

WSR 17-09-002
PERMANENT RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed April 5, 2017, 2:45 p.m., effective May 6, 2017]

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

Purpose: Revisions to WAC 182-531-0050 include removing the definition of "ADSA," clarifying the definitions of "experimental" and "investigational," and aligning the definitions of "peer reviewed medical literature" with other agency rules. Revisions to WAC 182-531-0550 include striking redundant subsections and referring to WAC 182-501-0165 as the authority for authorizing experimental or investigational services. Revisions to these WAC also include housekeeping changes.

Citation of Existing Rules Affected by this Order: Amending WAC 182-531-0050 and 182-531-0550.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-05-092 on February 14, 2017.

Changes Other than Editing from Proposed to Adopted Version: Replaced the term "case-by-case" with "medical necessity" in WAC 182-531-0550(2) as follows:

The determination of whether to authorize an experimental or investigational service is subject to a ~~case-by-case~~ medical necessity review under the provisions of WAC 182-501-0165.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: April 5, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-01-039, filed 12/9/15, effective 1/9/16)

WAC 182-531-0050 Physician-related services definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC, apply to this chapter.

"Acquisition cost" - The cost of an item excluding shipping, handling, and any applicable taxes.

"Acute care" - Care provided for clients who are not medically stable. These clients require frequent monitoring

by a health care professional in order to maintain their health status. See also WAC 246-335-015.

"Acute physical medicine and rehabilitation (PM&R)" - A comprehensive inpatient and rehabilitative program coordinated by a multidisciplinary team at an agency-approved rehabilitation facility. The program provides twenty-four hour specialized nursing services and an intense level of specialized therapy (speech, physical, and occupational) for a diagnostic category for which the client shows significant potential for functional improvement (see WAC 182-550-2501).

"Add-on procedure(s)" - Secondary procedure(s) that are performed in addition to another procedure.

"Admitting diagnosis" - The medical condition responsible for a hospital admission, as defined by the ICD diagnostic code.

"Advanced registered nurse practitioner (ARNP)" - A registered nurse prepared in a formal educational program to assume an expanded health services provider role in accordance with WAC 246-840-300 and 246-840-305.

~~("Aging and disability services administration (ADSA)" - The administration that administers directly or contracts for long-term care services including, but not limited to, nursing facility care and home and community services. See WAC 388-71-0202.)~~

"Allowed charges" - The maximum amount reimbursed for any procedure that is allowed by the agency.

"Anesthesia technical advisory group (ATAG)" - An advisory group representing anesthesiologists who are affected by the implementation of the anesthesiology fee schedule.

"Bariatric surgery" - Any surgical procedure, whether open or by laparoscopy, which reduces the size of the stomach with or without bypassing a portion of the small intestine and whose primary purpose is the reduction of body weight in an obese individual.

"Base anesthesia units (BAU)" - A number of anesthesia units assigned to a surgical procedure that includes the usual preoperative, intraoperative, and postoperative visits. This includes the administration of fluids and/or blood incident to the anesthesia care, and interpretation of noninvasive monitoring by the anesthesiologist.

"Bundled services" - Services integral to the major procedure that are included in the fee for the major procedure. Bundled services are not reimbursed separately.

"Bundled supplies" - Supplies (~~which~~) that are considered to be included in the practice expense RVU of the medical or surgical service of which they are an integral part.

"By report (BR)," see WAC 182-500-0015.

"Call" - A face-to-face encounter between the client and the provider resulting in the provision of services to the client.

"Cast material maximum allowable fee" - A reimbursement amount based on the average cost among suppliers for one roll of cast material.

"Center of excellence (COE)" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)," see WAC 182-500-0020.

"Certified registered nurse anesthetist (CRNA)" - An advanced registered nurse practitioner (ARNP) with formal training in anesthesia who meets all state and national criteria for certification. The American Association of Nurse Anesthetists specifies the national certification and scope of practice.

"Children's health insurance plan (CHIP)," see chapter 182-542 WAC.

"Clinical Laboratory Improvement Amendment (CLIA)" - Regulations from the U.S. Department of Health and Human Services that require all laboratory testing sites to have either a CLIA registration or a CLIA certificate of waiver in order to legally perform testing anywhere in the U.S.

"Conversion factors" - Dollar amounts the agency uses to calculate the maximum allowable fee for physician-related services.

"Covered service" - A service that is within the scope of the eligible client's medical care program, subject to the limitations in this chapter and other published WAC.

"CPT," see "current procedural terminology."

"Critical care services" - Physician services for the care of critically ill or injured clients. A critical illness or injury acutely impairs one or more vital organ systems such that the client's survival is jeopardized. Critical care is given in a critical care area, such as the coronary care unit, intensive care unit, respiratory care unit, or the emergency care facility.

"Current procedural terminology (CPT)" - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Emergency medical condition(s)," see WAC 182-500-0030.

"Emergency services" - Medical services required by and provided to a patient experiencing an emergency medical condition.

"Estimated acquisition cost (EAC)" - The agency's best estimate of the price providers generally and currently pay for drugs and supplies.

"Evaluation and management (E&M) codes" - Procedure codes (~~(which)~~ that) categorize physician services by type of service, place of service, and patient status.

"Expedited prior authorization" - The process of obtaining authorization that must be used for selected services, in which providers use a set of numeric codes to indicate to the agency which acceptable indications, conditions, diagnoses, and/or criteria are applicable to a particular request for services.

"Experimental" - A term to describe a (~~(procedure, or course of treatment, which)~~ health care service that) lacks sufficient scientific evidence of safety and effectiveness. ((See ~~WAC 182-531-0550~~.) A service is not "experimental" if the service:

(1) Is generally accepted by the medical profession as effective and appropriate; and

(2) Has been approved by the (~~(FDA)~~ federal Food and Drug Administration) or other requisite government body, if such approval is required.

"Federally approved hemophilia treatment center" - A hemophilia treatment center (HTC) (~~(which)~~ that):

(1) Receives funding from the U.S. Department of Health and Human Services, Maternal and Child Health Bureau National Hemophilia Program;

(2) Is qualified to participate in 340B discount purchasing as an HTC;

(3) Has a U.S. Center for Disease Control (CDC) and prevention surveillance site identification number and is listed in the HTC directory on the CDC web site;

(4) Is recognized by the Federal Regional Hemophilia Network that includes Washington state; and

(5) Is a direct care provider offering comprehensive hemophilia care consistent with treatment recommendations set by the Medical and Scientific Advisory Council (MASAC) of the National Hemophilia Foundation in their standards and criteria for the care of persons with congenital bleeding disorders.

"Fee-for-service," see WAC 182-500-0035.

"Flat fee" - The maximum allowable fee established by the agency for a service or item that does not have a relative value unit (RVU) or has an RVU that is not appropriate.

"Geographic practice cost index (GPCI)" - As defined by medicare, means a medicare adjustment factor that includes local geographic area estimates of how hard the provider has to work (work effort), what the practice expenses are, and what malpractice costs are. The GPCI reflects one-fourth the difference between the area average and the national average.

"Global surgery reimbursement," see WAC 182-531-1700.

"HCPCS Level II" - Health care common procedure coding system, a coding system established by Centers for Medicare and Medicaid Services (CMS) to define services and procedures not included in CPT.

"Health care financing administration common procedure coding system (HCPCS)" - The name used for the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) codes made up of CPT and HCPCS level II codes.

"Health care team" - A group of health care providers involved in the care of a client.

"Hospice" - A medically directed, interdisciplinary program of palliative services which is provided under arrangement with a Title XVIII Washington licensed and certified Washington state hospice for terminally ill clients and the clients' families.

"ICD," see "International Classification of Diseases."

"Informed consent" - That an individual consents to a procedure after the provider who obtained a properly completed consent form has done all of the following:

(1) Disclosed and discussed the client's diagnosis; and

(2) Offered the client an opportunity to ask questions about the procedure and to request information in writing; and

(3) Given the client a copy of the consent form; and

(4) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. Chapter IV 441.257; and

(5) Given the client oral information about all of the following:

(a) The client's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure; and

(b) Alternatives to the procedure including potential risks, benefits, and consequences; and

(c) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital admission" - An admission to a hospital that is limited to medically necessary care based on an evaluation of the client using objective clinical indicators, assessment, monitoring, and therapeutic service required to best manage the client's illness or injury, and that is documented in the client's medical record.

"International Classification of Diseases (ICD)" - The systematic listing that transforms verbal descriptions of diseases, injuries, conditions, and procedures into numerical or alphanumeric designations (coding).

"Investigational" - A term to describe a ~~((procedure, or course of treatment, which))~~ health care service that lacks sufficient scientific evidence of ~~((benefit))~~ safety and effectiveness for a particular condition. A service is not "investigational" if the service:

(1) Is generally accepted by the medical professional as effective and appropriate for the condition in question; or

(2) Is supported by an overall balance of objective scientific evidence, ~~((in which))~~ that examines the potential risks and potential benefits ~~((are examined, demonstrating))~~ and demonstrates the proposed service to be of greater overall benefit to the client in the particular circumstance than another ~~((s))~~ generally available service.

"Life support" - Mechanical systems, such as ventilators or heart-lung respirators, which are used to supplement or take the place of the normal autonomic functions of a living person.

"Limitation extension," see WAC 182-501-0169.

"Long-acting reversible contraceptive (LARC)" - Subdermal implants and intrauterine devices (IUDs).

"Maximum allowable fee" - The maximum dollar amount that the agency will reimburse a provider for specific services, supplies, and equipment.

"Medically necessary," see WAC 182-500-0070.

"Medicare clinical diagnostic laboratory fee schedule" - The fee schedule used by medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.

"Medicare physician fee schedule data base (MPFSDB)" - The official CMS publication of the medicare policies and RVUs for the RBRVS reimbursement program.

"Medicare program fee schedule for physician services (MPFSPS)" - The official CMS publication of the medicare fees for physician services.

~~((**"Medicare clinical diagnostic laboratory fee schedule"** - The fee schedule used by medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.))~~

"Mentally incompetent" - A client who has been declared mentally incompetent by a federal, state, or local court.

"Modifier" - A two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting physician can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"Outpatient," see WAC 182-500-0080.

"Peer-reviewed medical literature" - ~~((Medical literature published in professional journals that submit articles for review by experts who are not part of the editorial staff. It does not include publications or supplements to publications primarily intended as marketing material for pharmaceutical, medical supplies, medical devices, health service providers, or insurance carriers.))~~ A research study, report, or findings regarding a medical treatment that is published in one or more reputable professional journals after being critically reviewed by appropriately credentialed experts for scientific validity, safety, and effectiveness.

"Physician care plan" - A written plan of medically necessary treatment that is established by and periodically reviewed and signed by a physician. The plan describes the medically necessary services to be provided by a home health agency, a hospice agency, or a nursing facility.

"Physician standby" - Physician attendance without direct face-to-face client contact and which does not involve provision of care or services.

"Physician's current procedural terminology," see "current procedural terminology (CPT)."

"PM&R," see acute physical medicine and rehabilitation.

"Podiatric service" - The diagnosis and medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the foot and ankle.

"Pound indicator (#)" - A symbol (#) indicating a CPT procedure code listed in the agency's fee schedules that is not routinely covered.

"Preventive" - Medical practices that include counseling, anticipatory guidance, risk factor reduction interventions, and the ordering of appropriate laboratory and diagnostic procedures intended to help a client avoid or reduce the risk or incidence of illness or injury.

"Prior authorization," see WAC 182-500-0085.

"Professional component" - The part of a procedure or service that relies on the provider's professional skill or training, or the part of that reimbursement that recognizes the provider's cognitive skill.

"Prognosis" - The probable outcome of a client's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the client's probable life span as a result of the illness.

"Prolonged services" - Face-to-face client services furnished by a provider, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services. The time counted toward payment for prolonged E&M

services includes only face-to-face contact between the provider and the client, even if the service was not continuous.

"**Provider**," see WAC 182-500-0085.

"**Radioallergosorbent test**" or "**RAST**" - A blood test for specific allergies.

"**RBRVS**," see resource based relative value scale.

"**RBRVS RVU**" - A measure of the resources required to perform an individual service or intervention. It is set by medicare based on three components - Physician work, practice cost, and malpractice expense. Practice cost varies depending on the place of service.

"**Reimbursement**" - Payment to a provider or other agency-approved entity who bills according to the provisions in WAC 182-502-0100.

"**Reimbursement steering committee (RSC)**" - An interagency work group that establishes and maintains RBRVS physician fee schedules and other payment and purchasing systems utilized by the agency and the department of labor and industries.

"**Relative value guide (RVG)**" - A system used by the American Society of Anesthesiologists for determining base anesthesia units (BAUs).

"**Relative value unit (RVU)**" - A unit ~~((which))~~ that is based on the resources required to perform an individual service or intervention.

"**Resource based relative value scale (RBRVS)**" - A scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"**RSC RVU**" - A unit established by the RSC for a procedure that does not have an established RBRVS RVU or has an RBRVS RVU deemed by the RSC as not appropriate for the service.

"**RVU**," see relative value unit.

"**Stat laboratory charges**" - Charges by a laboratory for performing tests immediately. "Stat" is an abbreviation for the Latin word "statim," meaning immediately.

"**Sterile tray**" - A tray containing instruments and supplies needed for certain surgical procedures normally done in an office setting. For reimbursement purposes, tray components are considered by CMS to be nonroutine and reimbursed separately.

"**Technical advisory group (TAG)**" - An advisory group with representatives from professional organizations whose members are affected by implementation of RBRVS physician fee schedules and other payment and purchasing systems utilized by the agency and the department of labor and industries.

