement" is further defined to include those portions of an existing facility which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment roles as determined by the county assessor for the buildings or equipment for ad valorem property tax purposes at the time of application.

(ii) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than cogeneration projects that are both an integral part of a manufacturing facility and owned at least fifty percent by the manufacturer, or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of the new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel his or her own building, but leases from a third party, is eligible for sales and use tax deferral on the machinery and equipment provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.-110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours per week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(s) "Recipient" means a person receiving a tax deferral under this program.

(402) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral

for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(403) **Eligible investment amount.**

(a) Projects located in unemployment counties, MSAs, governor-designated counties, or timber impact towns are eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This is the number of positions used as the hiring benchmark. The qualified employment positions must be filled by the end of year three. Monitoring and reporting procedures are set forth in subsection (410) of this ((~~section~~)) rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (404) of this ((~~section~~)) rule explains the procedure for apportionment.

(b) Projects located in CEZs, counties containing CEZs, or counties contiguous to an eligible county, are eligible for a deferral if the project meets specific hiring requirements. The recipient is eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark over the life of the deferral. The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. Monitoring and reporting procedures are set forth in subsection (410) of this ((~~section~~)) rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (404) of this ((~~section~~)) rule explains the procedure for apportionment.

(c) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at ((~~http://www.dor.wa.gov~~)) www.dor.wa.gov.

(d) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(404) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

(405) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(406) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

((~~State of Washington~~))
Washington State Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98504-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(407) **Eligible area criteria.** The department will use the statewide and county unemployment statistics as last published by the department. Timber impact town designation is based on information provided by the department of employment security. The department will update the list of eligible areas by county, annually.

(408) **Use of the certificate.** A tax deferral certificate issued under this program will be for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in subsection (401) of this ((~~section~~)) rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient. The tax deferral certificate is be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(409) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action within thirty days from the date of the notice of disallowance pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(410) **Reporting and monitoring procedure.**

(a) Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) Requirement to submit annual surveys. Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report.** If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(411) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year. See subsection (c) for repayment and waiver for deferrals with hiring requirements.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(b) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral, other than failure to create the required number of positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facility is not used for manufacturing or research and development operations.

(c) **Failure of investment project to satisfy employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date of deferral). No penalties will be assessed.

(d) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with the special hiring requirements of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of deferral. No penalties will be assessed.

(e) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(412) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(413) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART V
Applications from July 1, 1992, to June 30, 1994

(501) **Definitions.** For the purposes of this part, the following definitions apply for applications made after July 1, 1992, but before July 1, 1994:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent; or

(iii) CEZ. Beginning July 1, 1993, a designated community empowerment zone approved under RCW 43.63A.700.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, or renovating an existing building with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing plant complex, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing plant complex prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing building which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application; or

(C) Acquires machinery and equipment to be used for either manufacturing or research and development. The lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

(ii) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010 or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program**,** also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.-110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of this chapter. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a long- or short-term lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have

begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(502) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much deferral is taken.

(503) **Eligible investment amount.** Recipients are eligible for a deferral on investment used to create employment positions.

(a) Total qualifying project costs must be examined to determine the number of positions associated with the project. Total qualifying project costs are divided by three hundred thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark at the end of year three. The qualified employment positions are reviewed in the third year, following December 31st of the year the project is operationally complete. If the recipient has failed to create the requisite number of positions, the department will issue an assessment under subsection (511) of this ((~~section~~)) rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (504) of this ((~~section~~)) rule explains the procedure for apportionment.

(b) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(504) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings directly used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development, or commercial testing and partly for purposes, which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

(505) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(506) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of equipment or machinery. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

((~~State of Washington~~))
Washington State Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98504-7477

(b) The department will verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews), within thirty days from the date of notice of the department's refusal, or within any extension of such time granted by the department. The filing of a petition for review with the department starts a review of departmental action.

(507) **Unemployment criteria.** For purposes of making application for tax deferral and of approving such applications, the statewide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will update the list of eligible areas by county, on an annual basis.

(508) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in quali-

fied buildings or qualified machinery and equipment as defined in subsection (501) of this ((~~section~~)) rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales. The deferral certificate is to defer the taxes of the recipient. For example, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

(509) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within thirty days from the date of the notice of disallowance.

(510) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(511) **Repayment of deferred taxes.** The recipient must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed.

(a) The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year		Percentage of Deferred Tax Repaid
1	(Year certified operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

(b) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest will not be charged on any taxes deferred under this part during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW.

(c) Taxes deferred on the sale or use of labor directly applied in the construction of an investment project for which deferral has been granted need not be repaid, provided eligibility for the granted tax deferral has been perfected by meeting all of the eligibility requirements, based upon the recipient's annual December 31 reports and any other information available to the department. The recipient must establish, by clear and convincing evidence, the value of all construction and installation labor for which repayment of sales tax is sought to be excused. Such evidence must include, but is not limited to: A written, signed, and dated itemized billing from construction/installation contractors or independent third party labor providers which states the value of labor charged separately from the value of materials. This information must be maintained in the recipient's permanent records for the department's review and verification. In the absence of such itemized billings in its permanent records, no recipient may be excused from repayment of sales tax on the value of labor in an amount exceeding thirty percent of its gross construction or installation contract charges. The value of labor for which an excuse from repayment of sales or use tax may be received will not exceed the value which is subject to such taxes under the general provisions of chapters 82.08 and 82.12 RCW.

(d) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be the facility is not used for a manufacturing or research and development operation.

(e) **Failure of investment project to satisfy required employment positions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department will assess interest but not penalties, on the deferred taxes for the project. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of the date of deferral. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(g) Any action taken by the department to assess interest or disqualify a recipient for tax deferral will be subject to administrative review pursuant to the provisions of WAC 458-20-100((~~, appeals, small claims and settlements~~)) (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(512) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project will be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(513) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

AMENDATORY SECTION (Amending WSR 10-21-044, filed 10/13/10, effective 11/13/10)

WAC 458-20-24003 Tax incentives for high technology businesses. (1) **Introduction.** This ((~~section~~)) rule explains the tax incentives, contained in chapter 82.63 RCW and RCW 82.04.4452, which apply to businesses engaged in research and development or pilot scale manufacturing in Washington in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. Eligibility for high technology or research and development tax incentives offered by the federal government or any other jurisdiction does not establish eligibility for Washington's programs.

This ((~~section~~)) rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances. Assume all the examples below occur on or after June 10, 2004, unless otherwise indicated.

(2) **Organization of the ((~~section~~)) rule.** The information provided in this ((~~section~~)) rule is divided into three parts.

(a) Part I provides information on the sales and use tax deferral program under chapter 82.63 RCW.

(b) Part II provides information on the sales and use tax exemption available for persons engaged in certain construction activities for the federal government under RCW 82.04.190(6).

(c) Part III provides information on the business and occupation tax credit on research and developing spending under RCW 82.04.4452.

PART I
SALES AND USE TAX DEFERRAL PROGRAM

(3) **Who is eligible for the sales and use tax deferral program?** A person engaged in qualified research and development or pilot scale manufacturing in Washington in the five high technologies areas is eligible for this deferral program for its eligible investment project.

(a) **What does the term "person" mean for purposes of this deferral program?** "Person" has the meaning given in RCW 82.04.030. Effective June 10, 2004, "person" also includes state universities as defined in RCW 28B.10.016. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.63 RCW.

(i) Effective June 10, 2004, the lessor or owner of the qualified building is not eligible for a deferral unless:

(A) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(B) All of the following conditions are met:

(I) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(II) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.63.020(2);

(III) The lessee must receive an economic benefit from the lessor no less than the amount of tax deferred by the lessor; and

(IV) Upon request, the lessor must provide the department with written documentation to support the eligibility of the deferral, including any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, economic benefit of the deferral is passed through to the lessee when evidenced by written documentation that the amounts paid to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred, or that the lessee receives more tenant improve-

ments through a credit for tenant improvements or other mechanism in the lease equal to the amount of the sales tax deferred.

(ii) Prior to June 10, 2004, the lessor or owner of the qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(iii) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.63 RCW are met. At the time of application, the lessor must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified research and development or pilot scale manufacturing once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified research and development or pilot scale manufacturing. Otherwise, deferred taxes will be immediately due to the lessor, and interest will be assessed retroactively from the date of deferral.

(b) **What is "qualified research and development" for purposes of this ((~~section~~)) rule?** "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(c) **What is "research and development" for purposes of this ((~~section~~)) rule?** "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.

The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21 C.F.R., as amended.

The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(i) A person need not both discover technological information and translate technological information into new or improved products, processes, techniques, formulas, inventions, or software in order to engage in research and development. A person may perform either activity alone and be engaged in research and development.

(ii) To discover technological information means to gain knowledge of technological information through purposeful investigation. The knowledge sought must be of something not previously known or, if known, only known by persons who have not made the knowledge available to the public.

(iii) Technological information is information related to the application of science, especially with respect to industrial and commercial objectives. Industrial and commercial objectives include both sale and internal use (other than internal use software). The translation of technological information into new or improved products, processes, techniques, formulas, inventions, or software does not require the use of newly discovered technological information to qualify as research and development.

(iv) The translation of technological information requires both technical and nonroutine activities.

(A) An activity is technical if it involves the application of scientific, engineering, or computer science methods or principles.

(B) An activity is nonroutine if it:

(I) Is undertaken to achieve a new or improved function, performance, reliability, or quality; and

(II) Is performed by engineers, scientists, or other similarly qualified professionals or technicians; and

(III) Involves a process of experimentation designed to evaluate alternatives where the capability or the method of achieving the new or improved function, performance, reliability, or quality, or the appropriate design of the desired improvement, is uncertain at the beginning of the taxpayer's research activities. A process of experimentation must seek to resolve specific uncertainties that are essential to attaining the desired improvement.

(v) A product is substantially improved when it functions fundamentally differently because of the application of technological information. This fundamental difference must be objectively measured. Examples of objective measures include increased value, faster operation, greater reliability, and more efficient performance. It is not necessary for the improvement to be successful for the research to qualify.

(vi) Computer software development may qualify as research and development involving both technical and nonroutine activities concerned with translating technological information into new or improved software, when it includes the following processes: Software concept, software design, software design implementation, conceptual freeze, alpha testing, beta testing, international product localization process, and other processes designed to eliminate uncertainties prior to the release of the software to the market for sale. Research and development ceases when the software is released to the market for sale.

Postrelease software development may meet the definition of research and development under RCW 82.63.010(16), but only if it involves both technical and nonroutine activities concerned with translating technological information into improved software. All facts and circumstances are considered in determining whether postrelease software development meets the definition of research and development.

(vii) Computer software is developed for internal use if it is to be used only by the person by whom it is developed. If it is to be available for sale, lease, or license, it is not developed for internal use, even though it may have some internal applications. If it is to be available for use by persons, other than the person by whom it is developed, who access or download

it remotely, such as through the internet, it is not usually deemed to be developed for internal use. However, remotely accessed software is deemed to be developed for internal use if its purpose is to assist users in obtaining goods, services, or information provided by or through the person by whom the software is developed. For example, software is developed for internal use if it enables or makes easier the ordering of goods from or through the person by whom the software is developed. On the other hand, a search engine used to search the world wide web is an example of software that is not developed for internal use because the search engine itself is the service sought.

(viii) Research and development is complete when the product, process, technique, formula, invention, or software can be reliably reproduced for sale or commercial use. However, the improvement of an existing product, process, technique, formula, invention, or software may qualify as research and development.

(d) **What is "pilot scale manufacturing" for purposes of this ((~~section~~)) rule?** "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. "Commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(e) **What are the five high technology areas?** The five high technology areas are as follows:

(i) **Advanced computing.** "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(ii) **Advanced materials.** "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(iii) **Biotechnology.** "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics, including genomics, gene expression and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(iv) **Electronic device technology.** "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(v) **Environmental technology.** "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(A) The assessment and prevention of threats or damage to human health or the environment concerns assessing and preventing potential or actual releases of pollutants into the environment that are damaging to human health or the environment. It also concerns assessing and preventing other physical alterations of the environment that are damaging to human health or the environment.

For example, a research project related to salmon habitat restoration involving assessment and prevention of threats or damages to the environment may qualify as environmental technology, if such project is concerned with assessing and preventing potential or actual releases of water pollutants and reducing human-made degradation of the environment.

(I) Pollutants include waste materials or by-products from manufacturing or other activities.

(II) Environmental technology includes technology to reduce emissions of harmful pollutants. Reducing emissions of harmful pollutants can be demonstrated by showing the technology is developed to meet governmental emission standards. Environmental technology also includes technology to increase fuel economy, only if the taxpayer can demonstrate that a significant purpose of the project is to increase fuel economy and that such increased fuel economy does in fact significantly reduce harmful emissions. If the project is intended to increase fuel economy only minimally or reduce emissions only minimally, the project does not qualify as environmental technology. A qualifying research project must focus on the individual components that increase fuel economy of the product, not the testing of the entire product when everything is combined, unless the taxpayer can separate out and identify the specific costs associated with such testing.

(III) Environmental technology does not include technology for preventive health measures for, or medical treatment of, human beings.

(IV) Environmental technology does not include technology aimed to reduce impact of natural disasters such as floods and earthquakes.

(V) Environmental technology does not include technology for improving safety of a product.

(B) Environmental cleanup is corrective or remedial action to protect human health or the environment from releases of pollutants into the environment.

(C) Alternative energy sources are those other than traditional energy sources such as fossil fuels, nuclear power, and hydroelectricity. However, when traditional energy sources are used in conjunction with the development of alternative energy sources, all the development will be considered the development of alternative energy sources.

(4) **What is eligible for the sales and use tax deferral program?** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings and acquisition of qualified machinery and equipment.

(a) **What is an "eligible investment project" for purposes of this ((~~section~~)) rule?** "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility.

(b) **What is an "investment project" for purposes of this ((~~section~~)) rule?** "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(c) **What is "qualified buildings" for purposes of this ((~~section~~)) rule?** "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for pilot scale manufacturing or qualified research and development.

(i) "Qualified buildings" is limited to structures used for pilot scale manufacturing or qualified research and development. "Qualified buildings" includes plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development.

(A) "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to pilot scale manufacturing or qualified research and development. An office may be located in a separate building from the building used for pilot scale manufacturing or qualified research and development, but the office must be located at the same site as the qualified building in order to qualify. Each individual office may only qualify or disqualify in its entirety.

(B) A site is one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(ii) "Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

However, "qualified buildings" includes construction of specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for pilot scale manufacturing or qualified research and development.

Also, "qualified buildings" includes construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing pilot scale manufacturing or qualified research and development in the building. Parking lots may be apportioned based upon its qualifying use.

(d) **What is "multiple qualified buildings" for purposes of this ((~~section~~)) rule?** "Multiple qualified buildings" means "qualified buildings" leased to the same person when such structures:

(i) Are located within a five-mile radius; and

(ii) The initiation of construction of each building begins within a sixty-month period.

(e) **When is apportionment of qualified buildings appropriate?** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing building used in pilot scale manufacturing or qualified research and development. Where a building(s) is used partly for pilot scale manufacturing or qualified research and development and partly for purposes that do not qualify for deferral under this ((~~section~~)) rule, apportionment is necessary.

(f) **What is the apportionment method?** The applicable tax deferral will be determined as follows:

(i) Tax on the cost of construction of areas devoted solely to pilot scale manufacturing or qualified research and development may be deferred.

(ii) Tax on the cost of construction of areas not used at all for pilot scale manufacturing or qualified research and development may not be deferred.

(iii) Tax on the cost of construction of areas used in common for pilot scale manufacturing or qualified research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to pilot scale manufacturing or qualified research and development, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to research and development or pilot scale manufacturing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(iv) The apportionment method described in (f)(i), (ii), and (iii) of this subsection must be used unless the applicant or recipient can demonstrate that another method better represents a reasonable apportionment of costs, considering all the facts and circumstances. An example is to use the number of employees in a qualified building that is engaged in pilot scale manufacturing or qualified research and development as the basis for apportionment, if this method is not easily manipulated to reflect a desired outcome, and it otherwise represents a reasonable apportionment of costs under all the facts and circumstances. This method may take into account qualified research and development or pilot scale manufacturing activities that are shifted within a building or from one building to another building. If assistance is needed to a tax-related question specific to your business under this subsection, you may request a tax ruling. To make a request contact the department's taxpayer information and education division at:

Washington State Department of Revenue
Taxpayer Information and Education
P.O. Box 47478
Olympia, WA 98504-7478
fax 360-586-2463

(v) Example. A building to be constructed will be partially devoted to research and development and partially devoted to marketing, a nonqualifying purpose. The total area of the building is 100,000 square feet. Sixty thousand square feet are used only for research and development, 20,000 square feet are used only for marketing, and the remaining 20,000 square feet are used in common by research and development employees and marketing employees. Tax on the cost of constructing the 60,000 square feet used only for research and development may be deferred. Tax on the cost of constructing the 20,000 square feet used only for marketing may not be deferred. Tax on 75% of the cost of constructing the common areas may be deferred. (Sixty thousand square feet devoted solely to research and development divided by 80,000 square feet devoted solely to research and development and marketing results in a ratio expressed as 75%.)

(g) **What is "qualified machinery and equipment" for purposes of this ((~~section~~)) rule?** "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this ((~~section~~)) rule, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(i) **What are "integral" and "necessary"?** Machinery and equipment is an integral and necessary part of pilot scale manufacturing or qualified research and development if the pilot scale manufacturing or qualified research and development cannot be accomplished without it. For example, a laboratory table is integral and necessary to qualified research and development. Likewise, telephones, computer hardware (e.g., cables, scanners, printers, etc.), and computer software (e.g., Word, Excel, Windows, Adobe, etc.) used in a typical workstation for an R&D personnel are integral and necessary to qualified research and development. Decorative artwork, on the other hand, is not integral and necessary to qualified research and development.

(ii) **Must qualified machinery and equipment be used exclusively for qualifying purposes in order to qualify?** Qualified machinery and equipment must be used exclusively for pilot scale manufacturing or qualified research and development to qualify for the deferral. Operating system software shared by accounting personnel, for example, is not used exclusively for qualified research and development. However, *de minimis* nonqualifying use will not cause the loss of the deferral. An example of *de minimis* use is the occasional use of a computer for personal e-mail.

(iii) **Is qualified machinery and equipment subject to apportionment?** Unlike buildings, if machinery and equipment is used for both qualifying and nonqualifying purposes, the costs cannot be apportioned. Sales or use tax cannot be deferred on the purchase or use of machinery and equipment used for both qualifying and nonqualifying purposes.

(iv) **To what extent is leased equipment eligible for the deferral?** In cases of leases of qualifying machinery and equipment, deferral of tax is allowed on payments made during the initial term of the lease, but not for extensions or renewals of the lease. Deferral of tax is not allowed for lease payments for any period after the seventh calendar year following the calendar year for which the project is certified as operationally complete.

(5) **What are the application and review processes?** Applicants must apply for deferral to the department of revenue before the initiation of construction of, or acquisition of equipment or machinery for the investment project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. In the case of an investment project consisting of "multiple qualified buildings," applications must be made for, and before the initiation of construction of, each qualified building.

(a) **What is "initiation of construction" for purposes of this ((~~section~~)) rule?**

(i) ((~~**On or after June 10, 2004.**~~

~~(A)~~)) Initiation of construction means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(((~~I~~))) (A) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(((~~II~~))) (B) Construction of the qualified building, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7); or

(((~~III~~))) (C) Tenant improvements for a qualified building, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7).

(((~~B~~))) (ii) Initiation of construction does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(((~~C~~))) (iii) If the investment project is a phased project, initiation of construction must apply separately to each building. For purposes of this ((~~section~~)) rule, a "phased project" means construction of multiple buildings in different phases over the life of a project. A taxpayer may file a separate application for each qualified building, or the taxpayer may file one application for all qualified buildings. If a taxpayer files one application for all qualified buildings, initiation of construction must apply separately to each building.

(((~~(ii) **Prior to June 10, 2004.** Construction is initiated when workers start on-site building tasks. The initiation of construction does not include land clearing or site preparation prior to excavation of the building site. Also, the initiation of construction does not include design or planning activities.~~)))

(b) **What is "acquisition of machinery and equipment" for purposes of this ((~~section~~)) rule?** "Acquisition of machinery and equipment" means the machinery and equipment is under the dominion and control of the recipient or its agent.

(c) **Lessor and lessee examples.**

(i) Prior to the initiation of construction, Owner/Lessor A enters into an agreement with Lessee B, a company engaged in qualified research and development. Under the agreement, A will build a building to house B's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to B, and will pass on the entire value of the deferral to B. B agrees in writing with the department to complete annual surveys. A applies for the deferral before the date the building permit is issued. A is entitled to a deferral on building construction costs.

(ii) After construction has begun, Lessee C asks that certain tenant improvements be added to the building. Lessor D and Lessee C each agree to pay a portion of the cost of the improvements. D agrees with C in a written agreement that D will pass on the entire value of D's portion of the tax deferral to C, and C agrees in writing with the department to complete annual surveys. C and D each apply for a deferral on the costs of the tenant improvements they are legally responsible for before the date the building permit is issued for such tenant improvements. Both applications will be approved. While construction of the building was initiated before the applications were submitted, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure. Also, lessees are entitled to the deferral only if they are legally responsible and actually pay contractors for the improvements, rather than merely reimbursing lessors for the costs.

(iii) After construction has begun but before machinery or equipment has been acquired, Lessee E applies for a deferral on machinery and equipment. The application will be approved, and E is required to complete annual surveys. Even though it is too late to apply for a deferral of tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(d) **How may a taxpayer obtain an application form?** Application forms may be obtained at department of revenue district offices, by downloading from the department's web site (dor.wa.gov), by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Washington State Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
fax 360-586-2163

Applicants must mail or fax applications to the special programs division at the address or fax number given above. Only those applications which are approved by the department in connection with the deferral program are not confidential and are subject to public disclosure.

For purposes of this ((~~section~~)) rule, "applicant" means a person applying for a tax deferral under chapter 82.63 RCW, and "department" means the department of revenue.

(e) **What should an application form include?** The application form should include information regarding the location of the investment project, the applicant's average employment in Washington for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, and time schedules for completion and operation. The application form may also include other information relevant to the project and the applicant's eligibility for deferral.

(f) **What is the date of application?** The date of application is the earlier of the postmark date or the date of receipt by the department.

(g) **When will the department notify approval or disapproval of the deferral application?** The department must rule on an application within sixty days. If an application is denied, the department must explain in writing the basis for the denial. An applicant may ((~~appeal~~)) seek review of a denial within thirty days under WAC 458-20-100 (((~~Appeals~~)) Informal administrative reviews).

(6) **Can a lessee leasing "multiple qualified buildings" elect to treat the "multiple qualified buildings" as a single investment project?** Yes. If a lessee will conduct qualified research and development or pilot scale manufacturing within the "multiple qualified buildings" and desires to treat the "multiple qualified buildings" as a single investment project, the lessee may do so by making both a preliminary election and a final election therefore.

(a) **When must the lessee make the preliminary election to treat the "multiple qualified buildings" as a single investment project?** The lessee must make the preliminary election before a temporary certificate of occupancy, or its equivalent, is issued for any of the buildings within the "multiple qualified buildings."

(b) **When must the lessee make the final election to treat the "multiple qualified buildings" as a single investment project?** All buildings included in the final election must have been issued a temporary certificate of occupancy or its equivalent. The lessee must then make the final election for such buildings by the date that is the earlier of:

(i) Sixty months following the date that the lessee made the preliminary election; or

(ii) Thirty days after the issuance of the temporary certificate of occupancy, or its equivalent, for the last "qualified building" to be completed that will be included in the final election.

(c) **What occurs if the final election is not made by the deadline?** When a final election is not made by the deadline in (b)(i) or (ii) of this subsection, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(d) **How are preliminary and final elections made?** The preliminary and final elections must be made in the form and manner prescribed by the department. For information

concerning the form and manner for making these elections contact the department's special programs division at:

Washington State Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
fax 360-586-2163

(e) **Before the final election is made, can the lessee choose to exclude one or more of the buildings included in its preliminary election?** Yes. Before the final election is made, the lessee may remove one or more of the qualified buildings included in the preliminary election from the investment project. When a qualified building under the preliminary election is, for any reason, not included in the final election, the qualified building will be treated as an individual investment project under the original application for that building.

(f) **Application.** This subsection (6) applies to deferral applications received by the department after June 30, 2007.

(7) **What happens after the department approves the deferral application?** If an application is approved, the department must issue the applicant a sales and use tax deferral certificate.

The certificate provides for deferral of state and local sales and use taxes on the eligible investment project. The certificate will state the amount of tax deferral for which the recipient is eligible. It will also state the date by which the project will be operationally complete. The deferral is limited to investment in qualified buildings or qualified machinery and equipment. The deferral does not apply to the taxes of persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

For purposes of this ((~~section~~)) rule, "recipient" means a person receiving a tax deferral under chapter 82.63 RCW.

(8) **How should a tax deferral certificate be used?** A successful applicant, hereafter referred to as a recipient, must present a copy of the certificate to sellers of goods or retail services provided in connection with the eligible investment project in order to avoid paying sales or use tax. Sellers who accept these certificates in good faith are relieved of the responsibility to collect sales or use tax on transactions covered by the certificates. Sellers must retain copies of certificates as documentation for why sales or use tax was not collected on a transaction.

The certificate cannot be used to defer tax on repairs to, or replacement parts for, qualified machinery and equipment.

(9) **May an applicant apply for new deferral at the site of an existing deferral project?**

(a) The department must not issue a certificate for an investment project that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW. For example, replacement machinery and equipment that replaces qualified machinery and equipment is not eligible for the deferral. Also, if renovation is made from an existing building that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW for the construction of the building, the renovation is not eligible for the deferral.

(b) If expansion is made from an existing building that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW for the construction of the building, the expanded portion of the building may be eligible for the deferral. Acquisition of machinery and equipment to be used for the expanded portion of the qualified building may also be eligible.

(c) An investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(d) A certificate may be amended or a certificate issued for a new investment project at an existing facility.

(10) **May an applicant or recipient amend an application or certificate?** Applicants and recipients may make written requests to the special programs division to amend an application or certificate.

(a) Grounds for requesting amendment include, but are not limited to:

(i) The project will exceed the costs originally stated;

(ii) The project will take more time to complete than originally stated;

(iii) The original application is no longer accurate because of changes in the project; and

(iv) Transfer of ownership of the project.

(b) The department must rule on the request within sixty days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may ((~~appeal~~)) seek review of a denial within thirty days under WAC 458-20-100 (((~~Appeals~~)) Informal administrative reviews).

(11) **What should a recipient of a tax deferral do when its investment project is operationally complete?**

(a) When the building, machinery, or equipment is ready for use, or when a final election is made to treat "multiple qualified buildings" as single investment project, the recipient must notify the special programs division in writing that the eligible investment project is operationally complete. The department must, after appropriate investigation: Certify that the project is operationally complete; not certify the project; or certify only a portion of the project. The certification will include the year in which the project is operationally complete. If the department certifies as an operationally complete investment project consisting of "multiple qualifying buildings," the certification is deemed to have occurred in the calendar year in which the final election is made.

(b) If all or any portion of the project is not certified, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due, including interest, and the due date.

(c) The department must explain in writing the basis for not certifying all or any portion of a project. The decision of the department to not certify all or a portion of a project may be ((~~appealed~~)) reviewed under WAC 458-20-100 (((~~Appeals~~)) Informal administrative reviews) within thirty days.

(d) An investment project consisting of "multiple qualifying buildings" may not be certified as operationally complete unless the lessee furnishes the department with a bond, letter of credit, or other security acceptable to the department in an amount equal to the repayment obligation as determined by the department. The department may decrease the secured

amount each year as the repayment obligation decreases under the provisions of RCW 82.63.045. If the lessee does not furnish the department with a bond, letter of credit, or other acceptable security equal to the amount of deferred tax, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(12) **Is a recipient of a tax deferral required to submit annual surveys?** Each recipient of a tax deferral granted under chapter 82.63 RCW must complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. See WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(13) **Is a recipient of tax deferral required to repay deferred taxes?**

(a) **When is repayment required?** Deferred taxes must be repaid if an investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete or at any time during any of the succeeding seven calendar years. Taxes are immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

Interest on the taxes, but not penalties, must be paid retroactively to the date of deferral. For purposes of this ((~~section~~)) rule, the date of deferral is the date tax-deferred items are purchased.

The lessee of an investment project consisting of "multiple qualified buildings" is solely liable for payment of any deferred tax determined to be due and payable beginning on the date the department certifies the product as operationally complete. This does not relieve any lessor of its obligation under RCW 82.63.010(7) and subsection (3)(a) of this ((~~section~~)) rule to pass the economic benefit of the deferral to the lessee.

(b) **When is repayment not required?**

(i) Deferred taxes need not be repaid if the investment project is used only for qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete and during the succeeding seven calendar years.

(ii) Deferred taxes need not be repaid on particular items if the purchase or use of the item would have qualified for the machinery and equipment sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 (discussed in WAC 458-20-13601) at the time of purchase or first use.

(iii) Deferred taxes need not be repaid if qualified machinery and equipment on which the taxes were deferred is destroyed, becomes inoperable and cannot be reasonably repaired, wears out, or becomes obsolete and is no longer practical for use in the project. The use of machinery and equipment which becomes obsolete for purposes of the project and is used outside the project is subject to use tax at the time of such use.

(14) **When will the tax deferral program expire?** The authority of the department to issue deferral certificates expires January 1, 2015.

(15) **Is debt extinguishable because of insolvency or sale?** The debt for deferred taxes will not be extinguished by the insolvency or other failure of the recipient.

(16) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral may be transferred to the new owner if the new owner meets all eligibility requirements for the remaining periods of the deferral. The new owner must apply for an amendment to the deferral certificate. If the deferral is transferred, the new owner is liable for repayment of deferred taxes under the same terms as the original owner. If the new owner is a successor to the previous owner under the terms of WAC 458-20-216 (Successors, quitting business) and the deferral is not transferred, the new owner's liability for deferred taxes is limited to those that are due for payment at the time ownership is transferred.

PART II
SALES AND USE TAX EXEMPTION FOR PERSONS ENGAGED IN CERTAIN CONSTRUCTION ACTIVITIES FOR THE FEDERAL GOVERNMENT

(17) **Persons engaged in construction activities for the federal government.** Effective June 10, 2004, persons engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, are not liable for sales and use tax on tangible personal property incorporated into, installed in, or attached to such building or other structure, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity. RCW 82.04.190(6).

PART III
BUSINESS AND OCCUPATION TAX CREDIT FOR RESEARCH AND DEVELOPMENT SPENDING

(18) **Who is eligible for the business and occupation tax credit?** RCW 82.04.4452 provides for a business and occupation tax credit for persons engaging in research and development in Washington in five areas of high technology: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

A person is eligible for the credit if its research and development spending in the calendar year for which credit is

claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(a) **What does the term "person" mean for purposes of this credit?** "Person" has the meaning given in RCW 82.04.030.

(b) **What is "research and development spending" for purposes of this ((~~section~~)) rule?** "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(c) **What is "taxable amount" for purposes of this ((~~section~~)) rule?** "Taxable amount" means the taxable amount subject to business and occupation tax required to be reported on the person's combined excise tax returns for the year for which the credit is claimed, less any taxable amount for which a multiple activities tax credit is allowed under RCW 82.04.440. See WAC 458-20-19301 (Multiple activities tax credits) for information on the multiple activities tax credit.

(d) **What are "qualified research and development expenditures" for purposes of this ((~~section~~)) rule?** "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the business and occupation tax credit provided by RCW 82.04.4452. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(i) In order for an operating expense to be a qualified research and development expenditure, it must be directly incurred in qualified research and development. If an employee performs qualified research and development activities and also performs other activities, only the wages and benefits proportionate to the time spent on qualified research and development activities are qualified research and development expenditures under this ((~~section~~)) rule. The wages of employees who supervise or are supervised by persons performing qualified research and development are qualified research and development expenditures to the extent the work of those supervising or being supervised involves qualified research and development.

(ii) The compensation of a proprietor or a partner is determined in one of two ways:

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

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

(iii) Depreciable property is any property with a useful life of at least a year. Expenses for depreciable property will not constitute qualified research and development expenditures even if such property may be fully deductible for federal income tax purposes in the year of acquisition.

(iv) Computer expenses do not include the purchase, lease, rental, maintenance, repair or upgrade of computer hardware or software. They do include internet subscriber fees, run time on a mainframe computer, and outside processing.

(v) Training expenses for employees are qualified research and development expenditures if the training is directly related to the research and development being performed. Training expenses include registration fees, materials, and travel expenses. Although the research and development must occur in Washington, training may take place outside of Washington.

(vi) Qualified research and development expenditures include the cost of clinical trials for drugs and certification by Underwriters Laboratories.

(vii) Qualified research and development expenditures do not include legal expenses, patent fees, or any other expense not incurred directly for qualified research and development.

(viii) Stock options granted as compensation to employees performing qualified research and development are qualified research and development expenditures to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer.

(ix) Preemployment expenses related to employees who perform qualified research and development are qualified research and development expenditures. These expenses include recruiting and relocation expenses and employee placement fees.

(e) **What does it mean to "conduct" qualified research and development for purposes of this ((~~section~~)) rule?** A person is conducting qualified research and development when:

(i) The person is in charge of a project or a phase of the project; and

(ii) The activities performed by that person in the project or the phase of the project constitute qualified research and development.

(iii) Examples.

(A) Company C is conducting qualified research and development. It enters into a contract with Company D requiring D to provide workers to perform activities under the direction of C. D is not entitled to the credit because D is not conducting qualified research and development. Its employees work under the direction of C. C is entitled to the credit if all other requirements of the credit are met.

(B) Company F enters into a contract with Company G requiring G to perform qualified research and development on a phase of its project. The phase of the project constitutes qualified research and development. F is not entitled to the credit because F is not conducting qualified research and development on that phase of the project. G, however, is entitled to the credit if all other requirements of the credit are met.

(f) **What is "qualified research and development" for purposes of this ((~~section~~)) rule?** "Qualified research and development" means research and development performed within this state in the fields of advanced computing,

advanced materials, biotechnology, electronic device technology, and environmental technology.

(g) **What is "research and development" for purposes of this ((~~section~~)) rule?** See subsection (3)(c) of this ((~~section~~)) rule for more information on the definition of research and development.

(i) Example. A company that engages in environmental cleanup contracted to clean up a site. It had never faced exactly the same situation before, but guaranteed at the outset that it could do the job. It used a variety of existing technologies to accomplish the task in a combination it had never used before. The company was not engaged in qualified research and development in performing this contract. While the company applied existing technologies in a unique manner, there was no uncertainty to attain the desired or necessary specifications, and therefore the outcome of the project was certain.

(ii) Example. Same facts as (g)(i) of this subsection, except that the company performed research on a technology that had been applied in other contexts but never in the context where the company was attempting to use it, and it was uncertain at the outset whether the technology could achieve the desired outcome in the new context. If the company failed, it would have to apply an existing technology that is much more costly in its cleanup effort. The company was engaged in qualified research and development with respect to the research performed in developing the technology.

(iii) Example. Company A is engaged in research and development in biotechnology and needs to perform standard blood tests as part of its development of a drug. It contracts with a lab, B, to perform the tests. The costs of the tests are qualified research and development expenditures for A, the company engaged in the research and development. Although the tests themselves are routine, they are only a part of what A is doing in the course of developing the drug. B, the lab contracted to perform the testing, is not engaged in research and development with respect to the drug being developed. B is neither discovering technological information nor translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. B is not entitled to a credit on account of the compensation it receives for conducting the tests.

(h) **What are the five high technology areas?** See subsection (3)(e) of this ((~~section~~)) rule for more information.

(19) **How is the business and occupation tax credit calculated?**

(a) **On or after July 1, 2004.** The amount of the credit is calculated as follows:

(i) A person must first determine the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development.

(ii) Then the person subtracts, from the amount determined under (a)(i) of this subsection, 0.92 percent of its taxable amount. If 0.92 percent of the taxable amount exceeds the amount determined under (a)(i) of this subsection, the person is not eligible for the credit.