"**Technical component**" - The part of a procedure or service that relates to the equipment set-up and technician's time, or the part of the procedure and service reimbursement that recognizes the equipment cost and technician time.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0550 Experimental and investigational services. (1) When the ~~((department makes a determination as to whether))~~ medicaid agency determines a proposed service is experimental or investigational, the ~~((depart-~~

~~ment))~~ agency follows the procedures in this section. ~~((The policies and procedures and any criteria for making decisions are available upon request.))~~

(2) The determination of whether ~~((a service is))~~ to authorize an experimental ((and/or)) or investigational service is subject to a ~~((ease-by-case))~~ medical necessity review under the provisions of WAC ~~((388-501-0165 which relate to medical necessity. The department also considers the following:~~

(a) Evidence in ~~peer reviewed medical literature~~, as defined in WAC 388-531-0050, and preclinical and clinical data reported to the National Institute of Health and/or the National Cancer Institute, concerning the probability of the service maintaining or significantly improving the enrollee's length or quality of life, or ability to function, and whether the benefits of the service or treatment are outweighed by the risks of death or serious complications;

(b) Whether evidence indicates the service or treatment is more likely than not to be as beneficial as existing conventional treatment alternatives for the treatment of the condition in question;

(c) Whether the service or treatment is generally used or generally accepted for treatment of the condition in the United States;

(d) Whether the service or treatment is under continuing scientific testing and research;

(e) Whether the service or treatment shows a demonstrable benefit for the condition;

(f) Whether the service or treatment is safe and efficacious;

(g) Whether the service or treatment will result in greater benefits for the condition than another generally available service; and

(h) If approval is required by a regulating agency, such as the Food and Drug Administration, whether such approval has been given before the date of service.

(3) The department applies consistently across clients with the same medical condition and health status, the criteria to determine whether a service is experimental. A service or treatment that is not experimental for one client with a particular medical condition is not determined to be experimental for another enrollee with the same medical condition and health status. A service that is experimental for one client with a particular medical condition is not necessarily experimental for another, and subsequent individual determinations must consider any new or additional evidence not considered in prior determinations.

(4) The department does not determine a service or treatment to be experimental or investigational solely because it is under clinical investigation when there is sufficient evidence in peer-reviewed medical literature to draw conclusions, and the evidence indicates the service or treatment will probably be of greater overall benefit to the client in question than another generally available service.

(5) All determinations that a proposed service or treatment is "experimental" or "investigation" are subject to the review and approval of a physician who is:

(a) Licensed under chapter 18.57 RCW or an osteopath licensed under chapter 18.71 RCW;

~~(b) Designated by the department's medical director to issue such approvals; and~~

~~(c) Available to consult with the client's treating physician by telephone)) 182-501-0165.~~

WSR 17-09-006

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 16-06—Filed April 6, 2017, 8:59 a.m., effective May 7, 2017]

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

Purpose: Ecology is amending chapter 173-305 WAC, Hazardous waste fee regulation. Ecology is doing this rule making to align the rule with existing fee calculation practices, which are consistent with the hazardous waste and toxics reduction goals and purposes of chapter 70.95C RCW. This rule making:

- Adds exclusions related to the hazardous waste planning fee calculation found in WAC 173-305-220.
- Clarifies language needed for the fee's calculation.

Citation of Existing Rules Affected by this Order: Amending WAC 173-305-020 and 173-305-220.

Statutory Authority for Adoption: RCW 70.95E.030 ... "The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties ..."

Adopted under notice filed as WSR 16-23-161 on November 23, 2016.

A final cost-benefit analysis is available by contacting John Ridgway, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6713, fax (360) 407-6715, email hwtrulemaking@ecy.wa.gov.

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

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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 5, 2017.

Maia Bellon
by Polly Zehm
Director

AMENDATORY SECTION (Amending WSR 00-16-103, filed 8/1/00, effective 9/1/00)

WAC 173-305-020 Definitions. Any terms not specifically defined in this section, for the purposes of this chapter, have the same meaning as given in WAC 173-303-040. The following terms are defined for the purposes of this chapter:

(1) "Additional fee" means the annual fee imposed under chapter 70.95E RCW against hazardous generators and hazardous substance users required to prepare plans;

(2) "Base fee" means the annual fee imposed under chapter 70.95E RCW against hazardous waste generators doing business in the state of Washington;

(3) "Business activities" means activities of any person who is "engaging in business" as the term is defined in chapter 82.04 RCW. Specifically, "engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidates thereof hold themselves out to the public as conducting such business;

(4) "Dangerous waste" means any discarded, useless, unwanted, or abandoned nonradioactive substances including, but not limited to, certain pesticides, or any residues or containers of those kinds of substances that are disposed of in a quantity or concentration that would pose a substantial present or potential hazard to human health, wildlife, or the environment because those wastes or constituents or combinations of those kinds of wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

"Dangerous wastes" specifically includes those wastes designated as dangerous by chapter 173-303 WAC;

(5) "Department" means the department of ecology;

(6) "Emissions" means the substances released to the environment that must be reported under toxic chemical release reporting, 40 C.F.R. Part 372;

(7) "EPA/state identification number" means the number assigned by the environmental protection agency (EPA) or by the department of ecology to each generator or transporter or both, and to each treatment facility, or storage facility, or disposal facility, or a treatment, storage, and disposal facility;

(8) "Extremely hazardous waste" means any dangerous waste that:

(a) Will persist in a hazardous form for several years at a disposal site and which, in its persistent form:

(i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife; and

(ii) Is highly toxic to man and wildlife;

(b) If disposed of at a disposal site in quantities that would present an extreme hazard to man or the environment.

"Extremely hazardous waste" specifically includes those wastes designated as extremely hazardous by chapter 173-303 WAC;

(9) "Facility" means any geographical area that has been assigned an EPA/state identification number or in the case of a hazardous substance user, means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person;

(10) "Generate" means any act or process that produces hazardous waste or first causes a hazardous waste to become subject to regulation;

(11) "Hazardous waste" includes all dangerous and extremely hazardous wastes but, for the purposes of this chapter, excludes all radioactive wastes or substances composed of both radioactive and hazardous components;

(12) "Hazardous waste generator" means all persons whose primary business activities are identified by the department to generate any quantity of hazardous waste in the calendar year for which the fee is imposed.

(13) "Interrelated facility" means multiple facilities owned or operated by the same person;

(14) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal government;

(15) "Plan" means the plan provided for in RCW 70.95C.200;

(16) "Price deflator" means the figures reported by the United States Department of Commerce Bureau of Economic Analysis(5) on the table for "implicit price deflator for gross ((national)) domestic product ((for government purchases of goods and services for state and local government))." The department must use a price deflator for "State and Local Government." If a "State and Local Government" figure is not included on the table, the department must use a price deflator figure applicable to general government.

(17) "Primary business activity" means a business activity that accounts for more than fifty percent of a business' total gross receipts or in the case of more than two business activities, the activity which has the largest gross receipts. Where a business engages in multiple activities and one or more of those activities generate hazardous waste, the gross receipts from all waste generating activities will be combined to determine their ratio to the total gross receipts of the business.

(18) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include:

- (a) Use constituting disposal;
- (b) Incineration; or
- (c) Use as a fuel.

(19) "Substantially similar processes" means processes that are essentially interchangeable, inasmuch as they use similar equipment and materials and produce similar products or services and generate similar wastes.

(20) "Waste generation site" means any geographical area that has been assigned an EPA/state identification number.

AMENDATORY SECTION (Amending WSR 00-16-103, filed 8/1/00, effective 9/1/00)

WAC 173-305-220 Hazardous waste planning fee. (1)

The department shall calculate the adjusted fees, annual fee, and maximum total fees using the formula in subsection (3) of this section. The formula uses a risk factor of one for dangerous waste and emissions, and a multiplication factor of ten for extremely hazardous waste. For purposes of this section, hazardous waste reported on the annual dangerous waste generator report as having been either recycled on-site or recycled for beneficial use offsite, including initial amounts of hazardous substances introduced into a process and subsequently recycled for beneficial use, may not be used in the calculation of hazardous waste generated. A facility may petition the director to exclude hazardous wastes recycled for beneficial use even if they were not reported as such on the annual dangerous waste generator report. Documentation from the hazardous waste handling facility that the hazardous waste was recycled for beneficial use must be submitted along with the petition.

(2) Fees in subsection (3) of this section are based on the following definitions:

(Note: The terms "dangerous waste" and "extremely hazardous waste" as used in this subsection use the same basic definition as in WAC 173-305-020, but are modified as follows for the fee calculation only.)

(a) Dangerous waste is the number of pounds of dangerous waste reported that are not recycled for beneficial use, calculated so that the following wastes are excluded:

(i) Wastewater discharged under permit by rule under WAC 173-303-802 ((is excluded.)); or

(ii) Dangerous waste that is treated on-site by the generator according to WAC 173-303-170 (3)(b) and (c); or

(iii) Nonrecurrent dangerous waste as reported on the annual dangerous waste generator report required under WAC 173-303-060(5).

(b) Emissions is the number of pounds of emission reported under Toxic Chemical Release Reporting, 40 C.F.R. Part 372, by a company. If emissions are reported in ranges, the middle value of the reported range will be used in the calculation.

(c) Extremely hazardous waste is the number of pounds of extremely hazardous waste reported that are not recycled for beneficial use, calculated so that the following wastes are excluded:

(i) Wastewater discharged under permit by rule under WAC 173-303-802 ((is excluded.

The price deflator is the "Implicit price deflator for gross national product for government purchases of goods and services for state and local government.")); or

(ii) Extremely hazardous waste that is treated on-site by the generator according to WAC 173-303-170 (3)(b) and (c); or

(iii) Nonrecurrent extremely hazardous waste as reported on the annual dangerous waste generator report required under WAC 173-303-060(5).

The total risk pounds for a facility or set of interrelated facilities is equal to ten times the number of pounds of extremely hazardous waste generated, plus the number of

pounds of dangerous waste generated, plus the number of pounds of emission reported by that facility.

(3) The annual fee for a facility or set of interrelated facilities is equal to the rate per risk pound times the total risk pounds. The rate for the risk pounds must be calculated by the department so that the maximum total fee in (a) of this subsection can be obtained. The annual fee for each facility or set of interrelated facilities is subject to the limitations in (b) and (c) of this subsection.

(a) The maximum total fees collected must be determined based on the maximum total fee for the previous year, multiplied by the most current price deflator, and divided by the price deflator used in the numerator for the previous year. The price deflator used in the denominator for the first adjustment is the second quarter price deflator for 1990. The maximum total fees for 1990 must be one million dollars.

(b) The maximum fee for any facility or interrelated facility must be determined based on the maximum total fee for the previous year, multiplied by the most current price deflator, and divided by the price deflator used in the numerator for the previous year. The price deflator used in the denominator for the first adjustment is the second quarter price deflator for 1990. The maximum annual fee for 1990 must be ten thousand dollars.

(c) The maximum annual fee for a generator who generates between two thousand six hundred forty and four thousand pounds of dangerous and extremely hazardous waste must be determined based on the maximum total annual fee for the previous year, multiplied by the most current price deflator, and divided by the price deflator used in the numerator for the previous year. The price deflator used in the denominator for the first adjustment is the second quarter price deflator for 1990. The maximum annual fee for 1990 must be fifty dollars.

WSR 17-09-008
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 6, 2017, 9:57 a.m., effective May 7, 2017]

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

Purpose: The department is amending WAC 388-400-0047 in order to remove the pure food assistance program households from the heat and eat program to be consistent with federal requirements for the low-income energy assistance program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0047.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090, 74.04.500, 74.08A.010, 74.08A.903, Food and Nutrition Act of 2008 (P.L. 110-246, 7 U.S.C.) as amended by P.L. 113-79.

Adopted under notice filed as WSR 17-05-077 on February 14, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: April 6, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-24-050, filed 12/1/16, effective 1/1/17)

WAC 388-400-0047 What is the heat and eat program and are you eligible? (1) What is the heat and eat program?

(a) The heat and eat program is a special energy assistance program for certain assistance units that receive basic food, Washington combined application project (WASH-CAP), or the food assistance program for legal immigrants (FAP).

(b) An assistance unit (AU) in heat and eat program receives up to twenty dollars and one cent in federal low income home energy assistance program (LIHEAP) benefits. This U.S. Department of Health and Human Services, Administration for Children and Families LIHEAP benefit makes the AU eligible for the standard utility allowance under WAC 388-450-0195 for twelve months.

(2) If you receive WASHCAP, you will get LIHEAP and your AU is eligible for the standard utility allowance under WAC 388-450-0195 for twelve months.

(3) Is your ~~((assistance unit))~~ AU eligible for heat and eat?

Your AU is eligible for heat and eat if you meet all of the following:

(a) You receive at least one dollar in basic food or FAP benefits prior to any recoupments;

(b) Your basic food or FAP AU includes at least one U.S. citizen or qualified alien as defined under WAC 388-424-0001 as required by 8 U.S.C. Sec. 1611 (a)(1);

~~(c)~~ You do not receive transitional food assistance (TFA);

~~((+))~~ ~~(d)~~ You are not eligible for the standard utility allowance (SUA) under WAC 388-450-0195 based on having out-of-pocket costs for heating or cooling;

~~((+))~~ ~~(e)~~ You have not received a regular LIHEAP benefit amount of more than twenty dollars in the past twelve months; and

~~((+))~~ ~~(f)~~ You ~~((do not))~~ do not receive the maximum allotment for your AU size under WAC 388-478-0060 without using the SUA.

- (4) How do you receive heat and eat?
 - (a) If you are eligible for heat and eat, we deposit the benefit on your EBT card.
 - (b) The heat and eat benefit is good for twelve months.
 - (c) After twelve months, we look at your circumstances to see if you are still eligible for heat and eat.
- (5) How do you apply for heat and eat?
 - (a) You do not apply for heat and eat.
 - (b) We will determine if your AU is eligible to receive heat and eat and automatically provide the benefit to you.

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WSR 17-09-009

PERMANENT RULES

OLYMPIC COLLEGE

[Filed April 6, 2017, 10:09 a.m., effective May 7, 2017]

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

Purpose: Redesigning of Olympic College official seal to accommodate new embosser.

Current seal creates relief cuts in pages when using new embosser.

Citation of Existing Rules Affected by this Order: Amending WAC 132C-10-001.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 17-04-058 on February 14 [January 27], 2017.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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: April 3, 2017.