(iii) The credit is calculated by multiplying the amount determined under (a)(ii) of this subsection by the following:

(A) For the periods of July 1, 2004, to December 31, 2006, the person's average tax rate for the calendar year for which the credit is claimed;

(B) For the periods of January 1, 2007, to December 31, 2007, the greater of the person's average tax rate for the calendar year or 0.75 percent;

(C) For the periods of January 1, 2008, to December 31, 2008, the greater of the person's average tax rate for the calendar year or 1.0 percent;

(D) For the periods of January 1, 2009, to December 31, 2009, the greater of the person's average tax rate for the calendar year or 1.25 percent; and

(E) For the periods after December 31, 2009, 1.50 percent.

(iv) For the purposes of this ((~~section~~)) rule, "average tax rate" means a person's total business and occupation tax liability for the calendar year for which the credit is claimed, divided by the person's total taxable amount for the calendar year for which the credit is claimed.

(v) For purposes of calculating the credit, if a person's reporting period is less than annual, the person may use an estimated average tax rate for the calendar year for which the credit is claimed, by using the person's average tax rate for each reporting period. When the person files its last return for the calendar year, the person must make an adjustment to the total credit claimed for the calendar year using the person's actual average tax rate for the calendar year.

(vi) Examples.

(A) A business engaging in qualified research and development has a taxable amount of $10,000,000 in a year. It pays $80,000 in that year in wages and benefits to employees directly engaged in qualified research and development. The business has no other qualified research and development expenditures. Its qualified research and development expenditures of $80,000 are less than $92,000 (0.92 percent of its taxable amount of $10,000,000). If a business's qualified research and development expenditures (or eighty percent of amounts received for the conduct of qualified research and development) are less than 0.92 percent of its taxable amount, it is not eligible for the credit.

(B) A business engaging in qualified research and development has a taxable amount of $10,000,000 in 2005. Seven million dollars of this amount is taxable at the rate of 0.015 under the B&O tax classification for services and $3,000,000 is taxable at the rate of 0.00484 under the B&O tax classification for royalties. The business pays $119,520 in B&O tax for this reporting period. It pays $200,000 in that year to employees directly engaged in qualified research and development. The business has no other qualified research and development expenditures.

In order to determine the amount of its credit, the business subtracts $92,000 (0.92 percent of its taxable amount of $10,000,000) from $200,000, its qualified research and development expenditures. The resulting amount of $108,000 multiplied by the business's average tax rate equals the amount of the credit.

The business's average tax rate in 2005 is determined by dividing its B&O tax of $119,520 by its taxable amount of

$10,000,000. The result, 0.01195, is multiplied by $108,000 to determine the amount of the credit. The credit is $1,291 ($1,290.60 rounded to the nearest whole dollar).

(b) **From July 1, 1998 to June 30, 2004.** The amount of the credit is equal to the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00484 in the case of a nonprofit corporation or association; and

multiplied by 0.015 in the case of all other persons.

(c) **Prior to July 1, 1998.** The amount of the credit is equal to the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00515 in the case of a nonprofit corporation or association; and

multiplied by 0.025 in the case of all other persons.

(d) The credit for any calendar year may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due for the calendar year.

(e) Credits may not be carried forward or carried back to other calendar years.

(20) **Is the person claiming the business and occupation tax credit required to submit annual surveys?** Each person claiming the credit granted under RCW 82.04.4452 must complete an annual survey. See WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(21) **Is the business and occupation tax credit assignable?** A person entitled to the credit because of qualified research and development conducted under contract for another person may assign all or a portion of the credit to the person who contracted for the performance of the qualified research and development.

(a) Both the assignor and the assignee must be eligible for the credit for the assignment to be valid.

(b) The total of the credit claimed and the credit assigned by a person assigning credit may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignor in any calendar year.

(c) The total of the credit claimed, including credit received by assignment, may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignee in any calendar year.

(22) **What happens if a person has claimed the business and occupation tax credit earlier but is later found ineligible?** If a person has claimed the credit earlier but is later found ineligible for the credit, then the department will declare the taxes against which the credit was claimed to be immediately due and payable. Interest on the taxes, but not penalties, must be paid retroactively to the date the credit was claimed.

(23) **When will the business and occupation tax credit program expire?** The business and occupation tax credit program for high technology businesses expires January 1, 2015.

(24) **Do staffing companies qualify for the business and occupation tax credit program?** A staffing company may be eligible for the credit if its research and development spending in the calendar year for which credit is claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(a) **Qualifications of the credit.** In order to qualify for the credit, a staffing company must meet the following criteria:

(i) It must conduct qualified research and development through its employees;

(ii) Its employees must perform qualified research and development activities in a project or a phase of the project, without considering any activity performed:

(A) By the person contracting with the staffing company for such performance; or

(B) By any other person;

(iii) It must complete an annual survey by March 31st following any year in which the credit was taken; and

(iv) It must document any claim of the B&O tax credit.

(b) Examples.

(i) Company M, a staffing company, furnishes three employees to Company N for assisting a research project in electronic device technology. N has a manager and five employees working on the same project. The work of M's employees and N's employees combined as a whole constitutes qualified research and development. M's employees do not perform sufficient activities themselves to be considered performing qualified research and development. M does not qualify for the credit.

(ii) Company V, a staffing company, furnishes three employees to Company W for performing a phase of a research project in advanced materials. W has a manager and five employees working on other phases of the same project. V's employees are in charge of a phase of the project that results in discovery of technological information. The work of V's employees alone constitutes qualified research and development. V qualifies for the credit if all other requirements of the credit are met.

(iii) Same as (b)(ii) of this subsection, except that the phase of the research project involves development of computer software for W's internal use. The work of V's employees alone constitutes qualified research and development. V qualifies for the credit if all other requirements of the credit are met.

AMENDATORY SECTION (Amending WSR 14-14-085, filed 6/30/14, effective 7/31/14)

WAC 458-20-255 Carbonated beverage syrup tax. (1) **Introduction.** This rule explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbon-

ated beverage syrup sold in this state at wholesale or retail. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and ((~~appeals~~)) reviews, and all general administrative provisions apply to the syrup tax.

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

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added to carbonated water to produce a carbonated beverage. "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide. Examples include soft drinks, mineral waters, seltzers, and fruit juices, if carbonated, and frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

(b) **What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. A ruling may be obtained by writing the department at dor.wa.gov/content/ContactUs/Default.aspx; or

Taxpayer Information and Education
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this rule for information about an exemption or credit that may be applicable to such sales.

(4) **Who is responsible for paying the syrup tax?** This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state.

(a) **Wholesale sales.** A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this rule, the buyer is not obligated to pay or report the syrup tax to the department.

(b) **Retail sales.** A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this rule, the buyer is not obligated to pay or report the syrup tax to the department.

(5) **Exemptions:** This subsection provides information on exemptions from the syrup tax.

(a) **Previously taxed syrup.** Any successive sale of previously taxed syrup is exempt. See RCW 82.64.030(1). "Previously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

(i) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(iii) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(iv) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(v) Example. Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state.

Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this rule). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) **Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. See RCW 82.64.030(2). The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

(i) **Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information. A blank exemption certificate can be obtained through the following means:

(A) From the department's internet web site at dor.wa.gov; or

(B) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

(ii) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. The buyer is liable for tax on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in (b)(i) of this subsection. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) **Taxation prohibited under the United States Constitution.** Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt. See RCW 82.64.050(1).

For instance, consider the sales of syrup to Indian tribes when the syrup is delivered in Indian country. In the following examples, the assumption is that the sale to the tribal business qualifies under the subsection on preemption of state tax for "sales of tangible personal property or provisions of service by nonmembers in Indian country" in WAC 458-20-192, Indians—Indian country.

(i) **Example 1.** Big Cola (an instate manufacturer) sells syrup wholesale to Little Cola Distribution (a nonbottler). Big Cola collects and pays the syrup tax and shows it on the invoice of Little Cola Distribution. Little Cola Distribution then sells and delivers the syrup to a tribal business in Indian country. In this situation the tax is due because the legal incidence of the tax is on Little Cola Distribution, a non-Indian outside of Indian country, as the first purchaser in a wholesale sale. Thus, the syrup tax is not preempted by the second wholesale sale to Indians in Indian country of syrup. In this circumstance, the legal incidence of the tax is not on the sale to the tribal business in Indian country. The syrup tax was previously owed and paid by Little Cola Distribution in its purchase from Big Cola. This tax is only collected once, notwithstanding that Little Cola Distribution separately itemized its syrup tax obligation as provided for in subsection (5)(a)(i) of this rule.

(ii) **Example 2.** Big Cola sells syrup wholesale to Little Cola Bottling (a trademarked bottler). Big Cola does not collect or pay the syrup tax from the sale to Little Cola Bottling due to the trademarked bottler exemption under subsection (5)(d) of this rule. Little Cola Bottling then sells and delivers the bottled syrup to a tribal business in Indian country. The syrup tax is not due.

(iii) **Example 3.** Big Cola sells and delivers syrup directly to a tribal business in Indian country. The syrup tax is not due.

(d) **Wholesale sales of trademarked syrup to bottlers.** Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked syrup within a specific geographic territory is exempt. See RCW 82.64.030(3).

(6) **Syrup tax credits.**

(a) **B&O tax credit for syrup tax paid.** RCW 82.04.4486 provides a B&O tax credit that was effective July 1, 2006. The credit is available to any buyer of syrup using the syrup in making carbonated beverages that are then sold, provided that the syrup tax, imposed by RCW 82.64.020, has been paid. The tax credit is a percentage of the syrup tax paid.

(i) **How much is the credit?** For syrup purchased July 1, 2006, through June 30, 2007, the B&O tax credit for the buyer was equivalent to twenty-five percent of the syrup tax paid. From July 1, 2007, through June 30, 2008, the allowable credit was fifty percent. From July 1, 2008, through June 30, 2009, the credit was seventy-five percent. As of July 1, 2009, the buyer is entitled to a B&O tax credit of one hundred percent of the syrup tax paid.

(ii) **When can the credit be taken?** The B&O tax credit can be claimed against taxes due for the tax reporting period in which the taxpayer purchased the syrup. The credit cannot exceed the amount of B&O tax due, nor can credit be refunded. Unused credit may be carried over and used for future reporting periods for a maximum of one year. The year starts at the end of the reporting period in which the syrup was purchased and credit was earned. See (b)(ii)(B)(iii) of this subsection for record documentation and retention.

(b) **Credit for syrup tax paid to another state.** Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit

may not be applied against any tax paid or owed in this state other than the syrup tax imposed by chapter 82.64 RCW.

(i) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

(ii) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

(A) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and

(B) Measured by the volume of the syrup.

(iii) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

WSR 16-12-076
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed May 27, 2016, 4:30 p.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: The department is amending chapter 16-240 WAC, WSDA grain inspection program—Definitions, standards, and fees, to address the fee structure in consideration of workload variables that contribute to variability in the fund balance, and to make modifications to update the chapter and make it more usable.

Citation of Existing Rules Affected by this Order: Amending WAC 16-240-010, 16-240-020, 16-240-038, 16-240-040, 16-240-043, 16-240-044, 16-240-046, 16-240-048, 16-240-054, 16-240-060, 16-240-070, and 16-240-080.

Statutory Authority for Adoption: RCW 22.09.020.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 16-08-112 on April 5, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 12, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 12, Repealed 0.

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

Date Adopted: May 27, 2016.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-010 Definitions. "Department" means the Washington state department of agriculture.

"Federal fiscal year" means October 1st through September 30th for GIPSA, FGIS.

"Fee" means any charge made by the department for:

(1) Inspecting and handling any commodity; or

(2) Any service related to weighing or storing grains or commodities.

"Fiscal year" means July 1st through June 30th for the state of Washington.

"GIPSA, FGIS" means the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service.

"Metric ton" means two thousand two hundred four and six-tenths pounds.

"Minimum operating fund balance" or **"MOFB"** means six months of grain inspection program operating expenses.

"Official commercial inspection services" means a contractual agreement between the applicant and the department for services specified by the applicant that will be provided at an applicant's facility.

"Revenue minimum" means the amount of revenue that must be collected by the department to offset expenses. In order to act as an official inspection agency under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, the program must collect revenue to offset expenses. The grain inspection program is supported entirely by the fees it generates from the services it provides as required by RCW 22.09.790. The circumstances under which charges occur to collect the revenue minimum are stated in WAC 16-240-038.

"Service point" means the Washington state department of agriculture offices and surrounding service areas authorized by the Federal Grain Inspection Service to provide sampling, inspecting, weighing, and certification services.

"Shift" means an established period of staffing for up to twelve hours at transloading facilities or up to eight hours at export port or domestic service point locations. Service requests in excess of the established period would require requesting an additional shift. Any work beyond the established shift period constitutes an additional shift.

"Unstaffed export locations" means a facility that does not have a permanent staffing request in place for day, night, swing, or graveyard shifts.

"USDA" means the United States Department of Agriculture.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-020 Washington state grain and commodity service points. The offices located in the following cities are service points for providing sampling, inspecting, weighing, and certification services.

(1) Service points:

(a) Colfax.

(b) Kalama (North).

(c) Kalama (South).

(d) Longview.

(((~~d~~))) (e) Olympia.

(((~~e~~))) (f) Pasco.

(((~~f~~))) (g) Seattle.

(((~~g~~))) (h) Spokane.

(((~~h~~))) (i) Tacoma.

(((~~i~~))) (j) Vancouver.

(2) Aberdeen has been delegated to Washington state as a service point by the Federal Grain Inspection Service. Services for Aberdeen are as follows:

(a) Services for Aberdeen may be requested through the Tacoma grain inspection office.

(b) Travel time and mileage will be assessed from Tacoma to Aberdeen for all services requested at Aberdeen until a permanent staff is established.

(3) Inspection points may be added or deleted within the department's delegated and designated service area.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-038 Revenue minimum ((~~fee process~~)) determination. The circumstances under which the department ((~~may assess~~)) assesses additional charges to meet the revenue minimum are as follows:

(1) When the daily volume of work at a service location at the established fees does not generate revenue at least equal to the straight time hourly rate per hour, per employee, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

(2) The daily revenue minimum assessment applies only to the regular metric tonnage rate shown in USGSA Table 1 of this schedule. When the alternate rate is in effect (WAC 16-240-043 and 16-240-070), export locations will not be subject to daily revenue minimum assessments for the balance of the alternate rate period allowed under WAC 16-240-043.

(3) Work volume daily averaging at export locations will be determined as follows:

(a) When the ((~~weekly~~)) daily volume of work at a service location at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, the department ((~~may~~)) charges an additional fee, as described in subsection (1) of this section. ((~~The weekly volume will be based on the applicable shift from Monday through the following Monday.~~))

(b) The straight time hourly rate will be assessed per hour, per employee.

(c) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under ((~~weekly~~)) daily averaging.

(4) Work volume monthly averaging at export locations will be determined as follows:

(a) When the applicant has requested the department to establish one or more permanent shifts, the applicant may request, in writing, that the revenue minimum required for staffing at the location be determined based on the completed invoices for the calendar month, instead of paying the fees for daily volume of work.

(b) When the monthly volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, the department charges an additional fee, as described in subsection (1) of this section.

(c) At export locations, the request for monthly averaging stays in effect until canceled.

(d) An applicant's written request to establish or cancel monthly averaging for the coming month must be received by 2:00 p.m. of the last business day in the month.

(e) Service cancellation fees under WAC 16-240-054 are not considered to be revenue under monthly averaging.

(f) The monthly revenue minimum assessment applies only to the standard monthly tonnage rate shown in USGSA Table 1 of this schedule. When the alternate rate is in effect, export locations will not be subject to daily revenue minimum assessments during the alternate rate period allowed under WAC 16-240-043.

(i) Upon the applicant's written notification to the department, the monthly revenue minimum will not be applied to the month in which an export facility resumes operations after an extended downtime. This exception for maintenance or repair is available once per fiscal year.

(ii) When the department provides services at a nonexport location or a transloading facility, and the hourly, unit, and applicable travel fees do not cover the cost of providing the service, an amount at least equal to the straight time hourly rate per hour, per employee, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

NEW SECTION

WAC 16-240-039 USDA, GIPSA, FGIS administrative fee. The United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service assesses a per metric ton administrative fee for export and other grain handled by facilities in the Washington state department of agriculture service area.

(1) Washington state department of agriculture will invoice and collect GIPSA's administrative fee at the current GIPSA tonnage calculation or charge on behalf of GIPSA and will pass through the assessment to GIPSA, FGIS.

(2) Washington state department of agriculture will assess the federal fiscal year administrative rate established

by GIPSA, FGIS under the guidelines established by GIPSA for collecting the fee.

(3) The fee assessments under this chapter do not include the GIPSA assessment.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-040 Official commercial inspection services. The department may provide on-site official commercial inspection services, at the applicant's request, when all of the following conditions are met:

(1) ((~~Appropriate~~)) As applicable under 7 C.F.R. § 800.46, appropriate space((~~, equipment~~)) and security must be provided by the applicant.

(2) The applicant must provide a written document fully describing the services requested. The applicant must fully describe the requested services in writing so the department can determine appropriate staffing levels and develop a guarantee of expenses proposal.

(3) The department must be able to provide appropriate licensed personnel to accomplish the service requested.

(4) ((~~A guarantee of expenses~~)) An adequate provision for fees is negotiated.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-043 Minimum operating fund ((~~discount~~)) balance fee adjustment. (((~~(1) The fund balance will be evaluated by July 1st of every even numbered year. If the fund exceeds the minimum balance by at least five percent, the excess will be prorated as a future discount to those customers who paid for services during the previous three calendar years. If an excess operating fund balance exists, the director or designee will authorize the program to apply the discount to qualified customers on a monthly basis at the time of future service billings during the next calendar year.~~

~~(2) The discount will be made available to qualified customers as follows. The department will establish the percent of discount available to qualified customers as based on each customer's fees paid over the previous three calendar years in relation to the total amount determined to be in excess of the revenue minimum. During the discount calendar year, each qualified customer will be entitled to receive a discount in the amount of one-twelfth of its total potential discount amount during each month that it incurs fees. No discount will be available in excess of the total fees charged in any month. No discount will accrue if not used during any month of the applicable calendar year.~~)) The department shall establish the minimum operating fund balance amount on the first business day of July each year.