Laurie Harmon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-19-095, filed 9/16/08, effective 9/16/08)

WAC 132C-10-001 Seal. (1) Design. The seal of Olympic College shall be the following form and design:



(2) Use. The seal shall be used only in connection with the transaction of official business of Olympic College or for promotional purposes.

WSR 17-09-017

PERMANENT RULES

DEPARTMENT OF

EARLY LEARNING

[Filed April 7, 2017, 5:07 p.m., effective May 8, 2017]

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

Purpose: Strike language that conflicts with WAC 170-290-0125, which is incorporated by reference and better clarify that subsidized child care program consumers are responsible for paying for child care that does not qualify for program benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0030.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Adopted under notice filed as WSR 17-01-157 on December 21, 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: March 31, 2017.

Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0030 Consumers' responsibilities.

When a person applies for or receives WCCC benefits, the applicant or consumer must, as a condition of receiving those benefits:

(1) Give DSHS correct and current information so DSHS can determine eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC 170-290-0125;

(3) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider;

(4) In cases of overdue or past due copayments, the consumer, as a condition of maintaining eligibility, must do one or more of the following:

(a) Pay past or overdue copayments;

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a return receipt that was signed for and not responded to, or a returned document that was not picked up;

(5) ~~((Only use WCCC benefits while the consumer is participating in WCCC approved activities outside the consumer's home;~~

~~((6)) Pay the provider for child care services when the consumer requests additional child care ((for personal reasons other than participating in WCCC approved activities that have been authorized by DSHS)) beyond the current authorization;~~

~~((7))~~ (6) Pay the provider for optional child care programs that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

~~((8))~~ (7) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

~~((9))~~ (8) Ensure that care is provided in the correct home per WAC 170-290-0130 if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;

~~((10))~~ (9) Cooperate (provide the information requested) with the child care subsidy audit process:

(a) A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation;

(b) The consumer remains ineligible until he or she meets child care subsidy audit requirements;

(c) The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter and cooperates;

(d) Care can begin on or after the date the consumer cooperated and meets WCCC requirements in Part II of this chapter.

~~((11))~~ (10) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it could affect the consumer's benefits;

~~((12))~~ (11) Document their child's attendance in child care by having the consumer or other person authorized by the consumer to take the child to or from the child care:

(a) If the provider uses a paper attendance record, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure; or

(b) Record the child's attendance using an electronic system if used by the provider;

~~((13))~~ (12) Provide the in-home/relative provider the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care; and

~~((14))~~ (13) Ensure that their children who receive child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(a) A department of health (DOH) medical exemption form signed by a health care professional; or

(b) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization.

WSR 17-09-018

PERMANENT RULES

TRANSPORTATION IMPROVEMENT BOARD

[Filed April 10, 2017, 5:13 p.m., effective May 11, 2017]

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

Purpose: Adoption of these rules is necessary to establish a program to manage the distribution of complete streets funding.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 16-20-075 on October 4, 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 14, 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 14, 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: November 21, 2016.

Stevan Gorcester
Executive Director

Chapter 479-10 WAC

PRESERVATION PROGRAMS, STREETLIGHT PROGRAM, AND COMPLETE STREETS GRANT PROGRAM

NEW SECTION

WAC 479-10-500 What is the purpose and authority for the complete streets grant program? The transportation improvement board (TIB) adopts rules necessary to implement the complete streets grant program authorized in RCW 47.04.320. The purpose of the program is to encourage local agencies to adopt ordinances calling for street and road designs that incorporate access to all users, including, bicyclists, pedestrians, motorists and public transportation riders by providing a financial incentive.

NEW SECTION

WAC 479-10-510 What local governments are eligible for the complete streets grant program? A city or county is eligible to receive a grant award from the complete streets grant program when it has a jurisdiction-wide complete streets ordinance adopted by its council or commission.

NEW SECTION

WAC 479-10-520 How are local governments selected for complete streets grant funding? In order to be considered for funding, an eligible city or county must be nominated by an approved nominating organization. Complete streets grant funding is an incentive payment, recognizing local governments that plan, design, and build with consideration for all users, high continuity with existing infrastructure, and sound engineering principles based on peer reviewed guides, reports and publications consistent with the purposes of the program. A nominating organization, keeping these guidelines in mind, may at its discretion nominate an

eligible local government for a complete streets grant. The transportation improvement board will select the best nominated local government, within available funding. Funding associated with the a grant award may be used to complete projects or activities identified on an approved work plan.

NEW SECTION

WAC 479-10-530 Who can nominate? The board will approve nominating organizations. The board may add or eliminate nominating organizations in advance of each call for nominations. Nominating organizations must be:

- (1) Washington state government agencies that have an interest in transportation; or
- (2) Statewide nonprofit groups that have transportation as part of their organizational purpose.

NEW SECTION

WAC 479-10-540 How many nominations may each nominator submit? The board will set a limit on the number of nominations available to each nominating organization, based on the pool of eligible local governments and the relative size of the nominating organization compared to other nominators.

NEW SECTION

WAC 479-10-550 The board may nominate eligible local governments. The board may nominate eligible local governments if the nominating organizations do not provide sufficient nominations to utilize available funds or the nominations received do not reflect appropriate geographic or local government diversity.

NEW SECTION

WAC 479-10-560 How will nominated local governments be evaluated for the complete streets grant program? Nominated local governments may be selected for a grant award based on the following factors:

- (1) Quality of the adopted complete streets ordinance;
- (2) Level of integration of the complete streets ethic in planning documents;
- (3) Presence of community outreach and engagement in street or road plans and projects;
- (4) Past projects constructed for existing and expected users;
- (5) Future project designs or plans that adhere to complete streets guidelines;
- (6) Other factors as determined by the board.

NEW SECTION

WAC 479-10-570 What projects are eligible? The following types of improvements are permitted uses:

- (1) Pedestrian infrastructure;
- (2) Bicycle infrastructure;
- (3) Street or road systems modifications that provide or improve access to public transit;

(4) Aesthetic improvements to the streetscape associated with the street or road system; and

(5) Other activities consistent with RCW 47.04.320 may be authorized by the board on a case-by-case basis.

NEW SECTION

WAC 479-10-580 How is the work plan determined?

Staff will work with the local government to determine eligible items that may be approved on the work plan. Projects may include work that is contracted out or work that is performed by local government staff for construction, installation, and significant repair of street or road related infrastructure, and capital planning processes that include an implementation plan for such infrastructure work. Automobile, freight access requirements, impact on sensitive environmental areas, and preserving the community character may also be taken into consideration.

NEW SECTION

WAC 479-10-590 How to make changes to the work plan. Work plans may be modified by request to the executive director within awarded funding. Savings from the approved work plan may be reprogrammed into additional work plan items.

NEW SECTION

WAC 479-10-600 When will the grant award payment be made? The grant award payment will be made after TIB approval of the eligible project work plan and a grant award agreement is fully executed. Funds shall be held by the local government in a separate and identifiable account and used only on the approved work plan. Funding not expended on a work plan item within three years of the grant award date shall be returned within ninety days after receipt of the transportation improvement board's written notification.

NEW SECTION

WAC 479-10-610 How is the amount of the incentive payment determined? The award amount for eligible project work plans will be based on the following factors:

- (1) Level of commitment to complete streets ethic;
- (2) Available funds;
- (3) Total number of eligible agencies nominated;
- (4) History of complete streets projects; and
- (5) Cost to implement the approved work plan.

NEW SECTION

WAC 479-10-620 What is required at grant award closeout? Within ninety days after the grant funds are fully expended or three years after the grant award date, whichever comes first, the local government shall provide an itemized list of expenditures and written certification that all grant funds were only expended on eligible work plan items. The board may require additional documentation of expenditures prior to closeout. If not all grant funds were expended, the local government shall return unused funds to the board

along with the closeout materials. Should the board determine that some funding was not expended on eligible work plan items; the local government shall return such funds to the board within ninety days after receipt of the board's written notice.

NEW SECTION

WAC 479-10-630 When can eligible local governments who have already received an award, receive a new award? Eligible local governments may receive a grant award in subsequent years only after previously awarded funds are expended or returned as provided in WAC 479-10-620.

WSR 17-09-033

PERMANENT RULES

DEPARTMENT OF

FINANCIAL INSTITUTIONS

(Securities Division)

[Filed April 12, 2017, 4:04 p.m., effective May 13, 2017]

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

Purpose: WAC 460-44A-505 provides an exemption from state securities registration requirements for offerings made in reliance on the federal Regulation D, Rule 505 exemption from federal registration requirements. On October 26, 2016, the Securities and Exchange Commission (SEC) adopted final rules amending exemptions to facilitate intrastate and regional securities offerings. *See* SEC Rulemaking Release No. 33-10238, titled "Exemptions to Facilitate Intrastate and Regional Securities Offerings," available at <https://www.sec.gov/rules/final/2016/33-10238.pdf>. Included in these amendments is a repeal of federal Rule 505 in its entirety. The repeal of federal Rule 505 will be effective on May 22, 2017. Once the repeal of federal Rule 505 becomes effective, businesses will be unable to rely on the corresponding exemption from state registration requirements in WAC 460-44A-505.

Citation of Existing Rules Affected by this Order: Repealing WAC 460-44A-505.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320(17).

Adopted under notice filed as WSR 17-04-059 on January 27, 2017.

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 1; 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 1.

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 12, 2017.

Gloria Papiez
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 460-44A-505 Uniform offering exemption for limited offers and sales of securities not exceeding \$5,000,000.

WSR 17-09-034

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed April 13, 2017, 8:14 a.m., effective May 14, 2017]

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

Purpose: This rule-making order establishes new chapter 16-305 WAC. This chapter authorizes an industrial hemp research program that includes program goals, applicant requirements, licensing requirements and fees, transportation requirements, data and reporting requirements, records retention requirements, inspection and sampling criteria, and testing criteria and fees.

RCW 15.120.030 requires the department to adopt rules establishing an industrial hemp research program to be supervised by the department to study the growth, cultivation and marketing of industrial hemp.

Statutory Authority for Adoption: RCW 15.120.030.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-06-080 on March 1, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 16-305-030, the department is amending the definition of "certified seed" by changing the word "or" to "and" to clarify that certified seed must be accepted by association of seed certifying agencies (AOSCA), organization for economic cooperation and development (OECD) or another certifying entity in order to be considered certified seed. The fifth sentence in this section now reads, "'Certified seed' means an industrial hemp seed variety that has been bred to comprise satisfactory genetic purity and varietal identity ((~~or~~)) and has been accepted by AOSCA, OECD or other certifying entity as determined by the department."

WAC 16-305-200(2), the department is adding "THC concentration" to tests that may be run on industrial hemp stored under a processor and marketer or combination license. These are discretionary tests that are only run if other evidence of noncompliance exists.

Number of Sections Adopted in Order to Comply with Federal Statute: New 26, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 26, 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: April 13, 2017.

Derek I. Sandison
Director

Chapter 16-305 WAC

INDUSTRIAL HEMP RESEARCH PROGRAM

NEW SECTION

WAC 16-305-010 Purpose of chapter. The purpose of this chapter is to establish the requirements for persons to participate in the department's industrial hemp research program as provided under chapter 15.120 RCW. These rules include licensing requirements. Licensing is required for persons to grow, produce, possess, process, and market or exchange industrial hemp as provided under this chapter and chapters 15.120 and 15.49 RCW and the rules adopted thereunder as related to industrial hemp seed certification.

NEW SECTION

WAC 16-305-020 Industrial hemp research program goals. (1) The department intends to study the feasibility and desirability of industrial hemp production in Washington state based on the availability of resources and funding for such studies. Potential areas for the department's studies and research include the following:

- (a) Growing industrial hemp grain;
- (b) Growing industrial hemp fiber; and
- (c) Developing a seed certification program.

(2) The industrial hemp research program deems the agricultural goals specific to crop production to be of high importance. These goals include:

- (a) Variety trials;
- (b) Pollen flow studies;
- (c) Plant genetics;
- (d) Pest and disease management;
- (e) Beneficial insects;
- (f) Soil quality;
- (g) Phytoremediation and bioremediation; and
- (h) Certified industrial hemp seed production.

(3) The main marketing and processing goals of the industrial hemp research program include:

- (a) Animal bedding;
- (b) Cosmetic or beauty products from seed oil;
- (c) Fiber products;
- (d) Biofuels;
- (e) Bioplastics;

- (f) Food and beverage additives from seeds and seed oil;
- (g) Industrial hemp grain and grain products;
- (h) Industrial hemp seed oil;
- (i) Construction materials;
- (j) Compost;
- (k) Insulation; and
- (l) Bio-char and soil amendment technologies.

NEW SECTION

WAC 16-305-030 Definitions. "Applicant" means a person who submits an application for a license to participate in the industrial hemp research program as required under this chapter.

"Approved seed" means a variety of industrial hemp seed that is approved by the department for growing industrial hemp.

"Authorized representative" means any person identified in writing by a licensee who may act as agent on behalf of the licensee for purposes of the license subject to any limitations stated in writing by the licensee. The licensee remains responsible for compliance with the license requirements irrespective of the acts or omissions of an authorized representative.

"Certified seed" means an industrial hemp seed variety that has been bred to comprise satisfactory genetic purity and varietal identity and has been accepted by Association of Seed Certifying Agencies (AOSCA), Organization for Economic Cooperation and Development (OECD) or other certifying entity as determined by the department.

"Contiguous land area" means a specific field with designated boundaries that is planted with industrial hemp. Separate parcels connected only by thin or narrow plantings of industrial hemp or separated by physical barriers such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means annual licenses renewed in such a way that the licensee is continuously operating under a valid license.

"DEA" means the federal Drug Enforcement Administration.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or another manner approved by the department.

"Devitalization" means the process of sterilizing viable industrial hemp seed in such a way that the seed is unable to grow into new plants. Devitalization may happen through steam sterilization, dehulling, pressing, or another method approved by the department. If using steam sterilization, the seeds must be steamed to one hundred eighty degrees Fahrenheit for at least fifteen minutes.

"Field" means a contiguous land area, registered with the department, on which a licensee plans to grow industrial hemp.

"Grain" means any devitalized industrial hemp seeds that are not intended for replanting, but will be used for food, feed, fiber, oil or other products.

"Industrial hemp" means all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, containing a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants of the genera *Cannabis* that meet the definition of "marijuana" as defined in RCW 69.50.101.

"Industrial hemp research program" means the department's "agricultural pilot program" established under chapter 15.120 RCW, this chapter, and the industrial hemp seed rules under chapters 16-302 and 16-303 WAC.

"Leadership position" means any board member, manager, or leader in a business or organization who will provide oversight and monitoring of subordinates.

"Licensee" means any person who holds a license from the department to grow, produce, possess, process, or exchange or sell industrial hemp. A licensee may be a person who is authorized to carry out department supervised research on the feasibility and desirability of industrial hemp production in Washington state.

"Processing area" means any area, building, plant or facility registered with and approved by the department in which a licensee will make industrial hemp into a marketable product. For the purposes of this definition, a person's domicile, home or residence is not considered a processing area.

"Registered land area" means a contiguous land area, including greenhouses, processing areas and storage areas registered with the department as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, processing area or storage area so long as those fields, greenhouses, processing areas or storage areas are at the same physical address.

"Report" means any data, statistics or information required to be provided to the department by a licensee under an industrial hemp license.

"Seed distributor" means any person licensed by the department to distribute or sell viable industrial hemp seed.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store industrial hemp.

"THC concentration" means the percent of total tetrahydrocannabinol, which is the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the genera *Cannabis*.

"Volunteer plant" means an industrial hemp plant that results from a previous crop.

NEW SECTION

WAC 16-305-040 Industrial hemp license application. (1) A person wishing to participate in the industrial hemp research program must submit a license application on a form provided by the department. A person wishing to obtain an application form for an industrial hemp research license may contact the department at: 509-249-6950, hemp@agr.wa.gov, 21 North 1st Avenue, Suite 203, Yakima, WA 98902 or download the application form from the department's web site at <http://agr.wa.gov/>. The department will post on its web site any deadline for submitting an application.

(2) Each applicant for a license to grow, produce, possess, process, or market or exchange industrial hemp shall submit a signed, complete, accurate, and legible application on a form provided by the department. Applications must be submitted at least thirty days prior to commencing industrial hemp operations regulated under this chapter. To maintain continuous licensing, an applicant must submit an application for a renewal license at least thirty days prior to the expiration of the previous license. The application must include the following information:

(a) The name and business address of the applicant;

(b) For corporate applicants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;

(c) If applicable, the legal description (section, township, and range) in which any proposed registered land area is located;

(d) The global positioning location coordinates taken at the approximate center of any proposed registered land area;

(e) The results of a soil quality test for each field, which, at a minimum, provides test results on the soil for pH, nitrogen, phosphorus and potassium. This requirement is not applicable for greenhouses;

(f) A map of the proposed registered land area, showing the boundaries and dimensions of the proposed registered land area in acres or square feet, and the proposed location of any variety of industrial hemp crop to be grown in the registered land area(s); and

(g) The applicant's signature accepting the license terms and conditions including the following:

(i) That the applicant agrees to collect, retain and transmit to the department data gathered while conducting each licensed activity as specified in the license for use by the department in studying the feasibility and desirability of industrial hemp production in Washington state. Such information shall be retained and transmitted to the department in a schedule and a format identified in each license;

(ii) That the applicant agrees to allow the department to inspect and sample any industrial hemp, or inspect any registered lands, facilities, and records required of the licensee under the terms of each license;

(iii) That the applicant is responsible to pay any fees adopted under the department's rules applicable to the licensed activities;

(iv) If applicable, the applicant must have the legal right which includes, but is not limited to, a valid deed or lease, to the registered land area, including the legal authority to grant the department access for inspection and sampling; and

(v) That the individual grower or combination license applicant or any member of the applicant's business occupying a leadership position has not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in the United States or any other country within ten years of the date of the application.

(3) In addition to the completed application form, each applicant must submit a nonrefundable application fee. If the application fee does not accompany the application, the application will be deemed incomplete.

(4) An application may be deemed incomplete if the applicant does not include information sufficient for the department to make a determination about the nature and scope of the applicant's proposed uses or activities.

(5) The department may deny an application where the applicant seeks to conduct activities or uses outside the scope of these rules and chapter 15.120 RCW; where the applicant has not met a material requirement identified in the application requirements; or where the applicant proposes a use or activity in conflict with local, state, or federal law. An application may be denied should the application contain goals or information that the department could reasonably conclude would be out of conformance with state or federal laws.

NEW SECTION

WAC 16-305-050 Qualifications of applicants. (1) For any type of license, the applicant must include a signed declaration indicating whether the applicant has ever been convicted of a felony or misdemeanor.

(2) A person with a prior felony drug conviction within ten years of applying for a grower or combination license is not eligible for the license. Associations, corporations and other business entities employing persons in leadership positions with a prior felony drug conviction within ten years of applying for a grower or combination license are not eligible for the license under this felony drug conviction limitation.

INDUSTRIAL HEMP LICENSES

NEW SECTION

WAC 16-305-060 Industrial hemp grower license. (1) A person must obtain an industrial hemp grower license prior to planting or growing any industrial hemp in this state, including growing any industrial hemp seed crop. A licensed grower may sell or exchange industrial hemp produced under the license to any licensed industrial hemp processor or grower. A fit for commerce certificate issued by the department under WAC 16-305-130 must be obtained by a grower prior to transporting any industrial hemp from the grower's registered land area.

(2) Any information obtained by the department regarding a grower's growth of industrial hemp may be provided to law enforcement agencies and fire and rescue agencies by the department without further notice to the licensee.

(3) The department may inspect and sample a grower's licensed operations and must have unrestricted access to all industrial hemp plants, plant parts, grain and seeds within a registered land area whether growing or not, and all land and facilities used by a grower for the growing and storage of industrial hemp, pesticide storage or housing, and all documents and records pertaining to the licensee's industrial hemp business operations.

(4) The licensee must pay all applicable fees adopted under this chapter and under the industrial hemp seed rules for any required inspections and testing. Samples may be taken at the department's discretion for testing.

(5) No registered land area or storage area may contain cannabis plants or parts thereof that the licensee knows or has reason to know are of a variety that will produce a plant that

when tested will produce more than three-tenths of one percent THC concentration on a dry weight basis. No licensee shall use any such variety for any purpose associated with the growing of industrial hemp.

(6) Industrial hemp may not be grown within four miles of any field or facility being used to grow marijuana as licensed under chapter 314-55 WAC. For calculation purposes, for outdoor fields licensed under chapter 314-55 WAC, four miles means from any field border of any registered land area, and for indoor facilities licensed under chapter 314-55 WAC, four miles means from any exterior or interior border wall.

(7) All licenses are valid for one year from date of issuance, and may be renewed in successive years. Each annual renewal shall require the payment of application renewal fees and license renewal fees.

(8) Unless approved by the department for continuous licensing, any plant material that is not harvested during the license period in which it was planted must be destroyed.

(9) Any licensee that wishes to change the registered land area(s) after issuance of the license, must submit to the department for approval an updated legal description, global positioning system location, and map specifying the proposed changes to the registered land area(s), pay fees and obtain the department's approval documented as an amendment to the license. The department may deny the requested change for good cause. The fee to change the registered land area(s) after issuance of the license is two hundred dollars.

(10) A copy of each license issued by the department under this section shall be forwarded by the department to the sheriff of each county where the industrial hemp is licensed to be grown.

(11) Signs provided by the department must be posted by each grower stating that the grower is a licensed industrial hemp research program participant. The grower must post such signs on at least each side of every field listed on the application, including the principal entry point(s) of each field.

(12) Licensees growing industrial hemp for seed certification must also follow the requirements in chapter 16-302 WAC.

NEW SECTION

WAC 16-305-070 Industrial hemp processor and marketer license. (1) A person shall obtain an industrial hemp processor and marketer license prior to obtaining industrial hemp for processing or marketing purposes.

(2) The department may inspect and sample and must have unrestricted access to all industrial hemp plants, parts, grain, seeds and products within a registered land area, and all documents and records pertaining to the licensee's industrial hemp business. A person's domicile, home or residence may not be used as a processing area.

(3) An inspection of a licensee's facilities may be conducted at least once by the department during a license period. The inspection activities may include:

(a) An inspection of the licensee's facilities, including any processing and storage areas;

(b) An inspection of all industrial hemp in the possession of the licensee;

(c) Sampling of industrial hemp for testing;

(d) An inspection of any industrial hemp products being produced under the license; and

(e) An inspection of any records and reports pertaining to the licensee's industrial hemp business.

(4) Any licensee that wishes to change the registered land area(s) after issuance of the license must submit to the department for approval an updated legal description, global positioning system location, and map specifying the proposed changes to registered land area(s), pay fees and obtain the department's approval documented as an amendment to the license. The department may deny the requested change for good cause. The fee to change the registered land area(s) after issuance of the license is two hundred dollars.

(5) A processor and marketer must obtain industrial hemp from a licensed Washington grower or from legally imported sources of industrial hemp. Each licensee must obtain a copy of the grower's license and fit for commerce certificate (WAC 16-305-130) from any licensed Washington grower with whom the processor and marketer conducts business before processing or marketing the industrial hemp.

(6) It is the duty of any processor to devitalize any industrial hemp seed received.

NEW SECTION

WAC 16-305-080 Industrial hemp combination license. (1) A person wishing to grow and process or market industrial hemp in this state may apply for separate licenses or for a combination license. A person who is granted a combination license is subject to all applicable requirements in this chapter, including under WAC 16-305-060 and 16-305-070.

(2) Under a combination license, industrial hemp seed harvested and processed without transporting the seed from the registered land area must be devitalized.

NEW SECTION

WAC 16-305-090 Industrial hemp distributor license. (1) Any person wishing to solely distribute or sell viable industrial hemp seed or propagules in Washington state must be licensed by the department as an industrial hemp distributor. A person must obtain an industrial hemp distributor license prior to exchanging, distributing, selling or reselling viable industrial hemp seed or propagules in Washington state.

(2) This license type may not be combined with licenses described in WAC 16-305-060, 16-305-070, or 16-305-080.

(3) Where appropriate, licensed industrial hemp distributors shall follow seed certification rules in chapter 16-302 WAC.

NEW SECTION

WAC 16-305-100 Industrial hemp importer certificate. Any person wishing to import viable industrial hemp seed or propagules into the state must obtain an importer certificate from the department. Only those persons holding a

valid license issued by the department may obtain an importer certificate. There is no charge for this certificate.

NEW SECTION

WAC 16-305-110 Industrial hemp business licenses and taxes. (1) Licensees must maintain all proper state, county and local business licenses and permits and comply with all applicable zoning regulations.

(2) Licensees must comply with business and occupation tax requirements set forth in chapter 82.04 RCW and regulations adopted thereunder.

NEW SECTION

WAC 16-305-120 Suspension of industrial hemp licenses for noncompliance with a child support order. (1) If the department receives notice under RCW 74.20A.320 that a licensee is not in compliance with a child support order, the department will suspend or not renew the licensee's industrial hemp license(s) until the department of social and health services provides the department with a release stating that the licensee is in compliance with the child support order. If a licensee's license is suspended, all industrial hemp crops and products in the licensee's possession must remain on the licensee's registered land area until the suspension is lifted.

(2) The department may renew, reinstate or otherwise extend the licensee's industrial hemp license(s) upon receipt of a copy of the release specified in subsection (1) of this section.

NEW SECTION

WAC 16-305-130 Fit for commerce certification. (1) A fit for commerce certificate is a document issued by the department attesting that industrial hemp has been tested for THC concentration and is in compliance with this chapter.

(2) No industrial hemp may leave a registered land area identified on a license without a fit for commerce certificate.

(3) No processor may acquire or process industrial hemp grown within the state of Washington without acquiring a legible copy of all fit for commerce certificates issued by the department to the grower or growers with whom the processor conducts business and specific to the industrial hemp purchased.

(4) A person who is issued an applicable combination license must obtain fit for commerce certificates before any industrial hemp may be processed.

(5) For the purposes of this section, "processing" does not include drying industrial hemp if the drying takes place on the registered land area as identified in the license.

(6) Industrial hemp plants, pieces or parts from different fields or registered land areas may not be combined into one lot until a fit for commerce certificate for each field or registered land area is issued. Industrial hemp seeds and grain are excluded from this restriction.

(7) Processor licensees using industrial hemp which was obtained from outside of the state of Washington must maintain a bill of lading or other proper documentation demon-

strating that the industrial hemp was legally imported into the state.

NEW SECTION

WAC 16-305-140 Transporting industrial hemp. (1) Industrial hemp subject to any applicable license issued under this chapter may not be transported from a registered land area as identified on the license until a fit for commerce certificate (WAC 16-305-130) is obtained by the applicable licensee prior to transport. During transport of industrial hemp off a grower's registered land area, including to a processor, the person in possession of the industrial hemp during transport must have in his or her possession either:

(a) Copies of the industrial hemp license and fit for commerce certificates, as required by this chapter; or

(b) A bill of lading or other proper documentation demonstrating that the industrial hemp was legally imported or is otherwise legally present in the state of Washington under applicable state and federal laws relating to industrial hemp.

(2) Any industrial hemp from a licensed Washington grower that is found in Washington state at any location off the premises of a registered land area of a licensee without a fit for commerce certificate (WAC 16-305-130) is deemed to be contraband and subject to seizure by the Washington state patrol or any law enforcement officer. Any such contraband material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the license.

NEW SECTION

WAC 16-305-150 Industrial hemp seed and propagules. (1) A licensee must use approved varieties of certified industrial hemp seed or propagules.

(2) A licensee may only obtain industrial hemp capable of propagation as follows:

(a) From a licensed distributor of industrial hemp seed or propagules under WAC 16-305-090; or

(b) Directly from the department as outlined in subsection (3) of this section.