(1) At that time, if the fund balance is above the new minimum operating fund balance amount by at least ten percent, the metric ton vessel rate and the approved automated weighing system rate per metric ton under WAC 16-240-070 at USGSA Table 1 shall be the alternate fee rate beginning August 1st of that year, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 at AMA Table 1 shall be the alternate fee rate beginning August 1st of that year.

(2) At that time, if the minimum fund balance is below the new minimum operating fund balance by at least ten percent, the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-070 at USGSA Table 1 shall be the standard fee rate beginning August 1st of that year, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 at AMA Table 1 shall be the standard fee rate beginning August 1st of that year.

(3) The department may review the status of the minimum operating fund balance any month during each fiscal year. On the first business day of the month following such review, if the fund balance is above the minimum operating balance by at least ten percent, the alternate fee rate established or to be established under subsection (1) of this section shall apply. If the fund balance is below the minimum operating fund balance by at least ten percent, the standard fee rate established or to be established under subsection (2) of this section shall apply. Any change in the fee rates required under this subsection shall take effect beginning the first day of the following month. The department shall give notice of any rate change as provided under subsection (5) of this section.

(4) The department shall post notice of each year's current minimum operating fund balance amount on the department's WSDAgrades.com web site within three business days of the date in July when that amount is established under this section.

(5) The department shall post notice of the fee rate established under subsection (1), (2), or (3) of this section on the department's WSDAgrades.com web site within three business days of the date the department determines the fee rate. The posted notice shall identify the fee rate for each affected category of service and the date each fee rate takes effect. Notice is not required to be posted when an established fee rate does not change following review under subsection (3) of this section.

(6) By e-mail or other means, the department may provide optional additional notice to current customers and to any other interested persons of the minimum operating fund balance established under this section and notice of any fee rates established or changed under subsections (1) through (3) of this section. Such optional additional notice should be given within the same times as the required notices under subsections (4) and (5) of this section. This subsection (6) shall not affect the validity of any fee rates established or changed under this section.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-044 GIPSA, FGIS scale authorization. The United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service (USDA, GIPSA, FGIS) has delegated official scale testing and scale authorization authority to the department.

(1) The GIPSA, FGIS scale authorization fee established in WAC 16-240-060, per hour, per employee is assessed

when GIPSA, FGIS scale authorization services are performed.

(2) In addition to the hourly GIPSA, FGIS scale authorization fee; the department may assess travel time at the scale authorization hourly rate, mileage beyond ten miles from the scale specialist's assigned office location, per diem, or overtime, if applicable.

(3) All scales in Washington state under USDA, GIPSA, FGIS jurisdiction must comply with the following testing requirements:

(a) Scales must be tested and certified for accuracy at least twice each year by an authorized Washington state department of agriculture scale specialist or a USDA, GIPSA, FGIS scale specialist.

(b) When tested by the department or by USDA, GIPSA, FGIS, a seal must be placed on the scales. This seal must be dated and must indicate approval or rejection.

(c) When scales are tested, copies of the test report must be:

(i) Forwarded to USDA, GIPSA, FGIS;

(ii) Maintained by the department; and

(iii) Maintained at the facility where the scale is located.

(4) The scale authorization fee is assessed in one-half hour increments.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-046 Straight time rate. The straight time hourly rate is assessed as cited below.

(1) An hourly fee is specified in the schedule ((~~of fees~~)) adopted under this chapter.

(2) ((~~No other fee is established in the schedule of fees.~~

~~(3)~~)) The revenue minimum under WAC 16-240-038 applies.

(((~~(4) The revenue minimum required for staffing at export locations determined on a weekly basis under WAC 16-240-038 applies.~~

~~(5)~~)) (3) No contractual agreement supersedes the straight time rate other than official commercial inspection services provided under WAC 16-240-040.

(((~~(6)~~)) (4) Straight time is assessed in one-half hour increments.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-048 Rates for working outside established business hours (overtime). In addition to regular inspection and weighing fees and any applicable hourly fees, the department will charge the overtime rate per hour, per employee, including applicable supervisory and clerical employee hours, when a service is requested:

(1) Anytime on Saturdays, Sundays, or holidays.

(2) Before or after regularly scheduled office hours, Monday through Friday, except as provided in WAC 16-240-036 for an established permanent staffing request.

(3) During established meal periods on any shift.

(4) For services requested at unstaffed export locations.

(5) Overtime is assessed in one-half hour increments.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-054 Service cancellation fee. A service cancellation fee applies when service is requested and then canceled ((~~or not performed~~)).

(1) When ((~~a~~)) an applicant requests a shift to provide service ((~~is requested~~)) before or after the inspection office's established hours, a cancellation fee ((~~would apply~~)) applies as follows:

(a) When a service is requested before or after an office's standard Monday through Friday shifts, or anytime on Saturdays, Sundays, or holidays; and

(b) The requested service is canceled after 2:00 p.m. of the last business day before the requested service; then

(c) A service cancellation fee according to WAC 16-240-060, Table 1, will be assessed per employee scheduled.

(2) When service is requested for a vessel inspection, a cancellation fee ((~~would apply~~)) applies as follows:

(a) When a vessel inspection is requested and then canceled after 2:00 p.m. of the last business day before the requested service((~~, a cancellation fee will apply.~~)); and

(b) The service cancellation fee will be assessed per employee scheduled to inspect the vessel.

(3) When a facility has an approved permanent staffing request letter in place for the day, night, swing, or graveyard shift, the department waives the cancellation fee for the permanently staffed shift.

NEW SECTION

WAC 16-240-056 Fees for dedicated staff time. The department provides administrative and consultation services and related assistance to an applicant for service that is establishing a new facility or renovating an existing facility when those services can be provided within the department's established staffing and normal course of business. When dedicated staff time is required to assist an applicant for service to establish or renovate a facility, the following fees apply.

(1) When dedicated staff time is required by an applicant for service to establish or renovate a facility, the department will charge the applicable hourly rates established in WAC 16-240-060.

(2) When dedicated staff time is required to add automated systems to a facility or to resolve systems installation or operation issues, the department will charge the applicable hourly rates established in WAC 16-240-060.

(3) When dedicated staff time is required, the department will charge the applicable travel fees established in WAC 16-240-050.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-060 WSDA grain program hourly and cancellation fees ((~~for service~~)). USGSA—AMA—WSDA Table 1 contains fees for GIPSA, FGIS scale authorization, straight-time hourly rate, overtime hourly rate, and service cancellation fees for services performed under the United States Grain Standards Act, the Agricultural Marketing Act of 1946, and Washington state rule.

USGSA—AMA—WSDA Table 1

WSDA Grain Program Hourly and Cancellation Fees ((~~for Service~~))

1.	Scale authorization fee, **per hour, per employee**	**$56.00**
2.	Straight-time rate, **rate per hour, per employee**	**$56.00**
3.	Overtime rate established under WAC 16-240-048, **per hour, per employee**	**$28.00**
4.	Service cancellation fee, **per employee**	**$200.00**

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-070 Fees for services under the United States Grain Standards Act. (1) USGSA Tables 1 through 7 in this section contain fees for official sampling ((~~and/or~~)), inspection ((~~and/or~~)), weighing services, and fees for other associated services under the United States Grain Standards Act (USGSA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the United States Grain Standards Act are described below.

(a) Fees for other services under the United States Grain Standards Act not specifically cited in WAC 16-240-070 are provided at the rates contained in WAC 16-240-080 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis. The program will require the ((~~recipient of~~)) applicant for service((~~s~~)) to provide advance consent to the rate for any service necessary to be performed at an external laboratory or organization.

(b) An applicant may be required to provide the necessary supplies and equipment when requesting a new or special type of analysis.

USGSA Table 1

Fees for Combination Inspection and Weighing Services

1.	In, out, or local, **standard rate, per metric ton**	**((~~$0.260~~))** **$0.250**
2.	Vessels (export and domestic ocean-going), **standard rate, per metric ton**	**$0.250**
3.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, **standard rate, per metric ton**	**$0.230**
Note: For automated weighing systems:		
■	When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060.	
4.	Vessels and local (export and domestic ocean-going), **alternate rate, per metric ton**	**$0.200**
Note: For vessels (export and domestic ocean-going):		
■	The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee.	
■	The metric ton vessel rate includes all official ship samples required by the load order.	
■	Stress crack analysis in corn is included in the fees in USGSA Table 1.	
■	During vessel loading, assessments for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be assessed at the per unit rates included ((~~in~~)) under this ((~~fee schedule~~)) chapter.	
((~~2.~~	~~Locations with approved automated weighing systems, **per metric ton**~~	**~~$0.240~~**))
~~Note: For automated weighing systems:~~		
	~~• When approved automated weighing systems are not functioning properly, additional staff may be required at the straight time hourly rate.~~))	
((~~3.~~)) 5.	Trucks or containers, **per truck or container**	**$25.00**
((~~4.~~)) 6.	Additional nongrade determining factor analysis, **per factor**	**$3.00**

USGSA Table 2

Fees for Official Sampling and Inspection Without Weighing Services

1.	Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, **per truck or container**	**$20.00**
2.	Railcars sampled by USDA approved mechanical sampler, including factor only or sampling only services, **per railcar**	**$20.00**
3.	Original or new sample reinspection railcars sampled by USDA approved grain probe, applicant assisted, including factor only or sampling only services, **per railcar**	**$20.00**
4.	Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, **per railcar**	**$30.00**

((~~5.~~	~~Inspection of bagged grain, including tote bags, per hundredweight (cwt)~~	~~**$0.100**~~
~~6.~~	~~Additional nongrade determining factor analysis, **per factor**~~	~~**$3.00**~~))
Note: The following applies to all fees in this table: ■ For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 2. ■ Stress crack analysis in corn is included in the fees in USGSA Table 2. ■ Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter. ((~~Examples are special grades, such as the determination of waxy corn, or criteria analysis, such as stress cracks in corn or seed sizing in soybeans.~~)) ■ The per railcar rate applies to each railcar included in a batch grade. A batch grade is two or more cars that are combined, at the applicant's request, for a single grade.		
5.	Inspection of bagged grain, including tote bags, per hundredweight (cwt)	**$0.100**
6.	Additional nongrade determining factor analysis, **per factor**	**$3.00**

USGSA Table 3
Fees for Official Class X Weighing Services Without an Inspection of Bulk Grain

1.	In, out, or local, **per metric ton**	**$0.200**
2.	Vessels (export and domestic ocean-going), **per metric ton**	**$0.200**
3.	Trucks or containers, **per weight lot**	**$20.00**

USGSA Table 4
Fees for Inspection of Submitted Samples, Fees for Reinspections Based on Official File Samples and Fees for Additional Factors

1.	Submitted samples, including factor-only inspections, **per inspection**	**$12.00**
2.	Reinspections based on official file sample, including factor-only reinspections, **per inspection**	**$12.00**
3.	Additional, nongrade determining factor analysis, **per factor**	**$3.00**
4.	Stress crack only analysis on corn, **per sample**	**$9.00**
Note: The following applies to all fees in this table: ■ When submitted samples are not of sufficient size to allow for official grade analysis, obtainable factors may be provided, upon request of the applicant, at the submitted sample rates shown above. ■ For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 4. ■ Stress crack analysis in corn is included in the fees in USGSA Table 4. ■ Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter. ((~~Examples are special grades, such as the determination of waxy corn, or criteria analysis, such as stress cracks in corn or seed sizing in soybeans.~~))		

USGSA Table 5
Fees for Official Analysis for Protein, Oil, or Other Official Constituents

Original or reinspection based on file sample, **per test**	**$9.00**
Note: The following applies to the fee in USGSA Table 5: ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee will also be assessed. ■ Results for multiple criteria achieved in a single testing operation are provided at the single test rate unless certificated separately.	

USGSA Table 6
Fees for Testing for the Presence of Mycotoxins Using USDA Approved Methods

Original, reinspection based on official file sample, or submitted sample, **per test**	**$40.00**
Note: The following applies to this table: ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee to obtain the sample will be assessed in addition to the per test fee shown earlier (see WAC 16-240-070, USGSA Table 2).	

USGSA Table 7
Fees for Stowage Examination Services on Vessels or Ocean-Going Barges and Fees for Other Stowage Examination Services

1.	Vessels or ocean-going barges stowage examination, original or reinspection, **per request**	**$500.00**
2.	Other stowage examinations of railcars, trucks, trailers, or containers, original or reinspection, **per inspection**	((~~**$12.00**~~)) **$9.00**

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-080 Fees for services under the Agricultural Marketing Act of 1946. (1) AMA Tables 1 through 5 in this section contain official sampling and/or inspection and/or weighing services and fees for other services under the Agricultural Marketing Act of 1946 (AMA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the Agricultural Marketing Act of 1946 are described below.

(a) Fees for other services under the Agricultural Marketing Act of 1946 not contained in WAC 16-240-080 are contained in WAC 16-240-070 or 16-240-090 and/or at the published rates of the laboratory or organization providing the official service or analysis.

(b) An applicant may be required to provide the necessary supplies and/or equipment when requesting a new or special type of analysis.

AMA Table 1

Fees for Combination Sampling, Inspection and Weighing Services, and Additional Factors

1.	In, out, or local, **standard rate, per metric ton**	((~~**$0.260**~~)) **$0.250**
2.	Vessels (export or domestic), **standard rate, per metric ton**	**$0.250**
3.	((~~Locations~~)) Vessels and local (export and domestic ocean-going) with approved automated weighing systems, **standard rate, per metric ton**	((~~**$0.240**~~)) **$0.230**
Note: For automated weighing systems:		
■	When approved automated weighing systems are not functioning properly, ((~~additional~~)) dedicated staff time may be required at the ((~~straight time hourly~~)) rates established in WAC 16-240-060.	
((~~3.~~)) 4.	Vessels and local (export ((~~or~~)) and domestic ocean-going), **alternate rate, per metric ton**	((~~**$0.260**~~)) **$0.200**
Note: For vessels (export and domestic ocean-going):		
■	The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee.	
■	The metric ton vessel rate includes all official ship samples required by the load order.	
■	During vessel loading, assessments for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be assessed at the per unit rates included under this chapter.	
((~~4.~~)) 5.	Trucks or containers, **per truck or container**	**$30.00**
((~~5.~~)) 6.	Additional, nongrade determining factor analysis, **per factor**	**$3.00**
Note: The following applies to all fees in this table:		
■	The rates in the above section also apply to services provided under federal criteria inspection instructions, state established standards, ((~~and/or~~)) or other applicant ((~~defined~~)) requested criteria.	
■	Dockage breakdown is included in the basic inspection fee.	
■	The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee.	
■	Assessments for other tests, such as mycotoxin analysis, provided during vessel loading will be assessed at the per unit rates included in this fee schedule.	

AMA Table 2

Fees for Official Sampling and Inspection Without Weighing Services, and Additional Factors

1.	Trucks or containers sampled by USDA approved grain probe, including factor only or sampling only services, **per truck or container**	**$30.00**
2.	Railcars sampled by USDA approved mechanical samplers, including factor only or sampling only services, **per railcar**	**$30.00**
3.	Railcars sampled by USDA approved grain probe, including factor only or sampling only services, **per railcar**	**$30.00**
4.	Inspection of bagged commodities or tote bags, including factor only or sampling only services, **per hundredweight (cwt)**	**$0.100**
5.	Additional, nongrade determining factor analysis, **per factor**	**$3.00**
Note: The following applies to all fees in this table:		
■	Dockage breakdown is included in the basic inspection fee.	
■	Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate.	
■	The rates shown above also apply to services provided under federal criteria inspection instructions.	

AMA Table 3
Fees for Official Weighing Services without Inspections

1.	In, out, or local, per metric ton	**$0.200**
2.	Vessels (export and domestic ocean-going), **per metric ton**	**$0.200**
3.	Trucks or containers, **per weight lot**	**$20.00**

AMA Table 4
Fees for Inspecting Submitted Samples

1.	Submitted sample, thresher run or processed, including factor-only inspections, **per sample**	**$20.00**
2.	Additional, nongrade determining factor analysis, **per factor**	**$3.00**
Note: The following applies to all fees in this table:		
■	Dockage breakdown is included in the basic inspection fee.	
■	Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate.	
■	The rates shown above also apply to inspection services provided under federal criteria inspection instructions.	
■	When the size of a submitted sample is insufficient to perform official grade analysis, factor-only analysis is available on request of the applicant.	

AMA Table 5
Fees for Miscellaneous Services

1.	Falling number determinations, including liquefaction number on request, **per determination**	**$20.00**
2.	Sampling and handling of processed commodities, **per hour, per employee**	**$56.00**
3.	Laboratory analysis, **at cost**	**At cost**
Note: The following applies to all fees in this table:		
■	On request, shipping arrangements billed directly **by shipper** to the customer's shipping account may be coordinated by the department.	

WSR 16-12-083
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed May 31, 2016, 11:01 a.m., effective July 1, 2016]

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

Purpose: WAC 458-20-193 (Rule 193) provides guidance on the tax treatment of interstate sales of tangible personal property.

Rule 193 has been revised to recognize changes to nexus standards effective September 1, 2015, due to chapter 5, Part II, Laws of 2015 3rd sp. sess. These changes include a new "click-through" nexus standard for remote sellers and a change to economic nexus from physical nexus for most wholesale sellers.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-193 Interstate sales of tangible personal property.

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

Adopted under notice filed as WSR 16-07-118 on March 22, 2016.

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

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

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

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

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

Date Adopted: May 31, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-15-025, filed 7/7/15, effective 8/7/15)

WAC 458-20-193 Interstate sales of tangible personal property. (1) **Introduction.** (((~~(a)~~))) This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property. In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington.

(((~~(b)~~))) (a) The following rules may also be helpful:

(i) WAC 458-20-178 Use tax and the use of tangible personal property.

(ii) WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.

(iii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(iv) WAC 458-20-221 Collection of use tax by retailers and selling agents.

(((~~(c) Examples included in this rule~~))) (b) This rule contains examples that identify a number of facts and then state a conclusion(((~~; they~~))). These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(((~~(d)~~))) (c) **Use tax.** This rule does not cover sales of intangibles or services and does not address the use tax obli-

gation of a purchaser of goods in Washington (((~~see WAC 458-20-178~~))) or the use tax collection obligation of out-of-state sellers of goods to Washington customers when sellers are not otherwise liable to collect and remit retail sales tax (((~~see WAC 458-20-221~~))). For information on payment or collection responsibilities for use tax see WAC 458-20-178 and 458-20-221.

(((~~(c)~~))) (d) **Tangible personal property.** For purposes of this rule, the term "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses, but does not include steam, electricity, or electrical energy. It includes prewritten computer software (as such term is defined in RCW 82.04.215) in tangible form. However, this rule does not address electronically delivered prewritten computer software or remote access software.

(2) **Organization of rule.** This rule is divided into three parts:

(a) Part I - Nexus standard for sales of tangible personal property;

(b) Part II - Sourcing sales of tangible personal property; and

(c) Part III - Drop shipment sales.

Part I - Nexus Standard for Sales of Tangible Personal Property

(101) **Introduction.** Except as provided in this subsection (101)(a) of this rule, the nexus standard described here ((~~is provided in RCW 82.04.067(6) and~~)) is used to determine whether a person who sells tangible personal property has nexus with Washington for B&O and retail sales tax purposes. ((~~The economic nexus standard under RCW 82.04.067 (1) through (5) (as further described in WAC 458-20-19401) does not apply to the activity of selling tangible personal property and is, therefore, not addressed in this rule. Further,~~))

(a) **Application to wholesale sales**. The nexus standard described in this Part I, commonly referred to as the physical presence nexus standard, applied to both retail and wholesale sales for periods prior to September 1, 2015. Effective September 1, 2015, wholesale sales taxable under RCW 82.04.257 and 82.04.270 are subject to the economic nexus standard under RCW 82.04.067 (1) through (5), and not the physical presence nexus standard under RCW 82.04.067(6). Retail sales and those wholesaling activities not taxable under RCW 82.04.257 and 82.04.270 remain subject to the physical presence nexus standard as of September 1, 2015. For more information on how the economic nexus standard applies to wholesaling activities, see WAC 458-20-19401.

(b) **Public Law 86-272.** Public Law 86-272 (15 U.S.C. Sec. 381 et seq.) applies only to taxes on or measured by net income. Washington's B&O tax is measured by gross receipts. Consequently, Public Law 86-272 does not apply.

(102) **Nexus.** Except as provided in subsection (101)(a) of this rule, a person who sells tangible personal property is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence. RCW 82.04.067(6).

(a) **Physical presence.** A person is physically present in this state if:

(i) The person has property in this state;

(ii) The person has one or more employees in this state; ((~~or~~))

(iii) The person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington; or

(iv) The person is a remote seller as defined in RCW 82.08.052 and is unable to rebut the substantial nexus presumption for remote sellers set out in RCW 82.04.067 (6)(c)(ii).

(b) **Property.** A person has property in this state if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Washington.

(c) **Employees.** A person has employees in this state if the person is required to report its employees for Washington unemployment insurance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

(d) **In-state activities.** Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington. It is immaterial that the activities that establish nexus are not significantly associated with a particular sale into this state.

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales representative, or other person acting either at the direction of or on behalf of another.

A person performing the following nonexclusive list of activities, directly or through an agent or other representative, generally is performing activities that are significantly associated with establishing or maintaining a market for a person's products in this state:

(i) Soliciting sales of goods in Washington;

(ii) Installing, assembling, or repairing goods in Washington;

(iii) Constructing, installing, repairing, or maintaining real property or tangible personal property in Washington;

(iv) Delivering products into Washington other than by mail or common carrier;

(v) Having an exhibit at a trade show to maintain or establish a market for one's products in the state (but not merely attending a trade show);

(vi) An online seller having a brick-and-mortar store in this state accepting returns on its behalf;

(vii) Performing activities designed to establish or maintain customer relationships including, but not limited to:

(A) Meeting with customers in Washington to gather or provide product or marketing information, evaluate customer needs, or generate goodwill; or

(B) Being available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is referenced by the seller in

its marketing materials, communications, or other information accessible to customers.

(e) **Remote sellers - Click-through nexus.** Effective September 1, 2015, a remote seller is presumed to have nexus with Washington for purposes of the retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, refers potential customers to the remote seller, whether by link on an internet web site or otherwise, but only if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller through such agreements exceeds ten thousand dollars during the preceding calendar year. For more information related to the presumption and how to rebut the presumption, see RCW 82.08.052 and 82.04.067.

(103) **Effect of having nexus.**

(a) **Retail sales.** A person ((~~selling~~)) that makes retail sales of tangible personal property ((~~that~~)) and has nexus with Washington is subject to B&O tax on that person's retail ((~~and wholesale~~)) sales, and is responsible for collecting and remitting retail sales tax on that person's sales of tangible personal property sourced to Washington, unless a specific exemption applies.

(b) **Wholesale sales.** A person that makes wholesale sales of tangible personal property and has nexus with Washington (as described in subsection (101)(a) of this rule) is subject to B&O tax on that person's wholesale sales sourced to Washington.

(104) **Trailing nexus.** RCW 82.04.220 provides that for B&O tax purposes a person who stops the business activity that created nexus in Washington continues to have nexus for the remainder of that calendar year, plus one additional calendar year (also known as "trailing nexus"). The department of revenue applies the same trailing nexus period for retail sales tax and other taxes reported on the excise tax return.

Part II - Sourcing Sales of Tangible Personal Property

(201) **Introduction.** RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on "sourcing rules" established under the streamlined sales and use tax agreement. Sourcing rules for the lease or rental of tangible personal property are beyond the scope of this rule, as are the sourcing rules for "direct mail," "advertising and promotional direct mail," or "other direct mail" as such terms are defined in RCW 82.32.730. See RCW 82.32.730 for further explanation of the sourcing rules for those particular transactions.

(202) **Receive and receipt.**

(a) **Definition.** "Receive" and "receipt" mean the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property.

(b) Receipt by a shipping company.

(i) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.

(ii) A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

(203) **Sourcing sales of tangible personal property - In general.** The following provisions in this subsection apply to sourcing sales of most items of tangible personal property.

(a) **Business location.** When tangible personal property is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

Example 1. Jane is an Idaho resident who purchases tangible personal property at a retailer's physical store location in Washington. Even though Jane takes the property back to Idaho for her use, the sale is sourced to Washington because Jane received the property at the seller's business location in Washington.

Example 2. Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

Example 3. An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

Example 4. The same purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser) to pick up the goods in Washington and deliver them to the purchaser's out-of-state location. Because "receive" and "receipt" do not include possession by the shipping company, the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location and not when the shipping company takes possession of the goods in Washington. The sale is not subject to B&O and retail sales tax.

(b) **Place of receipt.** If the sourcing rule explained in (a) of this subsection does not apply, the sale is sourced to the location where receipt by the purchaser or purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller.

(i) The term "purchaser" includes the purchaser's agent or designee.

(ii) The term "purchaser's donee" means a person to whom the purchaser directs shipment of goods in a gratuitous transfer (e.g., a gift recipient).

(iii) Commercial law delivery terms, and the Uniform Commercial Code's provisions defining sale or where risk of

loss passes, do not determine where the place of receipt occurs.

(iv) The seller must retain in its records documents used in the ordinary course of the seller's business to show how the seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or

(C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

• The seller's name and address;

• The purchaser's name and address;

• The place of delivery, if different from the purchaser's address; and

• The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 5. John buys luggage from a Department Store that has nexus with Washington (as in Example 2), but has the store ship the luggage to John in Washington. Department Store has nexus with Washington, and receipt of the luggage by John occurred in Washington. Department Store owes Washington retailing B&O tax and must collect Washington retail sales tax on this sale.

Example 6. Parts Store is located in Washington. It sells machine parts at retail and wholesale. Parts Collector is located in California and buys machine parts from Parts Store. Parts Store ships the parts directly to Parts Collector in California, and Parts Collector takes possession of the machine parts in California. The sale is not subject to B&O or retail sales taxes in this state because Parts Collector did not receive the parts in Washington.

Example 7. An out-of-state seller with nexus in Washington uses a third-party shipping company to ship goods to a customer located in Washington. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes. The sale is subject to B&O and retail sales tax in this state because the purchaser has taken possession of the goods in Washington.

Example 8. A Washington purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller at its out-of-state location, and deliver those goods to the Washington purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer. When the affiliated shipping company takes possession of the goods out-of-state, the Washington purchaser has not received the goods out-of-state. Possession by a shipping company on behalf of a purchaser is not receipt for purposes of this rule, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the buyer. Receipt occurs when the buyer takes possession of the goods in Washington. The sale is subject to B&O and retail sales tax in this state.

Example 9. An instate seller arranges for shipping its goods to an out-of-state purchaser by first delivering its goods to a Washington-based shipping company at its Washington location for further transport to the out-of-state customer's location. Possession of the goods by the shipping company in Washington is not receipt by the purchaser for Washington tax purposes, and the sale is not subject to B&O and retail sales tax in Washington.

Example 10. An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

Example 11. Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Company ABC directs Company XYZ to ship the goods by a for-hire carrier to a commercial storage warehouse in Washington. The goods will be considered as having been received by Company ABC when the goods are delivered at the commercial storage warehouse. Assuming Company XYZ has nexus, Company XYZ is subject to B&O tax and must collect retail sales tax on the sale.

(c) **Other sourcing rules.** There may be unique situations where the sourcing rules provided in (a) and (b) of this subsection do not apply. In those cases, please refer to the provisions of RCW 82.32.730 (1)(c) through (e).

(204) **Sourcing sales of certain types of property.**

(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

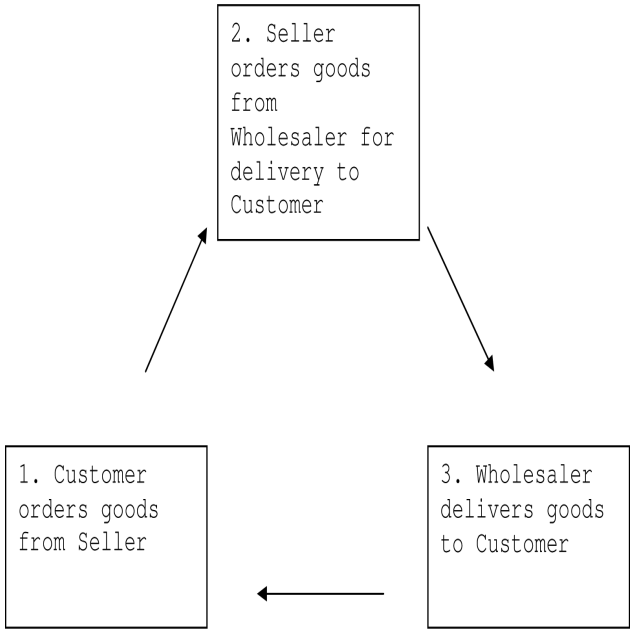
(b) **Sales of motor vehicles, watercraft, airplanes, manufactured homes, etc.** Sales of the following types of property are sourced to the location at or from which the property is delivered in accordance with RCW 82.32.730 (7)(a) through (c): Watercraft; modular, manufactured, or mobile homes; and motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" as defined in RCW 82.32.730. See WAC 458-20-145 (2)(b) for further information regarding the sourcing of these sales.

(c) **Sales of flowers and related goods by florists.** Sales by a "florist" are subject to a special origin sourcing rule. For specific information concerning "florist sales," who qualifies

as a "florist," and the related sourcing rules, see RCW 82.32.730 (7)(d) and (9)(e) and WAC 458-20-158.

Part III - Drop Shipments

(301) **Introduction.** A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a wholesaler and instructs that wholesaler to deliver the property directly to the seller's customer. The place of receipt in a drop shipment transaction is where the property is delivered (i.e., the seller's customer's location). Below is a diagram of a basic drop shipment transaction:



The following ((~~sections~~)) subsections discuss the taxability of drop shipments in Washington when:

(a) The seller and wholesaler do not have nexus;

(b) The seller has nexus and the wholesaler does not;

(c) The wholesaler has nexus and the seller does not; and

(d) The seller and wholesaler both have nexus. In each of the following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit or other approved exemption certificate has been acquired to document any wholesale sales in Washington. For information about reseller permits issued by the department, see WAC 458-20-102((~~, Reseller permits~~)).

(302) **Seller and wholesaler do not have nexus.** Where the seller and the wholesaler do not have nexus with Washington, sales of tangible personal property by the seller to the customer and the wholesaler to the seller are not subject to B&O tax. In addition, neither the seller nor the wholesaler is required to collect retail sales tax on the sale.

(303) **Seller has nexus but wholesaler does not.** Where the seller has nexus with Washington but the wholesaler does not have nexus with Washington, the wholesaler's sale of tangible personal property to the seller is not subject to B&O tax and the wholesaler is not required to collect retail sales tax on the sale. The sale by the seller to the customer is subject to wholesaling or retailing B&O tax, as the case may be. The seller must collect retail sales tax from the customer unless specifically exempt by law.

(304) **Wholesaler has nexus but seller does not.** Where the wholesaler has nexus with Washington but the seller does not have nexus with Washington, wholesaling B&O tax applies to the sale of tangible personal property by the wholesaler to the seller for shipment to the seller's customer. The sale from the seller to its Washington customer is not subject to B&O tax, and the seller is not required to collect retail sales tax on the sale.

Example 12. Seller is located in Ohio and does not have nexus with Washington. Seller receives an order from Customer, located in Washington, for parts that are to be shipped to Customer in Washington for its own use as a consumer. Seller buys the parts from Wholesaler, which has nexus with Washington, and requests that the parts be shipped directly to Customer. Seller is not subject to B&O tax and is not required to collect retail sales tax on its sale to Customer because Seller does not have nexus with Washington. The sale by Wholesaler to Seller is subject to wholesaling B&O tax because Wholesaler has nexus with Washington and Customer receives the parts (i.e., the parts are delivered to Customer) in Washington.

(305) **Seller and wholesaler have nexus with Washington.** Where the seller and wholesaler have nexus with Washington, wholesaling B&O tax applies to the wholesaler's sale of tangible personal property to the seller. The sale from the seller to the customer is subject to wholesaling or retailing B&O tax as the case may be. The seller must collect retail sales tax from the customer unless the sale is specifically exempt by law.

WSR 16-12-087
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed May 31, 2016, 1:02 p.m., effective July 1, 2016]

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

Purpose: The purpose of this proposal [adoption] is to retain general season deer hunting opportunity for 2016. In addition, the purpose of the proposal [adoption] is to balance the hunting opportunity between user groups. The proposal [adoption] also increases hunting opportunity when deer populations allow, and reduces the opportunity when declining deer numbers warrant a change. Current proposed [adopted] changes will reduce antlerless deer hunting opportunity for archery and muzzleloader hunters in several game management units in northeastern Washington.

Citation of Existing Rules Affected by this Order: See Reviser's note below.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, 77.12.800, 77.32.090, 77.32.155.

Adopted under notice filed as WSR 16-04-126 on February 3, 2016.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 19, Repealed 0.

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

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

Date Adopted: April 8, 2016.

Brad Smith, Chair
Fish and Wildlife Commission

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-13 issue of the Register.

WSR 16-12-091
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed May 31, 2016, 1:51 p.m., effective July 1, 2016]

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

Purpose: This proposed [adopted] rule change will extend a partial fee suspension in an effort to maintain a balanced budget for the geologist licensing program. The current temporary suspension expires on July 1, 2016, and this rule change will extend the date to July 1, 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 308-15-150 Fees.

Statutory Authority for Adoption: RCW 18.220.040.

Other Authority: RCW 43.24.086.

Adopted under notice filed as WSR 16-09-076 on April 18, 2016.

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

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

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

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

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

Date Adopted: May 31, 2016.

Damon G. Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-11-013, filed 5/8/14, effective 7/1/14)

WAC 308-15-150 Fees. (1) **Suspension of fees.** Effective July 1, ((~~2014,~~)) 2016, a portion of the listed fees shown in subsection (2) of this section are temporarily suspended and replaced with the following:

Renewal Fees	
Annual renewal fee for geologist	$40.00
Annual renewal for each specialty	$50.00
Annual renewal for geologist, with late fee (*if paid ninety days or more after due date*)	$80.00
Annual renewal fee for each specialty, with late fee (*if paid ninety days or more after due date*)	$100.00

The fees set forth in this section shall revert back to the fee amounts shown in WAC 308-15-150 on July 1, ((~~2016~~)) 2017.

(2) **Fees.**

Type of Fee	**Amount**
Application fees - includes initial license	
Application fee for geologist (applying by examination)	$100.00
Application fee for each specialty (applying by examination)	$100.00
Application fee for geologist (applying by reciprocity)	$200.00
Application fee for each specialty (applying by reciprocity)	$150.00
Examination fees	
Fees for the fundamentals of geology and practice of geology examinations are submitted directly to ASBOG	
Administration fee for reexamination	$65.00
Specialty examination (hydrogeologist or engineering geologist exam)	$300.00
Renewal fees	
Annual renewal fee for geologist	$100.00
Annual renewal fee for each specialty	$85.00
Annual renewal for geologist, with late fee (*if paid ninety days or more after due date*)	$200.00

Type of Fee	Amount
Annual renewal for each specialty, with late fee (*if paid ninety days or more after due date*)	$170.00
Miscellaneous fees	
Duplicate license or wall certificate . . .	$25.00
Certification of license records to other jurisdictions.	$45.00
Proctor examination for another jurisdiction	$100.00

WSR 16-12-099
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 16-01—Filed May 31, 2016, 3:30 p.m., effective July 1, 2016]

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

Purpose: This rule making amends three rules:

- General regulations for air pollution sources, chapter 173-400 WAC: Washington rules need to require compliance with the most recent federal rules. Maintaining EPA approval of our state air operating permit and prevention of significant deterioration programs requires the adoption of federal rules. Ecology updated references to federal requirements and added a single reference point for specifying the date of the federal rules, providing consistency for users of the rule and simplifies future updates.
- Low emission vehicles, chapter 173-423 WAC: As required by the federal Clean Air Act and RCW 70.120A.010, ecology is updating this chapter to maintain consistency with the California motor vehicle emission standards.
- Ambient air quality standards, chapter 173-476 WAC: Ecology is adopting the lower federal ozone standard which will protect people from the harmful effects of ground level ozone smog and complies with a federal requirement.