(3) If an approved industrial hemp seed variety cannot be acquired within the state of Washington, a licensee may request in writing that the department import the approved seed under the department's DEA registration number. If the licensee does not currently hold an importer certificate (WAC 16-305-100), the licensee must request such a certificate in writing from the department.

(4) If the department agrees to request the importation of industrial hemp seed on behalf of the licensee, the licensee agrees to the following conditions:

(a) That the department is not liable for and does not warrant that the seed is fit for any purpose;

(b) That the industrial hemp seed shall be a certified seed variety;

(c) That the licensee must pay when due all costs associated with the importation of such industrial hemp seed; and

(d) That upon suspension, revocation, expiration or non-renewal of a licensee's license, any industrial hemp seed that is not used by a licensee must be transported to a DEA approved storage facility without charge or reimbursement.

Continuous licensing is required. If a licensee fails to renew their license, any industrial hemp seed in the licensee's possession will become the property of the department without charge or reimbursement. At the department's discretion, and before the termination of the licensing period, the licensee may request in writing the department hold, on behalf of the licensee, the viable industrial hemp seed at a DEA approved storage location for a period of no greater than six months from the expiration of the license.

(5) Industrial hemp seed imported under the department's DEA registration number may either be stored in a DEA approved storage facility under the industrial hemp research program or it may be delivered directly to the licensee's address as identified on the license.

(6) Industrial hemp seed delivered directly to the grower's address must be planted immediately upon receipt or transported to a DEA approved storage facility.

(7) Industrial hemp seed collected by a grower from a DEA approved seed storage facility must be planted or returned to a DEA approved storage facility within twenty-four hours of receipt. The grower must provide a signed declaration on a form provided by the department declaring all the seed will be planted, returned to a DEA approved storage facility or destroyed within twenty-four hours of receipt.

(8) Before collecting from storage or receiving industrial hemp seed at the licensee's address, a licensee must make arrangements with the department to have a department representative present to verify the receipt of the industrial hemp seed.

(9) During industrial hemp seed collection, the licensee must present to the department:

- (a) A valid industrial hemp license;
- (b) A valid form of photo identification;
- (c) A signed declaration on a form provided by the department declaring the grower will take all steps necessary to prevent diversion;
- (d) If applicable, a valid industrial hemp importer certificate (WAC 16-305-100);
- (e) Copies of all seed importation documents; and
- (f) Other documents as required by the department.

NEW SECTION

WAC 16-305-160 Industrial hemp data and reporting requirements. (1) The licensee shall submit all reports required by the department in the format and by the due dates specified in the terms and conditions of each license. The data to be retained and transmitted to the department by each licensee will be used by the department to study the feasibility and desirability of industrial hemp production in Washington state.

(2) Each field inspection or processing area inspection may include an audit of the licensee's records and data, including the system used by the licensee to preserve required classes of records and data in a timely manner, using a format that facilitates meeting the terms and conditions of the license.

(3) The department may require a licensee to submit responses to a questionnaire or survey at the end of each licensing period. This questionnaire must be completed and

returned to the department within thirty business days of transmittal to the licensee by the department. A licensee's failure to return the completed questionnaire or survey may be good cause for the department to deny a license renewal application.

(4) The licensee must maintain records regarding the sale of any industrial hemp grown under the license.

NEW SECTION

WAC 16-305-170 Records retention. Records, data and reports required to be collected or maintained by the licensee or provided by the licensee to the department must be retained by the licensee for a period of three years from the expiration date of the license that was in effect at the time the records were generated.

NEW SECTION

WAC 16-305-180 Industrial hemp for human consumption. Industrial hemp processed for human consumption must follow food safety requirements as set forth in chapters 69.04, 69.07 and 69.10 RCW and regulations adopted thereunder. As provided under RCW 15.120.020, "processing any part of industrial hemp, except seed, as food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans is prohibited."

NEW SECTION

WAC 16-305-190 Industrial hemp inspection and sampling criteria. (1) All licensees are subject to inspection by the department. The department's inspections of the registered land area may include the following:

- (a) Inspections for unauthorized plant growth;
- (b) Inspections for industrial hemp in any form on the registered land area;
- (c) Inspections for rogue, volunteer, or off-type industrial hemp plants;
- (d) Identification of any industrial hemp activities not listed on the license;
- (e) Audits of existing business data and reports related to industrial hemp;
- (f) Identifying compliance with required signage (WAC 16-305-060);
- (g) Assessing compliance with other applicable licensing terms and conditions; and
- (h) Obtaining samples for lab testing.

(2) Registered land areas under a grower or combination license must be inspected by the department no less than two times during each license period. Registered land areas may be inspected by the department for a period of three hundred sixty-five days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants. Industrial hemp samples from registered land areas licensed under a grower or combination license must be taken by the department no less than once during any growing period. Industrial hemp samples from registered land areas shall be tested by the department for THC concentration at least once during any growing period.

(3) Registered land areas licensed under a processor and marketer or combination license must be inspected by the department no less than once during each license period. Industrial hemp seed being stored under a processor and marketer or combination license will be inspected by the department for devitalization practices no less than once per year.

NEW SECTION

WAC 16-305-200 Industrial hemp lab testing criteria. (1) Industrial hemp will be tested in a department run or contracted laboratory as determined by the department using testing methods approved by the department.

(2) Industrial hemp seed stored under a processor and marketer or combination license may be sampled and tested by the department for viability or THC concentration. The licensee will be required to reimburse the department for the actual costs incurred by the department for conducting such tests.

(3) Industrial hemp for food for human consumption must be tested for nonapproved pesticide or herbicide use. The grower or combination licensee will be required to reimburse the department for the actual costs incurred by the department for conducting such tests.

(4) Industrial hemp testing will take place at times and on dates determined by the department.

NEW SECTION

WAC 16-305-210 Industrial hemp testing fees. (1) Fees for industrial hemp tests are the responsibility of the licensee.

NEW SECTION

WAC 16-305-220 Industrial hemp license fees.

License Type	Annual Application Fee	Initial License Fee	Renewal License Fee	THC Testing Fee	Other Testing Fee	Other Fee	Inspection Fee
Combination	\$800	\$300 /1	\$300 /1	/2	\$400 pesticide testing fee /3	\$200 per additional field, processing area or storage area	\$200 fee + travel time and mileage /4
Distributor	\$450	\$300	\$300 /5	/2	N/A	N/A	\$200 fee + travel time and mileage /4
Grower	\$450	\$300 /6	\$300 /6	/2	\$400 pesticide testing fee /3	\$200 per additional field	\$200 fee + travel time and mileage /4

(2) No fit for commerce certificates (WAC 16-305-130) will be issued until all test fees due the department are paid in full.

(3) No renewal licenses will be issued until all test fees due the department are paid in full.

(4) THC concentration testing fees for industrial hemp production are established on a sliding rate scale. THC concentration testing will be scheduled by the department based on the availability of laboratory resources. Individual samples may be batched with samples from the same or different licensees in order to reduce the overall cost of the testing. For the purposes of this section, "batch" means a group of samples that are tested by the department on the same day, using the same equipment calibration and testing supplies to test each sample independently from other samples in the batch. The department will bill each licensee for the samples that licensee provides, based on batch size at the time of testing as shown in the following table:

Batch Size	Testing Fee Per Sample
Batch of 1 sample	\$2,000
Batch of 2 samples	\$1,000
Batch of 3 samples	\$667
Batch of 4 samples	\$500
Batch of 5 samples	\$400
Batch of 6 samples	\$333
Batch of 7 samples	\$286
Batch of 8 samples	\$250
Batch of 9 samples	\$222
Batch of 10 samples	\$200

License Type	Annual Application Fee	Initial License Fee	Renewal License Fee	THC Testing Fee	Other Testing Fee	Other Fee	Inspection Fee
Processor and Marketer	\$450	\$300 /7	\$300 /7	/2	/8	\$200 per additional processing area or storage area	\$200 fee + travel time and mileage /4
Specialty Grower - Seed Certification	\$450	\$300 /1	\$300 /1	/2	/8	/9	/9

- /1 Fee includes one field, one processing area, and one storage area.
- /2 See WAC 16-305-210 for THC concentration testing fees.
- /3 Applicable if growing industrial hemp for human consumption.
- /4 See WAC 16-303-250 for travel time and mileage rates.
- /5 Fee includes one storage area.
- /6 Fee includes one field.
- /7 Fee includes one processing area and one storage area.
- /8 See WAC 16-303-200 for seed testing fees.
- /9 See WAC 16-303-320 for seed certification fees.

NEW SECTION

WAC 16-305-230 Industrial hemp noncompliance for THC concentration. (1) If a licensee's industrial hemp tests higher than three-tenths of one percent THC concentration, the licensee may be subject to suspension or revocation of the license. The crop must be destroyed or utilized on-site in a manner approved by the department. If determined to be appropriate, the department may give notice of noncompliance to appropriate law enforcement agencies and the Washington state liquor and cannabis board, with a summary of the actions taken to destroy the noncompliant industrial hemp.

(2) If a licensee's industrial hemp tests higher than three-tenths of one percent but less than one percent THC concentration, the department may run appropriate genetic tests, at the licensee's expense, to verify the industrial hemp was from a variety of approved seed. If the industrial hemp was from a variety of approved seed, at the licensee's expense the licensee may either request a THC retest within thirty days or resampling of the same field.

(3) If at any time a licensee's industrial hemp tests higher than one percent THC concentration, the licensee may be subject to revocation or suspension of the license. The licensee, or any legal entity subsequently employing the licensee, may be ineligible for a license to grow or process industrial hemp for a period of three years from the termination date of the license held at the time of noncompliance.

NEW SECTION

WAC 16-305-240 Noncompliance conditions. Licensees may be subject to license suspension or revocation for any violation of chapter 15.120 RCW or this chapter.

NEW SECTION

WAC 16-305-250 License denial, suspension or revocation and right to adjudicative proceeding. Upon notice by the department to an applicant to deny a license or notice to a licensee to suspend or revoke a license, or upon receipt of a crop destruction order, a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act.

NEW SECTION

WAC 16-305-260 Venue for legal action. The venue for any legal action under this chapter shall be Thurston County, Washington.

WSR 17-09-041

PERMANENT RULES

STUDENT ACHIEVEMENT COUNCIL

[Filed April 14, 2017, 3:31 p.m., effective May 15, 2017]

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

Purpose: The Washington student achievement council (WSAC) is completing the process to adopt revised rules in order to strengthen consumer protection provided under chapter 28B.85 RCW, the Degree-Granting Institutions Act. Specifically, the revised rules:

- Strengthen requirements related to: Discontinuance and closure; surety bonds and other forms of security; information provided to the council and students; records maintenance; applications.
- Add rules covering at-risk institutions.
- Extend closure provisions and at-risk notification provisions to cover institutions otherwise exempt under the act.
- Clarify the complaint and suspension/withdrawal processes and the student achievement council's role in that process; and align the time line for student complaints with the state authorization reciprocity agreement.
- Add definitions and clarifications.

Citation of Existing Rules Affected by this Order: Amending WAC 250-61-050, 250-61-060, 250-61-063, 250-61-065, 250-61-070, 250-61-080, 250-61-085, 250-61-100, 250-61-110, 250-61-120, 250-61-140, 250-61-160, 250-61-

170, 250-61-180, 250-61-190, 250-61-200, 250-61-210 and 250-61-230; and new WAC 250-61-155.

Statutory Authority for Adoption: RCW 28B.76.120 and 28B.85.020.

Adopted under notice filed as WSR 17-05-051 on March 31 [February 9], 2017.

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 17, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 17, 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: March 31, 2017.

Dr. Randy Spaulding, Director
Academic Affairs and Policy

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-050 Definitions. The definitions set forth in this section are intended to supplement the definitions in chapter 28B.85 RCW and shall apply throughout this chapter.

~~((1) "Act" means the Degree-Granting Institutions Act, chapter 28B.85 RCW.~~

~~(2) "Council" means the Washington student achievement council.~~

~~(3) "Executive director" means the executive director of the council or the executive director's designee.~~

~~(4) "Accrediting association" means a national or regional accrediting association that is recognized by the council and the Secretary of the U.S. Department of Education.~~

~~(5) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of a degree.~~

~~(6) "College" means an institution which offers two-year and/or four-year programs culminating with associate and/or baccalaureate degrees. In some instances, a college may also offer first professional degree programs and/or graduate programs culminating with master's degrees.~~

~~(7) "University" means a multiunit institution with varied educational roles including instruction, promotion of scholarship, preservation and discovery of knowledge, research and public service. Such institutions provide a wide range of undergraduate and graduate studies, programs in professional fields, and may also provide programs leading to a doctorate.~~

~~(8) "Private vocational school" means a nonpublic entity that offers postsecondary programs designed to prepare individuals with the skills and training required for employment~~

~~in a specific trade, occupation, or profession related to the educational program.~~

~~(9) "Seminary" means an institution which offers one or more professional programs to candidates for the ministry, rabbinate, or priesthood.~~

~~(10) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or imply satisfactory completion of the requirements of an academic program of study at the postsecondary level.~~

~~(11) "Associate degree" means a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours.~~

~~(12) "Bachelor's degree" or "baccalaureate degree" means an undergraduate degree that requires no fewer than 120 semester hours or 180 quarter hours.~~

~~(13) "Master's degree" means a graduate degree that requires no fewer than 24 semester hours or 36 quarter hours beyond the baccalaureate degree.~~

~~(14) "Doctor's degree" or "doctorate" means a postgraduate degree that requires no fewer than 60 semester hours or 90 quarter hours beyond the baccalaureate degree.~~

~~(15) "False academic credential" means a document that signifies or implies satisfactory completion of the requirements of an academic program of study beyond the secondary level issued by a person or entity that:~~

~~(a) Is not accredited by a council-recognized accrediting association or does not have the international equivalent to such accreditation; or~~

~~(b) Is not authorized by the council; or~~

~~(c) Has not been exempted or granted a waiver from the requirements of authorization by the council.~~

~~Additionally, it can mean a credential falsely claimed to have been earned from an institution accredited by a council-recognized accrediting association; authorized by the council; or that has been exempted or granted a waiver by the council.~~

~~(16) "Program of study" means any course or grouping of courses prerequisite to or indicative of a degree.~~

~~(17) "Resident-based instruction" means a course or series of courses or degree programs which are taught by faculty at a specific location where students physically attend the course or program.~~

~~(18) "Distance learning" means a form of educational instruction other than classroom instruction, to include, but not limited to, correspondence, video-conferencing, television, internet transmission, or other electronic communication.~~

~~(19) "Credit" means the unit by which an institution measures its course work. The number of credit assigned to a course is generally defined by the number of hours per week in class and preparation and the number of weeks in a term. One credit is usually assigned for three hours of student work per week or its equivalent. The three hours of student work per week is usually comprised of a combination of one hour of lecture and two of homework or three hours of laboratory. Semester and quarter credits are the most common systems of measuring course work. A semester credit is generally based on at least a fifteen week calendar or 45 hours of student~~

work. A quarter credit is generally based on at least a ten week calendar or 30 hours of student work.