Citation of Existing Rules Affected by this Order: Amending chapter 173-400 WAC, General regulations for air pollution sources; chapter 173-423 WAC, Low emission vehicles; and chapter 173-476 WAC, Ambient air quality standards.

Statutory Authority for Adoption: For chapter 173-423 WAC is RCW 70.120A.010; and for chapters 173-400 and 173-476 WAC is RCW 70.94.152, 70.94.331, 70.94.860.

Adopted under notice filed as WSR 16-06-068 on February 25, 2016.

Changes Other than Editing from Proposed to Adopted Version:

- In chapter 173-400 WAC, ecology added "in effect on the date in WAC 173-400-025" throughout the rule wherever federal rules were adopted for clarity and consistency.
- Ecology did not adopt EPA requirements for sewage sludge incinerators because EPA had not adopted their rule in time for the adoption of ecology's rule amendments.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 25, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 31, 2016.

Maia D. Bellon
Director

NEW SECTION

WAC 173-400-025 Adoption of federal rules. Federal rules mentioned in this rule are adopted as they exist on January 1, 2016. Adopted or adopted by reference means the federal rule applies as if it was copied into this rule.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-040 General standards for maximum emissions. (1) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter. When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emis-

sion point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the permitting authority must be advised of the schedule.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

(c) When two or more emission units are connected to a common stack, the permitting authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

(e) Exemptions from twenty percent opacity standard.

(i) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 C.F.R. Part 60, Appendix A, ((~~Reference~~)) test method 9 (in effect on the date in WAC 173-400-025) and ecology methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

(ii) Military training exercises. Visible emissions resulting from military obscurant training exercises are exempt from compliance with the twenty percent opacity limitation provided the following criteria are met:

(A) No visible emissions shall cross the boundary of the military training site/reservation.

(B) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(iii) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities while being used to train firefighters and while complying with the requirements of chapter 173-425 WAC.

(3) **Fallout.** No person shall cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.** No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to the permitting authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, the permitting authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to the permitting authority.

(8) **Concealment and masking.** No person shall cause or allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(9) **Fugitive dust.**

(a) The owner or operator of a source or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incinera-

tion emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting wood derived fuels for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by ((~~EPA~~)) test method 5 in Appendix A to 40 C.F.R. Part 60, (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025) or approved procedures contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements ((~~adopted by reference~~)) in WAC 173-400-075 (40 C.F.R. Part 63, subpart EEE in effect on the date in WAC 173-400-025) and WAC 173-400-115 (40 C.F.R. Part 60, subparts E, Ea, Eb, Ec, AAAA, and CCCC (in effect on the date in WAC 173-400-025)) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by the Ecology Source Test Method 14 contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999.

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (in effect on ((~~January 30, 2001~~)) the date in WAC 173-400-025) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, subpart Ea or subpart Eb (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, subpart AAAA (in effect on

((~~July 1, 2010~~)) the date in WAC 173-400-025); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), subparts Ea (((~~in effect on July 1, 2010~~))), Eb (((~~in effect on July 1, 2010~~))), and AAAA (((~~in effect on July 1, 2010~~))), and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 C.F.R. Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under subpart EEE of 40 C.F.R. Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) *Cyclonic barrel burners.* See 40 C.F.R. 60.2265 (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025).

(xi) *Rack, part, and drum reclamation units.* See 40 C.F.R. 60.2265 (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025).

(xii) *Cement kilns.* Kilns regulated under subpart LLL of 40 C.F.R. Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 C.F.R. Part 60, subpart O (Standards of Performance for Sewage Treatment Plants) (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815((~~, in effect on July 1, 2010~~))) (in effect on the date in WAC 173-400-025).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 (in effect on ((~~July 1, 2010~~)) the date in WAC 173-400-025) mean the CISWI unit is considered a new unit and subject to WAC 173-400-

115, which adopts 40 C.F.R. Part 60, subpart CCCC ((~~by reference~~)) (in effect on the date in WAC 173-400-025).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875((~~, in effect on July 1, 2010, which is adopted by reference~~)) (in effect on the date in WAC 173-400-025). The federal rule contains these major components:

• Increments of progress towards compliance in 60.2575 through 60.2630;

• Waste management plan requirements in 60.2620 through 60.2630;

• Operator training and qualification requirements in 60.2635 through 60.2665;

• Emission limitations and operating limits in 60.2670 through 60.2685;

• Performance testing requirements in 60.2690 through 60.2725;

• Initial compliance requirements in 60.2700 through 60.2725;

• Continuous compliance requirements in 60.2710 through 60.2725;

• Monitoring requirements in 60.2730 through 60.2735;

• Recordkeeping and reporting requirements in 60.2740 through 60.2800;

• Title V operating permits requirements in 60.2805;

• Air curtain incinerator requirements in 60.2810 through 60.2870;

• Definitions in 60.2875; and

• Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted ((~~by reference~~)). Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999.

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 C.F.R. 60.1910 (((~~in effect on July 1, 2012~~))) combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, subpart AAAA (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on ((~~July 1,~~

~~2012~~)) the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 (in effect on ((~~July 1, 2012), which is adopted by reference~~)) the date in WAC 173-400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, subpart BBBB (in effect on ((~~February 5, 2001~~)) the date in WAC 173-400-025) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, subpart HHH (in effect on the date in WAC 173-400-025).

AMENDATORY SECTION (Amending WSR 05-03-033, filed 1/10/05, effective 2/10/05)

WAC 173-400-060 Emission standards for general process units. General process units are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or allow the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. ((~~EPA~~)) Test methods (in effect on ((~~February 20, 2001~~)) the date in WAC 173-400-025) from 40 C.F.R. Parts 51, 60, 61, and 63 and any other approved test procedures ((~~which are contained~~)) in ecology's "*Source Test Manual - Procedures For Compliance Testing*" as of ((~~July 12, 1990~~)) September 20, 2004, will be used to determine compliance.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set

forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.**

(a) All wigwam and silo burners designed to dispose of wood waste must meet all provisions of WAC 173-400-040 (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4) or 173-400-115 (40 C.F.R. Part 60, subpart DDDD in effect on the date in WAC 173-400-025) as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include, but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions. An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) **Grain elevators.**

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) **Catalytic cracking units.**

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:

(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.

(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

(6) **Other wood waste burners.**

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of WAC 173-400-040. In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 C.F.R. Part 60, subpart DDDD in effect on the date in WAC 173-400-025) must meet all applicable provisions of those sections.

(b) Such wood waste burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(7) **Sulfuric acid plants.**

No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H_2SO_4, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H_2SO_4.

(8) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 C.F.R. Part 60 rules mean those rules in effect on ((~~July 1, 2000~~)) the date in WAC 173-400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 C.F.R. 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 C.F.R. 60.757 (submittal of an initial design capacity report) and 40 C.F.R. 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 C.F.R. 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 C.F.R. 60.753.

(B) The systems must follow the compliance provisions in 40 C.F.R. 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 C.F.R. 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 C.F.R. 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 C.F.R. 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 C.F.R. 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 C.F.R. 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 C.F.R. 60.752 (b)(2)(v).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices ((~~in effect on July 1, 2012,~~)) (in effect on the date in WAC 173-400-025) are adopted ((~~by ref-~~

~~erence~~)). The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority.

(2) The permitting authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 C.F.R. Parts 61, 62, 63 and 65, as applicable, in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 C.F.R. Parts 51, 60, 61, 62, 63 and 65, as applicable.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) Submit reports required by 40 C.F.R. Parts 61 and 63 to the permitting authority, unless otherwise instructed.

(6) National Emission Standards for Hazardous Air Pollutants for Source Categories.

((~~Adopt by reference.~~

~~(a) **Major sources of hazardous air pollutants.** 40 C.F.R. Part 63 and Appendices in effect on July 1, 2012, as they apply to major sources of hazardous air pollutants are adopted by reference, except for Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities, as it applies to nonmajor sources and as specified under (b), (c), and (d) of this subsection.~~)) Adoption of federal rules.

(a) The term "administrator" in 40 C.F.R. Part 63 includes the permitting authority.

(b) ((~~**Area sources of hazardous air pollutants.** 40 C.F.R. Part 63 and Appendices in effect on July 1, 2012, as they apply to these specific area sources of hazardous air pollutants are adopted by reference:~~

~~(i) Subpart EEEEEE, Primary Copper Smelting;~~

~~(ii) Subpart FFFFFF, Secondary Copper Smelting;~~

~~(iii) Subpart GGGGGG, Primary Nonferrous Metal;~~

~~(iv) Subpart SSSSSS, Pressed and Blown Glass Manufacturing;~~

~~(v) Subpart YYYYY, Stainless and Nonstainless Steel Manufacturing (electric arc furnace);~~

~~(vi) Subpart EEE, Hazardous Waste Incineration;~~

~~(vii) Subpart IIII, Mercury Cell Chlor-Alkali Plants;~~

~~(viii) Subpart LLL, Portland Cement;~~

~~(ix) Subpart X, Secondary Lead Smelting;~~

~~(x) MMMMMM, Carbon black production;~~

~~(xi) NNNNNN, Chromium compounds; and~~

~~(xii) VVVVVV, Chemical manufacturing for synthetic minors.~~

~~(xiii) EEEEEEE, Gold Mine Ore Processing and Production.~~

~~(c) The area source rules in 40 C.F.R. Part 63 and appendices in effect on July 1, 2012, (except subpart JJJJJJ) are adopted by reference as they apply to a stationary source located at a chapter 401 source subject to chapter 173-401 WAC, operating permit regulation.~~

~~(d) 40 C.F.R. Part 63, Subpart JJJJJJ: Industrial, Commercial and Institutional Boilers, is not adopted by reference.~~

~~(e) 40 C.F.R. Part 63, Subpart DDDDD - National emission for major sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, is not adopted by reference.~~)) **Major sources of hazardous air pollutants.** 40 C.F.R. Part 63 and Appendices (in effect on the date in WAC 173-400-025) are adopted as they apply to major sources of hazardous air pollutants.

(c)(i) **Nonmajor sources of hazardous air pollutants (area source rules).** The stationary sources affected by the following subparts of 40 C.F.R. Part 63 are subject to chapter 173-401 WAC (Operating permit regulation). These subparts of 40 C.F.R. Part 63 and Appendices (in effect on the date in WAC 173-400-025) are adopted:

(A) Subpart X, Secondary lead smelting;

(B) Subpart EEE, Hazardous waste incineration;

(C) Subpart LLL, Portland cement;

(D) Subpart IIIII, Mercury cell chlor-alkali plants;

(E) Subpart YYYYY, Stainless and nonstainless steel manufacturing (electric arc furnace);

(F) Subpart EEEEEE, Primary copper smelting;

(G) Subpart FFFFFF, Secondary copper smelting;

(H) Subpart GGGGGG, Primary nonferrous metal;

(I) Subpart MMMMMM, Carbon black production;

(J) Subpart NNNNNN, Chromium compounds;

(K) Subpart SSSSSS, Pressed and blown glass manufacturing;

(L) Subpart VVVVVV, Chemical manufacturing for synthetic minors; and

(M) Subpart EEEEEEE, Gold mine ore processing and production.

(ii) 40 C.F.R. Part 63 and Appendices are adopted (WAC 173-400-025) as they apply to a stationary source located at a source subject to chapter 173-401 WAC (Operating permit regulation).

(7) **Consolidated ((~~requirements for the~~)) federal air rule (synthetic organic chemical manufacturing industry).** 40 C.F.R. Part 65((~~, in effect on July 1, 2012,~~)) (in effect on the date in WAC 173-400-025) is adopted ((~~by reference~~)).

(8) **Emission standards for perchloroethylene dry cleaners.**

(a) **Applicability.**

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Each dry cleaning system must follow the applicable requirements in Table 1:

TABLE 1.

PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 C.F.R. Part 63, subpart M (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025).

(iii) It is illegal to operate a transfer machine and any machine that requires the movement of wet clothes from one machine to another for drying.

(b) Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.

(i) It is illegal to locate a dry cleaning machine using perchloroethylene in a residential building.

(ii) If you installed a dry cleaning machine using perchloroethylene in a building with a residence before December 21, 2005, you must remove the system by December 21, 2020.

(iii) In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:

(A) Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.

(B) Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor.

(C) Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

(iv) The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(c) **Operations and maintenance record.**

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.

(B) Repair: The date, time, and result of each repair of the dry cleaning system.

(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:

(I) The air temperature at the inlet of the refrigerated condenser;

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

(II) The date the concentration was measured.

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(d) **General operations and maintenance requirements.**

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2.

Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.	Refrigerated condenser with a carbon adsorber for all machines and a vapor barrier enclosure.

(e) **Inspection.**

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3 and Table 4:

TABLE 3.

Minimum Inspection Frequency

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Once every 2 weeks.	Once every week.	Once every week.	Once every week.

TABLE 4.
Minimum Inspection Frequency Using Portable Leak Detector

Small area source	Large area source	Major source	Dry cleaner located in a building where people may live
Once every month.	Once every month.	Once every month.	Once every week.

(ii) You must check for leaks using a portable leak detector.

(A) The leak detector must be able to detect concentrations of perchloroethylene of 25 parts per million by volume.

(B) The leak detector must emit an audible or visual signal at 25 parts per million by volume.

(C) You must place the probe inlet at the surface of each component where leakage could occur and move it slowly along the joints.

(iii) You must examine these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

(iv) The dry cleaning system must be inspected while it is operating.

(v) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

(f) **Repair.**

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(g) **Requirements for systems with refrigerated condensers.** A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(h) **Requirements for systems with carbon adsorbers.** A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be written in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

AMENDATORY SECTION (Amending WSR 05-03-033, filed 1/10/05, effective 2/10/05)

WAC 173-400-100 Source classifications. (1) **Source classification list.** In counties without a local authority, or for sources under the jurisdiction of ecology, the owner or operator of each source within the following source categories shall register the source with ecology:

(a) Agricultural chemical facilities engaging in the manufacturing of liquid or dry fertilizers or pesticides;

(b) Agricultural drying and dehydrating operations;

(c) Any category of stationary source that includes an emissions unit subject to a new source performance standard (NSPS) under 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), other than subpart AAA (Standards of Performance for New Residential Wood Heaters);

(d) Any stationary source, that includes an emissions unit subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 C.F.R. Part 61 (in effect on the date in WAC 173-400-025), other than:

(i) Subpart M (National Emission Standard for Asbestos); or

(ii) Sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 C.F.R. Part 61, subparts H and/or I, and that are not subject to any other part of 40 C.F.R. Parts 61, 62, or 63, or any other parts of this section;

(e) Any source, or emissions unit subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technology (MACT) standard) under 40 C.F.R. Part 63 (in effect on the date in WAC 173-400-025);

(f) Any source, stationary source or emission unit with an emission rate of one or more pollutants equal to or greater than an "emission threshold" defined in WAC 173-400-030;

(g) Asphalt and asphalt products production facilities;

(h) Brick and clay manufacturing plants, including tiles and ceramics;

(i) Casting facilities and foundries, ferrous and nonferrous;

(j) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

(k) Chemical manufacturing plants;

(l) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

(m) Concrete product manufacturers and ready mix and premix concrete plants;

(n) Crematoria or animal carcass incinerators;

(o) Dry cleaning plants;

(p) Materials handling and transfer facilities that generate fine particulate, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

(q) Flexible vinyl and urethane coating and printing operations;

(r) Grain, seed, animal feed, legume, and flour processing operations, and handling facilities;

(s) Hay cubers and pelletizers;

(t) Hazardous waste treatment and disposal facilities;

(u) Ink manufacturers;

(v) Insulation fiber manufacturers;

(w) Landfills, active and inactive, including covers, gas collections systems or flares;

(x) Metal plating and anodizing operations;

(y) Metallic and nonmetallic mineral processing plants, including rock crushing plants;

(z) Mills such as lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

(aa) Mineralogical processing plants;

(bb) Other metallurgical processing plants;

(cc) Paper manufacturers;

(dd) Petroleum refineries;

(ee) Petroleum product blending operations;

(ff) Plastics and fiberglass product fabrication facilities;

(gg) Rendering plants;

(hh) Soil and groundwater remediation projects;

(ii) Surface coating manufacturers;

(jj) Surface coating operations including: Automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;

(kk) Synthetic fiber production facilities;

(ll) Synthetic organic chemical manufacturing industries;

(mm) Tire recapping facilities;

(nn) Wastewater treatment plants;

(oo) Any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability to EPA requirements under Sections 111 or 112 of Federal Clean Air Act.

(2) **Equipment classification list.** In counties without a local authority, the owner or operator of the following equipment shall register the source with ecology:

(a) Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;

(b) Boilers, all gas fired boilers above 10 million British thermal units per hour input;

(c) Chemical concentration evaporators;

(d) Degreasers of the cold or vapor type in which more than five percent of the solvent is comprised of halogens or such aromatic hydrocarbons as benzene, ethylbenzene, toluene or xylene;

(e) Ethylene oxide (ETO) sterilizers;

(f) Flares utilized to combust any gaseous material;

(g) Fuel burning equipment with a heat input of more than 1 million Btu per hour; except heating, air conditioning systems, or ventilating systems not designed to remove contaminants generated by or released from equipment;

(h) Incinerators designed for a capacity of one hundred pounds per hour or more;

(i) Ovens, burn-out and heat-treat;

(j) Stationary internal combustion engines and turbines rated at five hundred horsepower or more;

(k) Storage tanks for organic liquids associated with commercial or industrial facilities with capacities equal to or greater than 40,000 gallons;

(l) Vapor collection systems within commercial or industrial facilities;

(m) Waste oil burners above 0.5 mm Btu heat output;

(n) Woodwaste incinerators;

(o) Commercial and industrial solid waste incineration units subject to WAC 173-400-050(4);

(p) Small municipal waste combustion units subject to WAC 173-400-050(5).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) **Emission inventory.** The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory will include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. The format for the submittal of these inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. Emission estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s), whichever is the better estimate.

(2) **Monitoring.** Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved ((~~EPA~~)) test methods from 40 C.F.R. Parts 51, 60, 61 and 63 (in effect on ((~~July 1, 2012~~)) the date in WAC 173-400-025) or procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of September 20, 2004, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day,

expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 C.F.R. Part 51, Appendix P, Sections 3, 4 and 5 (in effect on ((~~May 1, 2012~~)) the date in WAC 173-400-025).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement contained in 40 C.F.R. Parts 60, 61, 62, 63, or 75 (all in effect on the date in WAC 173-400-025) or a permitting authority's adoption by reference of such federal standards. Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

(6) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(7) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems (CEMS) required by 40 C.F.R. Parts 60, 61, 62, 63, or 75 (all in effect on the date in WAC 173-400-025), or a permitting authority's adoption of those federal standards must meet the continuous emission monitoring systems (CEMS) performance specifications and data recovery requirements imposed by those standards. All CEMS required under an order, PSD permit, or regulation issued by a permitting authority and not subject to CEMS performance specifications and data recovery requirements imposed by 40 C.F.R. Parts 60, 61, 62, 63, or 75 must follow the continuous emission monitoring rule of the permitting authority, or if the permitting authority does not have a continuous emission monitoring rule, must meet the following requirements:

(a) The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(b) The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 C.F.R. Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 C.F.R. Part 60 (in effect on ((~~May 1, 2012, and the U.S. Environmental Protection Agency's~~)) the date in WAC 173-400-025), and EPA's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval or permit. All monitoring data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, no valid data is collected until the monitoring system passes a quality assurance test or audit.

(d) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under subsection (a) of this section, all continuous monitoring systems shall be in continuous operation.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(e) The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) The owner or operator shall submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the data were recorded. The report required by this section may be combined with any excess emission report required by WAC 173-400-108. This report shall include:

(i) The number of hours that the monitored emission unit operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection

and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the equipment (required to be monitored) was operated each day;

(iv) The results of all cylinder gas audits conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(8) No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-111 Processing notice of construction applications for sources, stationary sources and portable sources. WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations.

(1) Completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(b) A complete application contains all the information necessary for processing the application. At a minimum, the application must provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification, as well as the location, design, construction, and operation of the new source as needed to enable the permitting authority to determine that the construction or modification will meet the requirements of WAC 173-400-113. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(c) For a project subject to the special protection requirements for federal Class I areas under WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3). The applicant must send a copy of the application and all amendments to the application to the EPA and the responsible federal land manager.

(d) For a project subject to the major new source review requirements in WAC 173-400-800 through 173-400-860, the completeness determination includes a determination that the application includes all information required for review under those sections.

(e) An application is not complete until any permit application fee required by the permitting authority has been paid.

(2) Coordination with chapter 173-401 WAC, operating permit regulation. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with WAC 173-400-171.

(3) Criteria for approval of a notice of construction application. An order of approval cannot be issued until the following criteria are met as applicable:

(a) The requirements of WAC 173-400-112;

(b) The requirements of WAC 173-400-113;

(c) The requirements of WAC 173-400-117;

(d) The requirements of WAC 173-400-171;

(e) The requirements of WAC 173-400-200 and 173-400-205;

(f) The requirements of WAC 173-400-700 through 173-400-750;

(g) The requirements of WAC 173-400-800 through 173-400-860;

(h) The requirements of chapter 173-460 WAC; and

(i) All fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid.

(4) Final determination - Time frame and signature authority.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either:

(i) Issue a final decision on the application; or

(ii) Initiate notice and comment for those projects subject to WAC 173-400-171 followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.

(5) Distribution of the final decision.

(a) The permitting authority must promptly provide copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(b) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-800 through 173-400-860, the permitting authority must:

(i) Submit any control technology (LAER) determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(6) Appeals. Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided under chapters 43.21B RCW and 371-08 WAC.

(7) Construction time limitations.

(a) Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction

is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing by the permittee that an extension is justified.

(b) The extension of a project that is either a major stationary source, as defined in WAC 173-400-810, in a nonattainment area or a major modification, as defined in WAC 173-400-810, of a major stationary source in a nonattainment area must also require LAER, for the pollutants for which the area is classified as nonattainment, as LAER exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(c) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commence construction date.

(8) Change of conditions or revisions to orders of approval.

(a) The owner or operator may request, at any time, a change in the conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:

(i) The change in conditions will not cause the source to exceed an emissions standard set by regulation or rule;

(ii) No ambient air quality standard will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the permitting authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-111, 173-400-112, 173-400-113, 173-400-720, 173-400-830, and 173-460-040, as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(c) The applicant must consider the criteria in 40 C.F.R. 52.21 (r)(4) ((~~as adopted by reference in WAC 173-400-720~~)) (in effect on the date in WAC 173-400-025) or 173-400-830(3), as applicable, when determining which new source review approvals are required.

(9) Fees. Chapter 173-455 WAC lists the required fees payable to ecology for various permit actions.

(10) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-115 Standards of performance for new sources. NSPS. Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) **Adoption ((~~by reference~~)) of federal rules.**

(a) 40 C.F.R. Part 60 and Appendices ((~~in effect on August 14, 2012,~~)) (in effect on the date in WAC 173-400-025) are adopted ((~~by reference~~)). Exceptions are listed in (b) ((~~and (c)~~)) of this subsection.

(b) ((~~40 C.F.R. Part 60, Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (December 23, 2011), is not adopted by reference.~~

~~(c)~~)) Exceptions to adopting 40 C.F.R. Part 60 ((~~by reference~~)).

(i) The term "administrator" in 40 C.F.R. Part 60 includes the permitting authority.

(ii) The following sections and subparts of 40 C.F.R. Part 60 are not adopted ((~~by reference~~)):

(A) 40 C.F.R. 60.5 (determination of construction or modification);

(B) 40 C.F.R. 60.6 (review of plans);

(C) 40 C.F.R. Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, DDDD, FFFF, ((~~HHHHH~~)) MMMM, UUUU (emission guidelines); and

(D) 40 C.F.R. Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 C.F.R. 60.43 for the Newton Power Station of Central Illinois Public Service Company.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 C.F.R. Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

AMENDATORY SECTION (Amending WSR 11-17-037, filed 8/10/11, effective 9/10/11)

WAC 173-400-116 Increment protection. This section takes effect on the effective date of EPA's incorporation of this section into the Washington state implementation plan.

(1) Ecology will periodically review increment consumption. Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are published in 40 C.F.R. 52.21(c) ((~~as adopted by reference in WAC 173-400-720 (4)(a)(iv)~~)) (in effect on the date in WAC 173-400-025).

(3) Exclusions from increment consumption. The following concentrations are excluded when determining increment consumption:

(a) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construc-

tion or other temporary emission-related activities of new or modified sources;

(b) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(c) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by ((~~the administrator of the environmental protection agency~~)) EPA. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by ((~~the administrator~~)) EPA.

(ii) Specify that the time period for excluding certain contributions in accordance with (c)(i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national ambient air quality standard.

(iv) Require limitations to be in effect by the end of the time period specified in accordance with (c)(i) of this subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-171 Public notice and opportunity for public comment. The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) **Applicability to prevention of significant deterioration, and relocation of portable sources.**

This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) **Internet notice of application.**

(a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet web site.

(b) The internet posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, fax, or electronic mail during the fifteen-day internet posting period.

(e) A public comment period must be provided for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the fifteen-day internet posting period.

(3) **Actions subject to a mandatory public comment period.**

The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC; or

(c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 C.F.R. Part 51 (in effect on ((~~May 1, 2012~~)) the date in WAC 173-400-025) as part of review under WAC 173-400-110, 173-400-113, or 173-400-117; or

(d) Any order to determine reasonably available control technology, RACT; or

(e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

(f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, GEP, formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

(g) An order to authorize a bubble; or

(h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or

(i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

(j) Any notice of construction application or regulatory order used to establish a creditable emission reduction; or

(k) Any order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or

(l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

(m) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

(n) Any application or other action for which the permitting authority determines that there is significant public interest.

(4) **Advertising the mandatory public comment period.** Public notice of all applications, orders, or actions listed in subsection (3) of this section must be given by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal. This public notice can be published or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made. The notice must be published or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied. The applicant or other initiator of the action must pay the publishing cost of providing public notice.

(5) **Information available for public review.** The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law((,)) including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(6) **Public notice components.**

(a) The notice must include:

(i) The name and address of the owner or operator and the facility;

(ii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

(iii) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(iv) The location where those documents made available for public inspection may be reviewed;

(v) A thirty-day period for submitting written comment to the permitting authority;

(vi) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

(vii) The name, address, and telephone number and e-mail address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas, as required by WAC 173-400-117, public notice must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval.

(7) **Length of the public comment period.**

(a) The public comment period must extend at least thirty days prior to any hearing.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

(8) **Requesting a public hearing.** The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, fax, or electronic mail. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(9) **Setting the hearing date and providing hearing notice.** If the permitting authority determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

(10) **Notice of public hearing.**

(a) At least thirty days prior to the hearing the permitting authority will provide notice of the hearing as follows:

(i) Give public hearing notice by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal; and

(ii) Mail the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) In the case of a permit action, the applicant must pay all publishing costs associated with meeting the requirements of this subsection.

(11) **Notifying the EPA.** The permitting authority must send a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

(a) This subsection applies to ecology only actions including:

(i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;

(ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility

protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC 173-400-118, and rules to strengthen the SIP.

(b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least thirty days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.

(c) The public notice for ecology only actions must comply with the requirements of 40 C.F.R. 51.102 ((~~in effect on July 1, 2012~~)) (in effect on the date in WAC 173-400-025).

(13) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-400-260 Conflict of interest. All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act, as it pertains to conflict of interest((~~, and 40 C.F.R. 103(d) which is incorporated by reference~~)) (Section 128).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-710 Definitions. (1) For purposes of WAC 173-400-720 through 173-400-750 the definitions in 40 C.F.R. 52.21(b)((~~, adopted by reference in WAC 173-400-720 (4)(a)(iv), are to~~)) (in effect on the date in WAC 173-400-025) must be used((~~, except~~)). Exception: The definition of "secondary emissions" as defined in WAC 173-400-030 ((~~will~~)) must be used.

(2) All usage of the term "source" in WAC 173-400-710 through 173-400-750 and in 40 C.F.R. 52.21 ((~~as adopted by reference is to~~)) must be interpreted to mean "stationary source" as defined in 40 C.F.R. 52.21 (b)(5). A stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes, from a nonroad engine, or a nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 (1) through (4);

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-200;

(iv) WAC 173-400-205;

(v) Allowable emission limits established under WAC 173-400-081 must also meet the criteria of 40 C.F.R. 52.21 (k)(1) and 52.21 (p)(1) through (4) (in effect on the date in WAC 173-400-025); and

(vi) The following subparts of 40 C.F.R. 52.21((~~, in effect on August 13, 2012, which~~)) (in effect on the date in WAC 173-400-025) are adopted ((~~by reference~~)). Exceptions are listed in (b)(i), (ii), (iii), and (iv) of this subsection:

Section	Title
40 C.F.R. 52.21 (a)(2)	Applicability Procedures.
40 C.F.R. 52.21 (b)	Definitions, except the definition of "secondary emissions."
40 C.F.R. 52.21 (c)	Ambient air increments.
40 C.F.R. 52.21 (d)	Ambient air ceilings.
40 C.F.R. 52.21 (h)	Stack heights.
40 C.F.R. 52.21 (i)	Review of major stationary sources and major modifications - Source applicability and exemptions.
40 C.F.R. 52.21 (j)	Control technology review.
40 C.F.R. 52.21 (k)	Source impact analysis.
40 C.F.R. 52.21 (l)	Air quality models.
40 C.F.R. 52.21 (m)	Air quality analysis.
40 C.F.R. 52.21 (n)	Source information.
40 C.F.R. 52.21 (o)	Additional impact analysis.
40 C.F.R. 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - Additional requirements
40 C.F.R. 52.21 (r)	Source obligation.
40 C.F.R. 52.21 (v)	Innovative control technology.
40 C.F.R. 52.21 (w)	Permit rescission.
40 C.F.R. 52.21 (aa)	Actuals Plantwide Applicability Limitation.

(b) Exceptions to adopting 40 C.F.R. 52.21 by reference.

(i) Every use of the word "administrator" in 40 C.F.R. 52.21 means ecology except for the following:

(A) In 40 C.F.R. 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 C.F.R. 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 C.F.R. 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 C.F.R. 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 C.F.R. 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 C.F.R. 52.21 (b)(37) related to the definition of repowering, "administrator" means the EPA administrator.

(G) In 40 C.F.R. 52.21 (b)(51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 C.F.R. 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p)(1) ((~~-~~)), (2), (3) and (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 C.F.R. 52.21:

(A) In 40 C.F.R. 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 C.F.R. 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 C.F.R. 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.

(D) 40 C.F.R. 52.21 (r)(6)

"The provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 C.F.R. 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) A description of the project;

(b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 C.F.R. 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 C.F.R. 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 C.F.R. 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 C.F.R. 52.21 (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 C.F.R. 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 C.F.R. 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and

maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(vi) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (r)(6)(vi)(b) of this subsection, and not also within the meaning of (r)(6)(vi)(a) of this subsection, then the provisions of (r)(6)(vi)(ii) through (v) of this subsection do not apply to the project."

(E) 40 C.F.R. 52.21 (r)(7) "The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 C.F.R. 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 C.F.R. 70.4 (b)(3)(viii)."

(F) 40 C.F.R. 52.21 (aa)(2)(ix) "PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source."

(G) 40 C.F.R. 52.21 (aa)(5) "Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740."

(H) 40 C.F.R. 52.21 (aa)(9)(i)(b) "Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate."

(I) 40 C.F.R. 52.21 (aa)(14) "Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 C.F.R. 52.21 (aa)(14)(i) through (iii)."

(J) 40 C.F.R. 52.21 (aa)(14)(ii) "Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3)."

(iv) 40 C.F.R. 52.21 (r)(2) is not adopted ((~~by reference~~)).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (1) **Application submittal.**

(a) The applicant shall submit an application that provides complete information necessary for ecology to determine compliance with all PSD program requirements.

(b) The applicant shall submit complete copies of its PSD application or an application to increase a PAL, distributed in the following manner:

(i) Three copies to ecology: Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy to each of the following federal land managers:

(A) U.S. Department of the Interior - National Park Service; and

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) One copy to the permitting authority with authority over the source under chapter 173-401 WAC.

(iv) One copy to EPA.

(c) Application submittal and processing for the initial request, renewal or expiration of a PAL under 40 C.F.R. 52.21(aa) shall be done as provided in 40 C.F.R. 52.21(aa)(3) ((-)) through (5)((~~, which is adopted by reference in WAC 173-400-720 (4)(a)(iv), except public~~)) (in effect on the date in WAC 173-400-025). Exception: Public participation must comply with WAC 173-400-740.

(2) **Application processing.**

(a) Completeness determination.

(i) Within thirty days after receiving a PSD permit application, ecology shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Ecology may request additional information clarifying aspects of the application after it has been determined to be complete.

(ii) The effective date of the application is the date on which ecology notifies the applicant that the application is complete pursuant to (a)(i) of this subsection.

(iii) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action taken.

(iv) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) Preparation and issuance of the preliminary determination.

(i) When the application has been determined to be complete, ecology shall begin developing the preliminary determination to approve or deny the application.

(ii) As expeditiously as possible after receipt of a complete application, ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

(c) Issuance of the final determination.

(i) Ecology shall make no final decision until the public comment period has ended and all comments received during the public comment period have been considered.

(ii) Within one year of the date of receipt of the complete application and as expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.

(d) Once the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a determination will be either the date of issuance of the final determination, or a later date if specified in the final determination.

Until the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a final determination is one of the following dates:

(i) If no comments on the preliminary determination were received, the date of issuance; or

(ii) If comments were received, thirty days after receipt of the final determination; or

(iii) A later date as specified within the PSD permit approval.

(3) **PSD technical support document.** Ecology shall develop a technical support document for each preliminary PSD determination. The preliminary technical support document will be updated prior to issuance of the final determination to reflect changes to the final determination based on comments received. The technical support document shall include the following information:

(a) A brief description of the major stationary source, major modification, or activity subject to review;

(b) The physical location, ownership, products and processes involved in the major stationary source or major modification subject to review;

(c) The type and quantity of pollutants proposed to be emitted into the air;

(d) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(e) A brief summary of the basis for the permit approval conditions;

(f) A statement on whether the emissions will or will not cause a state and national ambient air quality standard to be exceeded;

(g) The degree of increment consumption expected to result from the source or modification;

(h) An analysis of the impacts on air quality related values in federal Class I areas and other Class I areas affected by the project; and

(i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

(4) **Appeals.** A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. A PSD permit issued under the terms of a delegation agreement can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(5) **Construction time limitations.**

(a) Approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The time period between construction of the approved phases of a phased construction project cannot be extended. Each phase must commence construction within eighteen months of the projected and approved commencement date.

(b) Ecology may extend the eighteen-month effective period of a PSD permit upon a satisfactory showing that an extension is justified. A request to extend the effective time to begin or complete actual construction under a PSD permit may be submitted. The request may result from the cessation of on-site construction before completion or failure to begin actual construction of the project(s) covered by the PSD permit.

(i) Request requirements.

(A) A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.

(B) An evaluation of BACT and an updated ambient impact, including an increment analysis, for all pollutants subject to the approval conditions in the PSD permit.

(ii) Duration of extensions.

(A) No single extension of time shall be longer than eighteen months.

(B) The cumulative time prior to beginning actual construction under the original PSD permit and all approved time extensions shall not exceed fifty-four months.

(iii) Issuance of an extension.

(A) Ecology may approve and issue an extension of the current PSD permit.

(B) The extension of approval shall reflect any revised BACT limitations based on the evaluation of BACT presented in the request for extension and other information available to ecology.

(C) The issuance of an extension is subject to the public involvement requirements in WAC 173-400-740.

(iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-740 PSD permitting public involvement requirements. (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

(b) An extension of the time to begin construction or suspend construction under a PSD permit; or

(c) A revision to a PSD permit, except an administrative amendment to an existing permit; or

(d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 (((~~as in effect on May 1, 2012~~))) (in effect on the date in WAC 173-400-025) as part of review of air quality impacts.

(2) **Notification of the public.** As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or after receipt of a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(b) Notify the public by:

(i) Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC 173-400-730(4). The date the public notice is published in the newspaper starts the required thirty-day comment period.

(ii) If ecology grants a request to extend the public comment period, the extension notice must also be published in a newspaper as noted above and a copy of the extension notice sent to the organizations and individuals listed in (c) and (d) of this subsection. The closing date of the extended comment period shall be as defined in the public comment period extension notification.

(iii) If a hearing is held, the public comment period must extend through the hearing date.

(iv) The applicant or other initiator of the action must pay the cost of providing public notice.

(c) Send a copy of the public notice to:

(i) Any Indian governing body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

(d) Send a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected federal land manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC;

(v) Individuals or organizations who request a copy; and

(vi) The location for public inspection of material required under (a) of this subsection.

(3) **Public notice content.** The public notice shall contain at least the following information:

(a) The name and address of the applicant;

(b) The location of the proposed project;

(c) A brief description of the project proposal;

(d) The preliminary determination to approve or disapprove the application;

(e) How much increment is expected to be consumed by this project;

(f) The name, address, and telephone number of the person to contact for further information;

(g) A brief explanation of how to comment on the project;

(h) An explanation on how to request a public hearing;

(i) The location of the documents made available for public inspection;

(j) There is a thirty-day period from the date of publication of the notice for submitting written comment to ecology;

(k) A statement that a public hearing may be held if ecology determines within a thirty-day period that significant public interest exists;

(l) The length of the public comment period in the event of a public hearing;

(m) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same locations where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

(a) The final approval or disapproval determination must be made within one year of receipt of a complete application and must include the following:

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

(iv) A description of what approval conditions changed from the preliminary determination; and

(v) A cover letter that includes an explanation of how the final determination may be appealed.

(b) Ecology shall mail a copy of the cover letter that accompanies the final determination to:

(i) Individuals or organizations that requested notification of the specific project proposal;

(ii) Other individuals who requested notification of PSD permits.

(c) A copy of the final determination shall be sent to:

(i) The applicant;

(ii) U.S. Department of the Interior - National Park Service;

(iii) U.S. Department of Agriculture - Forest Service;

(iv) EPA Region 10;

(v) The permitting authority with authority over the source under chapter 173-401 WAC;

(vi) Any person who commented on the preliminary determination; and

(vii) The location for public inspection of material required under subsection (2)(a) of this section.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-810 Major stationary source and major modification definitions. The definitions in this section must be used in the major stationary source nonattainment area permitting requirements in WAC 173-400-800 through 173-400-860. If a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability ((~~Limit which are adopted by reference in~~)) Limitation (WAC 173-400-850), then that definition ((~~is to~~)) must be used for purposes of the Plant Wide Applicability ((~~Limit~~)) Limitation program.

(1) Actual emissions means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under WAC 173-400-850. Instead, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which is representative of normal source operation. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the

baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under WAC 173-400-800 through 173-400-860 or under a plan approved by ((~~the administrator~~)) EPA, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period. However, if an emission limitation is part of a maximum achievable control technology standard that ((~~the administrator~~)) EPA proposed or promulgated under 40 C.F.R. Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(4) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(5) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(6) Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(7) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(8) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents)

and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(9) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(10) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(11) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(12) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see WAC 173-400-840(7)) and for PALs (see WAC 173-400-850).

(13) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator

of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(14)(a) Major stationary source means any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185B, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) Fifty tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) Fifty tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) Twenty-five tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) Ten tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) Fifty tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by ((~~the administrator~~)) EPA);

(vi) Seventy tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of WAC 173-400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b)(i) through (vi) of this subsection shall apply in areas subject to sections 181-185B of the Federal Clean Air Act.

(i) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) One hundred tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) Fifty tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) Twenty-five tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) Ten tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of subsection (14) of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants - The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the ((~~act~~)) Federal Clean Air Act.

(15)(a) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 C.F.R. 52.21 or under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or ((~~section~~)) 40 C.F.R. 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by ((~~the administrator~~)) EPA implementing 40 C.F.R. 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 C.F.R. 52.21 or regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or 40 C.F.R. 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 C.F.R. Part 51, Appendix S ((~~adopted by reference in WAC 173-400-850~~)) (in effect on the date in WAC 173-400-025) shall apply.

(e) For the purpose of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source.

(16) Necessary preconstruction approvals or permits means those permits or orders of approval required under federal air quality control laws and regulations or under air quality control laws and regulations which are part of the applicable state implementation plan.

(17)(a) Net emissions increase means with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to WAC 173-400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2)(a)(iii) and (b)(iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC; and

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 C.F.R. 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section,

the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830 or in issuing any permit under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(g) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(h) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(18) Nonattainment major new source review (NSR) program means the major source preconstruction permit program that has been approved by ((~~the administrator~~)) EPA and incorporated into the plan to implement the requirements of 40 C.F.R. 51.165, or a program that implements 40 C.F.R. Part 51, Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(19) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(20) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(21) Prevention of significant deterioration (PSD) permit means any permit that is issued under the major source preconstruction permit program that has been approved by ((~~the administrator~~)) EPA and incorporated into the plan to implement the requirements of 40 C.F.R. 51.166, or under the program in 40 C.F.R. 52.21.

(22) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(23)(a) Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b)(i) through (iii) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(24)(a) Regulated NSR pollutant, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a)(i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide is a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(C) Nitrogen oxides are precursors to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations for PM-2.5 made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of WAC 173-400-800 through 173-400-850.

(25)(a) Replacement unit means an emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. 60.15 (b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(26) Reviewing authority means "permitting authority" as defined in WAC 173-400-030.

(27) Significant means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Ozone	40 tons per year of volatile organic compounds or nitrogen oxides
Lead	0.6 tons per year
PM-10	15 tons per year
PM-2.5	10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions; 40 tons per year of sulfur dioxide emissions

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to sections 181-185B, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five tons per year.

(c) For the purposes of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment

area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a), (b), and (e) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty tons per year, provided ((~~the administrator~~)) EPA has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a) and (b) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185B of the Federal Clean Air Act shall be considered a significant net emissions increase.

(28) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(29) Source and stationary source means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(30) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(31) Best available control technology (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-830 Permitting requirements. (1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to WAC 173-400-820, is authorized to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.

(b) The permitting authority has determined, based on review of an analysis performed by the owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(c) The proposed new major stationary source or a major modification of an existing major stationary source will comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for Source Categories, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants and designated precursors to those air contaminants, except that it will achieve LAER for the air contaminants and designated precursors to those air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source is major or for which the existing source is major and the proposed modification is a major modification.

(e) Allowable emissions from the proposed new major stationary source or major modification of an existing major stationary source of that air contaminant and designated precursors to those air contaminants are offset by reductions in actual emissions from existing sources in the nonattainment area. All offsetting emission reductions must satisfy the requirements in WAC 173-400-840.

(f) The owner or operator of the proposed new major stationary source or major modification of an existing major stationary source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is also a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is also a major modification within the meaning of WAC 173-400-720, it meets the requirements of the PSD program under 40 C.F.R. 52.21 delegated to ecology by EPA Region 10, while such delegated program remains in effect. The proposed new major stationary source or major modification will comply with the PSD program in WAC 173-400-700 through 173-400-750 for all air contaminants for which the area has not been designated nonattainment when that PSD program has been approved into the Washington SIP.

(h) The proposed new major stationary source or the proposed major modification meets the special protection requirements for federal Class I areas in WAC 173-400-117.

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where ((~~the administrator of the environmental protection agency~~)) EPA has granted a NO_X waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(j) The requirements of this section applicable to major stationary sources and major modifications of PM-10 and PM-2.5 shall also apply to major stationary sources and major modifications of PM-10 and PM-2.5 precursors, except where ((~~the administrator of the~~)) EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 40 C.F.R. 51.165, or the requirements of 40 C.F.R. Part 51, Appendix S, as applicable, shall apply to the source or modification as though construction had not yet commenced on the source or modification. 40 C.F.R. Part 51, Appendix S shall not apply to a new or modified source for which enforceable limitations are established after WAC 173-400-800 through 173-400-850 have been approved into Washington's SIP.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-840 Emission offset requirements. (1) The ratio of total actual emissions reductions to the emissions increase shall be 1.1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section.

(2) In meeting the emissions offset requirements of WAC 173-400-830 for ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(a) In any marginal nonattainment area for ozone - 1.1:1;

(b) In any moderate nonattainment area for ozone - 1.15:1;

(c) In any serious nonattainment area for ozone - 1.2:1;

(d) In any severe nonattainment area for ozone - 1.3:1; and

(e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of WAC 173-400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185B of the Federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185B of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 C.F.R. 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1.

(5) Emission offsets used to meet the requirements of WAC 173-400-830 (1)(e), must be for the same regulated NSR pollutant.

(6) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(7) Emission offsets are required for the incremental increase in allowable emissions occurring during startup and shutdown operations at the new or modified emission units subject to nonattainment area major new source review. The incremental increase is the difference between the allowable emissions during normal operation and the allowable emissions for startup and shutdown contained in the nonattainment new source review approval.

(8) Emission offsets including those described in an emission reduction credit issued under WAC 173-400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is determined to be complete, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the notice of construction application is determined to be complete. If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction resulting from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the preshutdown or precurtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (7)(b)(iii)(A)(I) of this section.

(iv) All emission reductions claimed as offset credit shall be federally enforceable;

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area. Except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status than the nonattainment area where the source proposing to use the reduction is located; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on in issuing any permit under 40 C.F.R. 52.21 or regulations approved pursuant to 40 C.F.R. Part 51, subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress.

(vii) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

(9) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977). This document is also available from ((~~Mr. Ted Creekmore,~~)) Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL). The Actuals Plantwide Applicability ((~~limit~~)) Limitations (PAL) program ((~~contained~~)) in Section IV.K of Appendix S (Emission Offset Interpretive Ruling) to 40 C.F.R. Part 51, ((~~Appendix S, Emission Offset Ruling, as of May 1, 2012,~~)) (in effect on the date in WAC 173-400-025) is adopted ((~~by reference~~)) with the following exceptions:

(1) The term "reviewing authority" means "permitting authority" as defined in WAC 173-400-030.

(2) "PAL permit" means the major or minor new source review permit issued that establishes the PAL and those PAL terms as they are incorporated into an air operating permit issued pursuant to chapter 173-401 WAC.

(3) The reference to 40 C.F.R. 70.6 (a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-930 Emergency engines. (1) **Applicability.**

(a) This section applies statewide except where a permitting authority has not adopted this section in rule.

(b) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

(c) This section is not applicable to emergency engines proposed to be installed as part of a new major stationary source, as defined in WAC 173-400-710 and 173-400-810, or major modification, as defined in WAC 173-400-710 and 173-400-810.

(d) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

(e) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW 70.94.152 and chapter 173-460 WAC.

(f) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

(g) If an applicant cannot meet the requirements of this section, then they must file a notice of construction application.

(2) **Operating requirements for emergency engines.** Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines((~~, contained~~)) in 40 C.F.R. ((~~Part~~)) 89.112 Table 1 and 40 C.F.R. ((~~Part~~)) 1039.102 Tables 6 and 7 (in effect on the date in WAC 173-400-025), as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur biodiesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.

(c) Operate a maximum of fifty hours per year for maintenance and testing or other nonemergency use.

(3) **Definitions.**

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical work during an emergency use.

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure or loss of all or part of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

(i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) Train personnel on emergency activities; or

(iii) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance; or

(iv) Exercise the engine if such operation is recommended by the engine or generator manufacturer.

AMENDATORY SECTION (Amending WSR 12-24-033, filed 11/28/12, effective 12/29/12)

WAC 173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference. Each manufacturer and each new 2009 and subsequent model year passenger car, light duty truck and medium duty passenger vehicle subject to this chapter shall comply with each applicable standard set forth in Table 070(1) and incorporated by reference:

Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington starting January 14, 2009

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1 General Provisions		
Section 1900	Definitions	((~~8/7/12~~)) 10/8/15
Section 1956.8 (g) and (h)	Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy Duty Engines and Vehicles	((~~8/7/12~~)) 12/5/14
Section 1960.1	Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	((~~8/7/12~~)) 12/31/12
Section 1961	Exhaust Emission Standards and Test Procedures - 2004 through 2019 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((~~8/7/12~~)) 12/31/12
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2009 through 2016 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	8/7/12

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 1961.2	Exhaust Emission Standards and Test Procedures - 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((~~8/7/12~~)) 10/8/15
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((~~8/8/12~~)) 12/31/12
Section 1965	Emission Control, Smog Index, and Environmental Performance Labels - 1979 and Subsequent Model-Year Motor Vehicles	((~~8/7/12~~)) 10/8/15
Section 1968.2	Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	((~~8/7/12~~)) 7/31/13
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	((~~8/7/12~~)) 7/31/13
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	((~~8/7/12~~)) 10/8/15
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	((~~8/7/12~~)) 10/8/15

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	11/9/07
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	((~~5/15/99~~)) 12/5/14
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	((~~8/7/12~~)) 12/5/14
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	8/7/12
Section 2039	Emission Control System Warranty Statement	12/26/90
Section 2040	Vehicle Owner Obligations	12/26/90
Section 2046	Defective Catalyst	2/15/79
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing		
Article 2 Enforcement of New and In-Use Vehicle Standards		
Section 2109	New Vehicle Recall Provisions	12/30/83

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	12/8/10
Section 2112	Definitions	((~~8/7/12~~)) 12/5/14
	Appendix A to Article 2.1	8/16/09
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Section 2114	Voluntary and Influenced Recall Plans	11/27/99
Section 2115	Eligibility for Repair	1/26/95
Section 2116	Repair Label	1/26/95
Section 2117	Proof of Correction Certificate	1/26/95
Section 2118	Notification	1/26/95
Section 2119	Recordkeeping and Reporting Requirements	11/27/99
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Article 2.2 Procedures for In-Use Vehicle Ordered Recalls		
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Section 2123	Initiation and Notification of Ordered Emission-Related Recalls	1/26/95
Section 2124	Availability of Public Hearing	1/26/95
Section 2125	Ordered Recall Plan	1/26/95
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Section 2127	Notification of Owners	1/26/95
Section 2128	Repair Label	1/26/95
Section 2129	Proof of Correction Certificate	1/26/95
Section 2130	Capture Rates and Alternative Measures	11/27/99
Section 2131	Preliminary Tests	1/26/95
Section 2132	Communication with Repair Personnel	1/26/95
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Section 2135	Extension of Time	1/26/95
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
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Section 2142	Alternative Procedures	2/23/90
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Section 2144	Emission Warranty Information Report	11/27/99
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Section 2147	Demonstration of Compliance with Emission Standards	((~~8/7/12~~)) 12/5/14
Section 2148	Evaluation of Need for Recall	11/27/99
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Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	8/8/12

AMENDATORY SECTION (Amending WSR 13-24-010, filed 11/21/13, effective 12/22/13)

WAC 173-476-020 Applicability. (1) The provisions of this chapter apply to all areas of the state of Washington.

(2) All federal regulations referenced in this regulation are adopted as they exist on ((~~August 3, 2013~~)) January 1, 2016.

AMENDATORY SECTION (Amending WSR 13-24-010, filed 11/21/13, effective 12/22/13)

WAC 173-476-150 Ambient air quality standard for ozone. (1) **Standard for ozone.** The three-year average of the annual fourth highest daily maximum eight-hour average concentration of ozone in the ambient air must not exceed ((~~0.075~~)) 0.070 ppmv.

(2) **Measurement method.** The levels of ozone in the ambient air must be measured by:

(a) A FRM based on 40 C.F.R. Part 50, Appendix D and designated according to 40 C.F.R. Part 53; or

(b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation method.** The interpretation method found in 40 C.F.R. Part 50, Appendix ((~~P~~)) U must be followed.

AMENDATORY SECTION (Amending WSR 13-24-010, filed 11/21/13, effective 12/22/13)

WAC 173-476-900 Table of standards.

Disclaimer: This table is provided as an overview. See complete rule for more detail.

Pollutant		Averaging Time	Level	Remarks	Measurement Method	Interpretation Method
Particle Pollution	PM-10	24-hour	150 μg/m^3	Not to be exceeded more than once per year averaged over 3 years	40 C.F.R. Part 50, Appendix J	40 C.F.R. Part 50, Appendix K
	PM-2.5	Annual	12.0 μg/m^3	Annual mean, averaged over 3 years	40 C.F.R. Part 50, Appendix L	40 C.F.R. Part 50, Appendix N
		24-hour	35 μg/m^3	98th percentile, averaged over 3 years		
Lead		Rolling 3-month average	0.15 μg/m^3	Not to be exceeded	40 C.F.R. Part 50, Appendix G	40 C.F.R. Part 50, Appendix R
Sulfur Dioxide		Annual	0.02 ppmv	Not to be exceeded in a calendar year	40 C.F.R. Part 50, Appendix A-1 or A-2	WAC 173-476-130(3)
		24-hour	0.14 ppmv	Not to be exceeded more than once per year		
		3-hour	0.5 ppmv	Not to be exceeded more than once per year		
		1-hour	75 ppbv	99th percentile of 1-hour daily maximum concentrations, averaged over 3 years		
Nitrogen Dioxide		Annual	53 ppbv	Annual Mean	40 C.F.R. Part 50, Appendix F	40 C.F.R. Part 50, Appendix S
		1-hour	100 ppbv	98th percentile of 1-hour daily maximum concentrations, averaged over 3 years		
Ozone		8-hour	((~~0.075~~)) 0.070 ppmv	Annual fourth-highest daily maximum 8-hr concentration, averaged over 3 years	40 C.F.R. Part 50, Appendix D	40 C.F.R. Part 50, Appendix ((~~P~~)) U
Carbon Monoxide		8-hour	9 ppmv	Not to be exceeded more than once per year	40 C.F.R. Part 50, Appendix C	WAC 173-476-160(3)
		1-hour	35 ppmv			