(20) "Faculty" means personnel who are appointed by the institution for purposes of teaching, research, mentoring, advisory roles and/or other activities relating to the development and delivery of the instructional programs of the institution.

(21) "To operate" means but is not limited to the following:

(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.

(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.

(c) Maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose or any other function of a degree-granting institution, other than contact with the institution's former students for any legitimate purpose related to their having attended.

(d) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs.

(22) "Suspend" means that, due to deficiencies, the council interrupts for a stated time the institution's authority to recruit and enroll new students, but it may continue serving currently enrolled students for the remainder of the term. Authorization or exemption may be reinstated, provided the deficiencies have been resolved to the satisfaction of the council.

(23) "Withdraw" means that, due to significant deficiencies or failure to meet the criteria of authorization or exemption, the council has withdrawn the authorization or exemption granted to an institution. Upon withdrawal, the institution must cease all degree-granting operations immediately.

(24) "Accredited institution" means an institution that has been accredited by an accrediting association recognized by the council and the Secretary of the U.S. Department of Education.

(25) "Additional program" means a degree program that:

(a) Differs in title and curriculum from any currently authorized program; or

(b) Is comprised of a curriculum that is twenty-five percent or more different in content than any currently authorized program.

(26) "Additional site" means a site at which the institution will provide both administrative services as well as educational instruction.

(27) State authorization reciprocity agreement (SARA) means an agreement among member states, districts and territories that establishes comparable standards for interstate offering of postsecondary distance education courses and programs. SARA is overseen by a national council and is administered by four regional education compacts.)) (1) "Accredited institution" means an institution that has been accredited by an accrediting association recognized by the council and the Secretary of the U.S. Department of Education.

(2) "Accrediting association" means a national or regional accrediting association that is recognized by the

council and the Secretary of the U.S. Department of Education.

(3) "Act" means the Degree-Granting Institutions Act, chapter 28B.85 RCW.

(4)(a) "Administrative capability" means that both administrative services and educational instruction take place at an authorized location.

(b) "Additional site" means a site with administrative capability that is not currently authorized.

(5) "Adverse action" means a warning or other sanction issued by the institution's accrediting association, a sanction issued by the United States Department of Education, or a judgment against an institution that may impact ongoing operations.

(6) "At-risk" means a designation made by the council based on an adverse action or other findings that indicate a heightened potential of closure or other negative impacts on students.

(7) "Authorization" means the authority to operate in Washington state as a degree-granting institution.

(a) "Standard authorization" means authorization granted to institutions seeking to operate in Washington, but does not include institutions seeking field placement authorization only.

(b) "Field placement authorization" means authorization granted to institutions seeking authorization solely to offer required field placements at locations in Washington as part of distance learning programs.

(8) "Council" means the student achievement council, a Washington state agency, as established under chapter 28B.77 RCW.

(9) "Credit" generally means the unit by which an institution measures its course work. The number of credits assigned to a course is generally defined by the number of hours per week in class and preparation and the number of weeks in a term. One credit is usually assigned for three hours of student work per week or its equivalent. The three hours of student work per week is usually comprised of a combination of one hour of lecture and two of homework or three hours of laboratory. Semester and quarter credits are the most common systems of measuring course work. A semester credit is generally based on at least a fifteen week calendar or 45 hours of student work. A quarter credit is generally based on at least a ten week calendar or 30 hours of student work.

(10) "Degree" means any designation, appellation, letters, or words including, but not limited to, "associate," "bachelor," "master," "doctor," or "fellow" which signify or imply satisfactory completion of the requirements of an academic program of study at the postsecondary level.

(a) "Associate degree" means a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours.

(b) "Bachelor's degree" or "baccalaureate degree" means an undergraduate degree that requires no fewer than 120 semester hours or 180 quarter hours.

(c) "Master's degree" means a graduate degree that requires no fewer than 24 semester hours or 36 quarter hours beyond the baccalaureate degree.

(d) "Doctor's degree" or "doctorate" means a postgraduate degree that requires no fewer than 60 semester hours or 90 quarter hours beyond the baccalaureate degree.

(11) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of a degree.

(a) "College" means an institution which offers programs culminating with associate and/or baccalaureate degrees. In some instances, a college may also offer first professional degree programs and/or graduate programs culminating with master's degrees.

(b) "University" means a multiunit institution with varied educational roles including instruction, promotion of scholarship, preservation and discovery of knowledge, research and public service. Such institutions provide a wide range of undergraduate and graduate studies, programs in professional fields, and may also provide programs leading to a doctorate.

(c) "Private vocational school" means a nonpublic entity that offers postsecondary programs designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the educational program.

(12) "Distance learning" means a form of educational instruction other than classroom instruction to include, but not limited to, correspondence, video-conferencing, television, internet transmission, or other electronic communication.

(13) "Executive director" means the executive director of the council or the executive director's designee.

(14) "Faculty" means personnel who are appointed by the institution for purposes of teaching, research, mentoring, advisory roles and/or other activities relating to the development and delivery of the instructional programs of the institution.

(15) "False academic credential" means a document that signifies or implies satisfactory completion of the requirements of an academic program of study beyond the secondary level issued by a person or entity that:

(a) Is not accredited by a council-recognized accrediting association or does not have the international equivalent to such accreditation; or

(b) Is not authorized by the council; or

(c) Has not been exempted or granted a waiver from the requirements of authorization by the council.

Additionally, it can mean a credential falsely claimed to have been earned from an institution accredited by a council-recognized accrediting association; authorized by the council; or that has been exempted or granted a waiver by the council.

(16) "Field placement" means a student learning experience comprised primarily of the practical application of previously studied theories and skills. Examples include, but are not limited to, clinicals, student teaching, and practica.

(17) "Operate" means, but is not limited to, the following:

(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.

(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.

(c) Maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose or any other function of a degree-granting institution, other than contact with the institution's former students for any legitimate purpose related to their having attended.

(d) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs.

(18)(a) "Program of study" means any course or group of courses prerequisite to or indicative of a degree.

(b) "Additional program" means a degree program that:

(i) Differs in title and curriculum from any currently authorized program; or

(ii) Is comprised of a curriculum that is twenty-five percent or more different in content than any currently authorized program.

(19) "Resident-based instruction" means a course or series of courses or degree programs which are taught by faculty at a specific location where students physically attend the course or program.

(20) "State authorization reciprocity agreement (SARA)" means an agreement among member states, districts and territories that establishes comparable standards for interstate offering of postsecondary distance education courses and programs. SARA is overseen by a national council and is administered by four regional education compacts.

(21) "Suspend" means that, due to deficiencies, the council interrupts for a stated time the institution's authority to recruit and enroll new students, but it may continue serving currently enrolled students for the remainder of the term. Authorization or exemption may be reinstated, provided the deficiencies have been resolved to the satisfaction of the council.

(22) "Withdraw" means that, due to significant deficiencies or failure to meet the criteria of authorization or exemption, the council has withdrawn the authorization or exemption granted to an institution. Upon withdrawal, the institution must cease all degree-granting operations immediately.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-060 Exemption criteria. No exemption from the requirements for degree authorization is considered to be permanent. The exemption granted is dependent upon the institution's maintenance of the conditions under which the exemption was granted.

Unless otherwise indicated, the provisions of this chapter do not apply to:

(1) Honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) Any public college, public university, public community college, or public technical college or institute operating as part of the public higher education system of this state.

(3) Institutions that have received institutional accreditation from an association recognized by the council and the Secretary of the U.S. Department of Education, Provided:

(a) The institution has been continuously offering degree program(s) in Washington for fifteen years or more; and

(b) The institution was established originally within the state of Washington and has operated as the same organization continuously from that date until the present. An institution is considered to have operated as the same organization continuously if it has no significant alteration of primary location, ownership, majority control, other than routine board membership turnover, or incorporation and no closure involving cessation of substantially all organized instructional and administrative activity; and

(c) The institution has been accredited as a degree-granting institution for ten years or more by an accrediting association recognized by the council and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(d) The institution maintains eligibility to participate in Title IV financial aid programs.

(4) A branch campus, extension center, or off-campus facility operating within the state of Washington, which is affiliated with an institution domiciled outside this state, Provided:

(a) It has continuously offered degree programs in Washington for fifteen years or more; and

(b) It has held separate institutional accreditation as a free-standing institution for ten years or more by an accrediting association recognized by the council and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(c) It maintains eligibility to participate in Title IV financial aid programs.

(5) Institutions offering instruction on a federal enclave solely to federal employees and their dependents. If the institution offers or advertises instruction for other persons, the institution shall be subject to authorization.

(6) Institutions recognized by the Washington state legislature as an accredited Washington degree-granting institution, provided the institution maintains all conditions specified in the legislation as part of the recognition.

(7) Tribally controlled Native American colleges.

(8) Institutions which offer program(s) of study whose sole stated objective is training in the religious beliefs of the controlling religious organization and/or preparation of students for occupations that are primarily (~~church-related~~) religious organization-related, Provided:

(a) The institution's mission reflects its religious nature; and

(b) The institution's degree program(s) in title and abbreviation, curriculum content, and objectives reflect the strictly religious nature of the institution; and

(c) The institution's program(s) require a prescribed program of study, which must be successfully completed prior to the granting of a degree; and

(d) The institution's program(s) of study are represented in an accurate manner in institutional catalogs, web sites, and other official published materials; and

(e) The institution does not claim or publicize accreditation from an accrediting association that is not recognized by the council and the Secretary of the U.S. Department of Education.

(9) In the case of institutions which offer both religious and secular programs, the secular programs shall be subject to the requirements of chapter 28B.85 RCW.

(10) Institutions not otherwise exempt which offer only workshops and seminars and institutions offering only credit-bearing workshops or seminars lasting no longer than three calendar days.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-063 Exemption requirements. In order to apply for and maintain an exemption from the requirements for degree authorization, an institution must comply with the following:

(1) The chief academic officer of the institution shall contact council staff and arrange for a preliminary conference to discuss the exemption criteria and procedures pertaining to the request for exemption.

(2) Any institution granted exemption from the requirements for degree authorization may be subject to periodic review by the council to ensure that all criteria for the exemption continue to be met. The institution is to provide all information requested by the council to assist in making this determination.

(3) The institution shall inform the council immediately of any proposed changes within the institution and/or its offerings that may affect the exemption granted.

(4) The (~~executive director~~) council may suspend or withdraw the exemption granted to an institution that fails to maintain the conditions under which the exemption was granted; engages in false advertising; or allows misleading representations to be made on its behalf. Suspension shall allow the institution a prescribed period of time to address the issues that may have brought the suspension. Withdrawal shall require the institution to cease all degree-granting activities immediately.

(5) In the case of religious exemption, a religious institution shall be required to place the following statement in a prominent position within any catalog, general bulletins, web sites, and course schedules: "The Washington student achievement council has determined that (name of institution) qualifies for religious exempt status from the Degree-Granting Institutions Act for the following programs: (List). The council makes no evaluation of the administration, faculty, business practices, financial condition or quality of the offerings by this institution. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the council at P.O. Box 43430, Olympia, WA 98504-3430 or by email at degreauthorization@wsac.wa.gov."

(6) An exempt institution is required to notify the council of any adverse action within thirty days of the action being taken.

(7) In the event an exempt institution plans to discontinue operations in Washington, it is subject to closure procedures as outlined in WAC 250-61-160.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-065 Waiver of requirements. The ~~((executive director or the director's designee))~~ council may waive or modify the authorization requirements contained in this chapter for a particular institution if the ~~((executive director or the director's designee))~~ council finds that such waiver or modification will not frustrate the purposes of this chapter; and (1) that literal application of this chapter creates a manifestly unreasonable hardship on the institution; or (2) is an institution based out-of-state that provides distance learning courses and/or programs to Washington state residents under a state authorization reciprocity agreement entered into by the ~~((Washington student achievement))~~ council. No waiver granted under this chapter is permanent. The council will periodically review institutions granted waivers and continue the waiver only if the conditions under which the waiver was initially granted remain in effect.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-070 Applicability to private vocational schools. Degree-granting private vocational schools' programs shall be regulated pursuant to the terms of an interagency agreement between the ~~((Washington student achievement))~~ council and the work force training and education coordinating board. As stipulated in the interagency agreement, degree programs shall be regulated by the ~~((Washington student achievement))~~ council and nondegree programs shall be regulated by the work force training and education coordinating board. Copies of the agreement are available from either agency upon request.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-080 Authorization standards. These standards form the basis for the review of an institution ~~((by the council staff))~~ and guide the decisions of ~~((the executive director and))~~ the council. To receive authorization, the institution shall meet all of the specific requirements of this chapter. An institution is required to notify the council of any adverse action within thirty days of the action being taken. Failure to report an adverse action may result in suspension of the authorization granted.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-085 Accreditation requirements. An institution operating in Washington shall:

(1) Be accredited by an accrediting association recognized by the council and the Secretary of the U.S. Department of Education; or

(2) Have applied for accreditation to an accrediting association recognized by the council and the Secretary of the U.S. Department of Education and such application is pending before the accrediting association; or

(3) Have been granted a temporary waiver by the council of the requirement for accreditation based upon submission of a plan for accreditation as outlined in the initial authorization application; or

(4) Have been granted an exemption by the council of the requirement for accreditation based upon the following condition: The ~~((school))~~ institution has filed, and kept current with appropriate amendments, at the ~~((Washington student achievement))~~ council an affidavit by each president of two separate accredited colleges or universities accredited by an accrediting association recognized by the council and the Secretary of the U.S. Department of Education stating that the majority of course credits offered by the unaccredited institution are generally acceptable or transferable to the accredited college or university which each president represents.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-100 Academic requirements. (1) Educational programs. Each program shall require the completion of a prescribed program of study leading to the attainment of competence in an interdisciplinary area or specific field of study. Programs shall generally meet the guidelines or standards of an accrediting association recognized by the council and the Secretary of the U.S. Department of Education that accredits similar programs of study.

(a) Associate degrees:

(i) An associate degree shall require at least ninety quarter credits or sixty semester credits.

(A) An associate degree intended for occupational preparation shall require, as a minimum, general education requirements that comprise a recognizable body of instruction in three program-related areas:

(I) Communications;

(II) Computation; and

(III) Human relations.

(B) The general education requirements of all other associate degrees shall be consistent with the current guidelines of ~~((the Washington inter-college relations commission))~~ Washington's direct transfer agreement associate degree.

(ii) The following associate degree designations shall be acceptable:

(A) The associate of arts (A.A.), and associate of science (A.S.) for programs which emphasize the liberal arts and sciences. These programs generally satisfy the general education requirements for a baccalaureate degree and are transfer oriented.

(B) The associate in applied technology (A.A.T.), associate in applied science (A.A.S.), associate of occupational science (A.O.S.) and other such applied or technology-related degree designations for programs which emphasize preparation for occupations at the technical level. These programs generally do not satisfy the general education require-

ments for a baccalaureate degree and are not transfer-oriented.

(b) Baccalaureate degrees: A baccalaureate degree shall require at least one hundred eighty quarter credits or one hundred twenty semester credits. The degree shall require a distinct major and, as a minimum, twenty-five percent of the program shall be in general education curricula.

(c) Master's degrees:

(i) A master's degree program shall require at least thirty-six quarter credits or twenty-four semester credits, specialization in an academic or professional area, and a demonstration of mastery.

(ii) The following master's degree designations shall be acceptable:

(A) The master of arts (M.A.) and master of science (M.S.) for programs which advance study and exploration in the discipline. The majority of credit for M.A. and M.S. degrees shall be at the graduate level in the major field.

(B) The master of business administration (M.B.A.), master of fine arts (M.F.A.), master of education (M.Ed.), etc. for programs which emphasize professional preparation.

(d) Doctoral degrees:

(i) Doctoral degree programs shall provide a broad range of advanced course offerings, faculty in ancillary and supporting fields, access to adequate laboratory and research facilities, and a wide range of current reference materials in the subject field. A doctoral degree shall require at least three full academic years of specialized postbaccalaureate study. To obtain a doctoral degree a student shall be required to demonstrate, through comprehensive examination, the ability to perform research at the level of the professional scholar or perform the work of a professional that involves the highest levels of knowledge and expertise.

(ii) The following doctoral degree designations shall be acceptable:

(A) The doctor of philosophy (Ph.D.) degree for programs which are oriented toward original research and require a dissertation.

(B) A professional doctoral degree (J.D., Ed.D., etc.) for programs which emphasize technical knowledge and professional competence and require either a research thesis or a project involving the solution of a substantial problem of professional interest.

(e) Distance learning program(s) of study must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings.

(f) ~~((Nonecollegiate))~~ Prior experiential learning.

(i) ~~((Undergraduate))~~ Credit for ~~((nonecollegiate))~~ prior experiential learning may be awarded when validated through a portfolio or similar assessment procedure. The institution shall maintain copies of examinations, portfolios, and evaluations used in this process. ~~((Nonecollegiate learning credit shall constitute no more than twenty-five percent of an undergraduate degree program.))~~

(ii) Credit awarded for ~~((nonecollegiate))~~ prior experiential learning at the undergraduate and graduate level must be consistent with the minimum standards as published by the institution's accrediting association. This subsection applies to institutions that meet WAC 250-61-085 (1), (2), or (3).

(iii) Prior experiential learning credit shall constitute no more than twenty-five percent of an undergraduate or graduate degree program. This subsection applies to institutions that meet WAC 250-61-085(4).

(2) Faculty.

(a) Faculty shall be professionally prepared and graduates of accredited institutions and, as a group, the institutions from which they earned their degrees shall be diverse.

(b) Faculty shall be sufficient in number and kind and in the proportion of full-time and part-time positions to sustain rigorous courses, programs, and services.

(c) Faculty teaching academic courses at the undergraduate degree level shall have, as a minimum, a master's degree in the assigned or related program area from an accredited institution. Faculty assigned to teach in vocational-technical subjects shall have educational credentials and experience compatible with their teaching assignment. Faculty assigned to teach general education courses within any undergraduate program shall have, as a minimum, a master's degree in a related area from an accredited institution.

(d) Faculty teaching at the master's degree level in programs which emphasize advanced study and exploration in a discipline shall have an earned doctorate in a related field from an accredited institution and experience in directing independent study and research. Faculty teaching in master's programs which emphasize professional preparation shall have, as a minimum, a master's degree from an accredited institution and documented achievement in a related field.

(e) Faculty teaching at the doctoral level shall have an earned doctorate in a related field from an accredited institution and experience in teaching and directing independent study and research.

(3) Admissions. Admission requirements shall be based on the institution's objectives and consistently applied to each program of study. Through preenrollment assessments, testing and advising, the institution shall determine the readiness and ability of each student to succeed in his/her degree program. Institutions shall use only those tests reviewed and approved by the U.S. Department of Education.

High school graduation or the equivalent shall be required for undergraduate admission. A baccalaureate degree or the equivalent shall be required for admission into graduate programs. Special undergraduate admission may be granted, based on the applicant's general educational development.

(4) Enrollment contract. If an enrollment contract is utilized, the institution shall discuss all terms and provisions of the contract with the student prior to the student's execution of the contract. The contract shall contain an acknowledgment section directly above the student's signature blank for the student to acknowledge that the institution discussed all terms and provisions of the contract with the student and that the student understands all financial obligations and responsibilities.

(5) Evaluation. The institution shall provide evidence that it has procedures for continuing evaluation and improvement of educational programs, quality of instruction, and overall operations of the institution.

(a) Student, alumni, and employer evaluations of the effectiveness of the curricula shall be considered in these evaluations.

(b) The institution's chief academic officer or designee shall periodically evaluate all areas of the institution to determine their effectiveness in fulfilling institutional objectives and meeting the standards set forth in these regulations or implied in the statute. The results of those evaluations shall be submitted to council staff upon request.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-110 Student services and instructional resources requirements. (1) Student services. The institution shall provide adequate services for students in addition to formal instruction. These services shall normally include admissions, advising and guidance, financial assistance, student records, and disability accommodation.

(a) Advising and guidance services shall be readily available to students to assist them in program planning, course selection, and other academic activities.

(b) Financial aid administration and distribution, if provided, shall be performed according to institutional, state, and federal policies.

(c) Student records shall be maintained in accordance with the guidelines established by the U.S. Department of Education.

(d) Students with disabilities shall have access to, and reasonable accommodations in, all programs for which they are qualified consistent with the provisions of the Americans with Disabilities Act.

(e) Placement services and employment opportunities, if provided, shall be accurately described.

(2) Facilities for site-based instruction.

(a) The institution shall have adequate space, facilities and equipment, instructional materials, and staff to support quality education and services.

(b) The institution shall comply with all applicable ordinances, laws, codes, and regulations concerning the safety, health, and access of all persons on its premises.

(3) Disability accommodations. The institution shall provide reasonable accommodations for students and employees with disabilities. To the extent practicable, the institution must consider diagnosis, assessments, and accommodation plans received from prior secondary and postsecondary educational institutions or employers. The institution shall inform students and employees of local, state, and federal laws regarding discrimination against people with disabilities.

(4) Library. The institution shall provide adequate and accessible library resources and facilities to support the educational needs of students and faculty. If the institution, educational site, or academic center does not maintain its own library on site, it must demonstrate that it can provide sufficient library resources to meet the needs of the program(s) through a written agreement with another institution or organization, or through other mechanisms.

(5) Financial resources.

(a) The institution shall have adequate financial resources necessary to sustain its purpose and commitment to students.

(b) In the case of an institution seeking initial authorization, it shall have sufficient financial resources to sustain itself for one full academic year without the assistance of revenue from tuition and fees.

(6) Financial records.

(a) The institution shall maintain financial records in conformity to generally accepted accounting principles.

(b) The institution shall be audited annually by an independent certified public accountant according to generally accepted auditing standards.

(c) Such records shall be made available to the council upon request.

(7) Recruitment and publications. All publications relating to the institution, including advertisements, catalogs, and other communications shall be accurate and not misleading. Any catalog and/or web site that is made available to students describing the educational services offered shall include the statement of authorization as provided by the council upon the granting of authorization.

Authorized institutions shall not advertise or publicize that they are approved, recommended, accredited, or otherwise endorsed by the council. Such institutions may only state that they are authorized by the council.

(8) Transcripts and academic credentials. The institution shall provide accurate and appropriate transcripts of credit for enrolled students and diplomas for graduates.

(a) For each student, the institution shall maintain and make available a transcript that specifies the name of the institution, the name of the student, all courses completed and academic credentials awarded, and an explanation of the institution's evaluation system. Each course entry shall include a title, the number of credits awarded, and a grade or written evaluation. The transcript shall distinguish credits awarded by transfer, for prior learning experience, and credit by examination.

(b) The institution shall not be required to make copies of transcripts available unless all tuition and fees and other expenses owed by the student to the institution have been paid.

(c) In addition to transcripts, the institution shall maintain records to document the performance and progress of each student, including, but not limited to: Financial transactions, admissions records, and records of interruption for unsatisfactory progress or conduct. Transcripts shall be kept permanently after a student has discontinued enrollment. All other records and accounts shall be kept for a minimum of six years after a student has discontinued enrollment.

(d) The institution shall maintain physical or electronic copies of all transcripts at a secure off-site facility.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-120 Catalog requirements. (1) An institution granted authorization shall publish a catalog supplemented as necessary by other published materials, providing

sufficient information for students to obtain an adequate understanding of the institution, its programs, policies and procedures. Institutional catalogs shall be published at least once every two years and be provided to students at the time of their enrollment. Electronic catalogs must be archived and students must have access to the archived information.

(2) An institution granted authorization shall print a statement in a prominent position in the catalog and on its web site that reads: "(Name of institution) is authorized by the Washington student achievement council (the council) and meets the requirements and minimum educational standards established for degree-granting institutions under the Degree-Granting Institutions Act. This authorization is subject to periodic review and authorizes (name of institution) to offer specific degree programs. The council may be contacted for a list of currently authorized programs. Authorization by the council does not carry with it an endorsement by the council of the institution or its programs. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the council at P.O. Box 43430, Olympia, WA 98504-3430 or by email at degreeauthorization@wsac.wa.gov."

(3) An institution granted authorization shall make the following statement regarding transferability available to all students: "The transferability of credits earned at (name of institution) is at the discretion of the receiving college, university, or other educational institution. Students considering transferring to any institution should not assume that credits earned in any program of study at (name of institution) will be accepted by the receiving institution. Similarly, the ability of a degree, certificate, diploma, or other academic credential earned at (name of institution) to satisfy an admission requirement of another institution is at the discretion of the receiving institution. Accreditation does not guarantee credentials or credits earned at (name of institution) will be accepted by or transferred to another institution. To minimize the risk of having to repeat coursework, students should contact the receiving institution in advance for evaluation and determination of transferability of credits and/or acceptability of degrees, diplomas, or certificates earned."

(4) The catalog shall include elements as required by the council in application materials such that a prospective student may become reasonably informed about the institution, its offerings, policies and procedures.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-140 Security requirements. The institution is required to have on file with the council an original surety bond or other security acceptable to the council in lieu of the bond.

(1) An institution shall have a separate acceptable security for each authorized site with administrative capability.

(2) For institutions seeking initial standard authorization, the surety bond or security amount for the initial period of authorization shall be ~~((twenty-five))~~ fifty thousand dollars for each proposed Washington site with administrative capability.

(3) For institutions seeking initial field placement authorization, the surety bond or security amount for the initial period of authorization shall be twenty-five thousand dollars.

~~((2))~~ (4) For institutions seeking renewal of standard authorization, the surety bond or security amount shall be ten percent of the preceding fiscal year's total tuition and fee revenue received for educational services in Washington, but not less than ~~((twenty-five))~~ fifty thousand dollars ~~((not more than two hundred fifty thousand dollars. For private vocational schools that offer nondegree programs as well as degree programs, the amount required shall be based only on the degree program portion of its revenue from tuition and fees))~~ for each authorized Washington site with administrative capability.

~~((3))~~ (5) For institutions seeking renewal of field placement authorization, the surety bond or security amount shall be ten percent of the preceding fiscal year's total tuition and fee revenue received for the field placement courses offered in Washington, but not less than twenty-five thousand dollars.

(6) For private vocational schools that offer nondegree programs as well as degree programs, the amount required shall be based only on the degree program portion of its revenue from tuition and fees.

(7) Release of surety bonds and other securities shall be made in compliance with chapter 28B.85 RCW.

NEW SECTION

WAC 250-61-155 At-risk institutions. (1) The council may designate an institution as at-risk based on an adverse action or other findings that indicate a heightened potential of closure or other negative impacts on students.

(2) An institution designated by the council as at-risk will be notified of deficiencies and may be subject to additional and/or more frequent reporting requirements as specified by the council.

(3) Restrictions on offering new programs may also be imposed.

(4) Security requirements may be increased at the discretion of the council consistent with the risk assessed.

(5) The council may suspend or withdraw authorization.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-160 Discontinuance or closure requirements. (1) In the event an institution ~~((chooses))~~ plans to discontinue a program and/or site currently available to Washington residents, but maintain other operations, it shall notify the council ~~((well in advance of any such proposed action))~~ immediately and provide information to the council pertaining to accommodations to be made for any currently enrolled students to ensure they are provided the opportunity to complete their studies. Institutions may be subject to additional reporting requirements as specified by the council.

(2) In the event an institution ~~((proposes))~~ plans to discontinue all its operations in Washington, the chief administrative officer of the institution shall:

(a) Notify the ~~((executive director))~~ council immediately by certified mail and email; and

(b) Furnish enrolled students with a written notice explaining the reasons for closure and what procedures they are to follow to secure refunds and their official records, and what arrangements have been made for providing continuing instruction at other institutions; and

(c) The institution shall make all reasonable efforts to ensure that current students are provided with alternative opportunities to complete their studies; and

(d) ~~(Provide for the permanent maintenance of official records in a manner acceptable to the executive director.~~

~~In the event it appears to the executive director that the official records of an institution discontinuing its operation are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the students and the council, the executive director may seek a court order to take possession of the records and provide for their permanent maintenance.))~~
Submit to the council the following:

(i) A timeline for the planned discontinuance of operations including the planned closure date; and

(ii) A list of all students currently enrolled in program(s) of study at the Washington locations showing student name, contact information, program name, number of credits completed, and number of credits remaining for program completion; and

(iii) The total number of students currently enrolled in each program of study for each site at which the program is offered; and

(iv) The alternative opportunities for program completion provided by the institution for students currently enrolled in programs of study; and

(v) A copy of all information regarding the closure that is provided to students, administrators, and faculty at the Washington locations; and

(vi) A copy of all documents provided by the institution's accrediting agency related to the closure; and

(vii) A copy of any signed transfer agreement; and

(viii) A copy of any signed teach-out agreement; and

(ix) Electronic copies of transcripts for all current and past students; and

(x) A plan for the maintenance of student records.

(3) Upon discontinuance of all Washington operations, the institution shall:

(a) Submit a list of all students enrolled in program(s) of study at the Washington locations showing student name, contact information, program name, number of credits completed, number of credits remaining for program completion, and the alternative opportunities selected for program completion by each student; and

(b) Provide for the permanent maintenance of official records; and submit the following:

(i) Contact information for the location where records for Washington students will be maintained; and

(ii) A description of the method and language used to inform students as to how final transcripts may be obtained.

(4) In the event it appears to the council that the official records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the students and the council, the council may seek a court order to take possession of the records and provide for their permanent maintenance.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-170 Application requirements. (1) Initial application.

(a) Institutions seeking initial standard authorization shall contact the council staff to arrange for a preliminary conference to discuss the authorization criteria, application procedures and the review process.

(b) An institution shall submit a fully completed application packet using forms provided by council staff. The application packet will not be considered complete until all required elements have been received by the council.

(c) For standard authorization, an initial application fee in the amount of five thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(d) For field placement authorization, an initial application fee in the amount of two thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(2) Renewal application.

(a) Authorized institutions must submit an application for renewal of authorization on a biennial basis when requested by council staff.

(b) No later than the due date provided by the council, an institution seeking renewal must submit a fully completed renewal application packet using the forms provided by council staff. Failure to provide all requested materials by the due date may result in temporary suspension of the institution's authorization.

(c) For standard authorization, a renewal application fee in the amount of two thousand five hundred dollars is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(d) For field placement authorization, a renewal application fee in the amount of one thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(e) Any programs that have been authorized for at least one year prior to the authorization renewal date, but which are not yet made available to students, must be so noted in the renewal application. The authorization granted for these programs will be withdrawn at that time and the institution must seek authorization for these programs through the new program application if it wishes to offer them in the future.

(3) Additional program(s).

(a) If an institution ~~((proposes))~~ plans to offer additional program(s) of study during the current authorization period, the institution shall submit a new program application well in advance of the proposed offering.

(b) An additional program application fee in the amount of one thousand dollars per program is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The program(s) of study may not be offered, advertised or promoted prior to the granting of authorization.

(d) A nonaccredited institution will be limited to no more than two additional programs per calendar year until full accreditation is received.

(4) Additional site(s).

(a) If an institution (~~(proposes)~~) plans to offer programs at a new site in Washington, the institution shall submit a new site application well in advance of the proposed start of operations at that site.

(b) An additional site application fee in the amount of five hundred dollars per site is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The site may not be utilized, advertised or promoted prior to the granting of authorization.

(5) Change of ownership or control. A significant change of ownership or control of an institution shall nullify any previous authorization or exemption. The chief administrator, representing the new owner(s), shall notify the council as soon as the change is known. If the chief administrator asserts in a written statement that all conditions set forth in the act and these rules are being met or will be met before offering instruction, the (~~(executive director)~~) council may issue a temporary certificate of authorization for a maximum of one hundred eighty days. The new ownership shall complete an application for initial authorization and submit the application to the council no later than sixty days prior to the expiration of the temporary certificate of authorization.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-180 Application review procedures. (1)

Staff analysis. Following receipt of a fully completed application, council staff shall review and analyze the material submitted.

(2) Additional documentation and site visit. If council staff determines it is necessary to verify or supplement the information provided in the application, the staff may require additional written documentation and/or arrange for a site visit. The expense for any site visits shall be paid by the institution applying for authorization.

(3) External consultants. At the discretion of the (~~(executive director)~~) council, the expertise of other higher education experts may be used to assist in the evaluation of the documentation submitted. The cost for the services of the evaluation expert(s) shall be paid by the institution applying for authorization. The fee for such services is five hundred dollars per program per consultant, to be submitted by the institution upon request by the council during the review process. The check is to be made payable to the Washington student achievement council.

(4) Comment period. Upon completion of a preliminary review, the council shall post a notification of the request for authorization on its web site for a set period of time. Any persons having knowledge as to why the institution or its program(s) may not meet the requirements for degree authorization may provide comment to the council on the proposal.

(5) Staff recommendations. After the final review has been completed, council staff shall summarize its findings and develop a recommendation to the executive director

regarding the application. This recommendation will take one of the following forms:

(a) That the institution be granted authorization, subject to biennial reporting and maintenance of the conditions under which authorization has been granted.

(b) That the institution be granted conditional authorization, subject to additional conditions as established by the council, and maintenance of the conditions under which authorization has been granted.

(c) That the institution be denied authorization.

(6) Notification. Following the (~~(executive director's)~~) council's decision to authorize or deny the institution's request, a letter signifying the action shall be sent from the (~~(executive director)~~) council to the chief administrative officer of the institution.

(a) The letter of authorization will serve as official authorization for the institution to operate in Washington for the specific programs and locations designated in the letter.

(b) An institution denied authorization shall be provided with an explanation as to how the institution and/or its programs failed to meet the criteria for authorization. Any institution denied standard authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of four thousand dollars. Any institution denied field placement authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of one thousand dollars. The check is to be made payable to the Washington student achievement council.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-190 Complaints. A student with a complaint against an authorized institution concerning loss of tuition and/or fees due to unfair or deceptive business practices or other violation of the standards for authorization detailed in the act and this chapter by the institution shall make a reasonable effort to resolve the complaint directly with the institution. If a mutually satisfactory solution cannot be reached, the following procedure shall be pursued:

(1) Upon receipt of a written complaint that an institution has failed or is failing to comply with the provisions of the act or this chapter, and documentation that the student has made a reasonable effort to resolve the complaint directly with the institution, the executive director shall notify the institution (~~(by mail)~~) of the nature of the complaint and (~~(shall conduct an investigation)~~).

(2) ~~If preliminary findings indicate that a violation(s) may have occurred or are occurring, the executive director shall attempt, through mediation and conciliation, to effect compliance and bring about a settlement.~~

(3) ~~If no agreement is reached, the executive director shall file a formal complaint with the council and notify the institution of the conduct which warrants the complaint. Final resolution of the complaint shall be subject to hearing procedures provided for in this chapter and the institution may be subject to a summary suspension of its authorization, pending~~

further proceedings for suspension, withdrawal or other actions deemed proper after the hearing.

~~(4)) request appropriate information and documentation relating to the specific area(s) of the complaint.~~

(2) Within five business days, the institution must either respond with the requested information and documentation and a recommended resolution to the complaint or acknowledge receipt of the request and provide a reasonable estimate of the amount of time necessary to respond. If a recommended resolution is acceptable to the complainant, the process is completed at this point.

(3) If there is no recommended resolution or the complainant is not satisfied with a recommended resolution, the executive director will review the complaint to determine if the complaint falls within the scope of authority of the council under the act and this chapter and indicates a possible violation of the act and this chapter.

(4) If a complaint is found by council staff to be actionable, the council will negotiate with the institution to find an appropriate resolution.

(5) Council staff will then issue a final decision regarding the complaint and may require the institution to repay lost tuition and fees to the student.

(6) If the institution is unsatisfied with the final decision, the institution may request the council hold an administrative hearing as provided in WAC 250-61-210.

(7) A complainant is not bound by the council's determination of restitution and may pursue any other legal remedy.

(8) Any complaints must be filed within ~~((one))~~ two years after the student's last recorded date of attendance in order to be considered by the council, unless a school has discontinued all Washington operations, in which case, complaints must be filed within one year of discontinuance of all Washington operations. Only the student or the student's legal guardian may file a complaint on behalf of the student.

~~((5) Complaints may also be filed with the council by an authorized staff member of the council or by the attorney general.))~~

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-200 Suspension or withdrawal of authorization. (1) The executive director may suspend or withdraw an institution's authorization ~~((if it finds))~~ based on a finding that:

(a) Any ~~((statement))~~ information contained in the application for authorization is untrue; or

(b) The institution has failed to maintain the standards for authorization as detailed in the act and this chapter; or

(c) Advertising or representations made on behalf of, and sanctioned by, the institution is deceptive or misleading; or

(d) The institution has violated any provision of this chapter.

(2) In the case of an adverse finding the executive director shall provide the institution a notice of violation that includes details of the legal basis of the finding and the facts used to make the determination.

(3) The institution will have an opportunity to respond to the notice of violation and address deficiencies within a reasonable time period specified by the council.

(4) The executive director may designate an institution as at-risk.

(5) The executive director may suspend the institution's authorization for a period of time if, in the executive director's judgment, the deficiencies can be corrected within the given time period. Upon suspension, the institution must immediately cease the recruitment and/or enrollment of new students. The institution may continue serving currently enrolled students for the remainder of the term. Authorization may be reinstated after any deficiencies have been resolved to the satisfaction of the council.

~~((3) Authorization shall be withdrawn only after the institution has been informed in writing of its deficiencies and been given reasonable time to meet the required standards.))~~ (6) The executive director may withdraw the institution's authorization if, in the executive director's judgment, the deficiencies cannot be corrected within the given time period. Upon withdrawal, the institution must immediately cease all degree-granting operations. To seek reinstatement of authorization, the institution must apply for initial authorization.

~~((4))~~ (7) The executive director's ~~((and council's))~~ action~~((s are))~~ to suspend or withdraw authorization is subject to ~~((due process))~~ the hearing procedures ~~((of the Washington Administrative Procedure Act))~~ specified in WAC 250-61-210.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-210 Hearing process. (1) A party subject to the following actions may request a hearing:

(a) A denial of exemption from the Degree-Granting Institutions Act;

(b) A denial of authorization under the Degree-Granting Institutions Act;

(c) A cease and desist order issued under chapter 28B.85 RCW; or

(d) Other final action as defined in chapter 34.05 RCW, by the executive director that adversely affects the institution ~~((or student))~~ and which is contrary to the intent and purpose of the Degree-Granting Institutions Act or this chapter.

(2) A party must submit a request for a hearing to the executive director at the council office no later than thirty days following receipt of the notice of final agency action. In the written request, the party must identify the final action in dispute and state that a hearing is requested.

(3) Any hearing called for under the act shall be conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW, as follows:

(a) The presiding officer, who shall be the executive director or the hearing officer designated by the executive director, shall conduct the hearing under the provisions of chapter 34.05 RCW and shall enter an initial order under RCW 34.05.461 (2) through (9).

(b) The ~~((council))~~ executive director shall review the initial order under RCW 34.05.464 and either enter a final

order or remand the matter for further proceedings under RCW 34.05.464(7).

(c) If the challenged agency action is upheld, the party that initiated the hearing process shall pay the costs of the administrative hearing within sixty days following final disposition of the matter.

(d) Any further review of final action must be taken in accordance with RCW 34.05.510 et seq.

NEW SECTION

WAC 250-61-230 Notices. All notices required under this chapter shall be sent via email to degreeauthorization@wsac.wa.gov and also via certified mail, return receipt requested to: Degree Authorization, Washington Student Achievement Council, P.O. Box 43430, Olympia, WA 98504-3430.

WSR 17-09-042
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed April 14, 2017, 4:42 p.m., effective May 15, 2017]

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

Purpose: Explain how wait lists will be administered in the event consumer needs exceed state subsidized child care program capacity.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Adopted under notice filed as WSR 17-05-072 on February 13, 2017.

Changes Other than Editing from Proposed to Adopted Version: Language was inserted in WAC 170-290-2240(3) to clarify that DSHS informs the applicant and child care provider of when payment begins once the applicant comes off the wait list and selects a provider.

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 5, 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 13, 2017.

Ross Hunter
Director

Wait List for Child Care Programs

NEW SECTION

WAC 170-290-2210 Eligibility. (1) If the applicant or reapplicant meets one of the qualifiers of the priority list and otherwise meets all eligibility requirements of Part II or III of this chapter, the applicant or reapplicant will not be placed on the wait list and will be eligible to receive WCCC subsidies. The priority list includes:

- (a) Families applying for or receiving TANF;
- (b) Families receiving TANF and working to cure a sanction;
- (c) Reapplicants who received subsidies within the last thirty days and:
 - (i) Have reapplied for subsidies; and
 - (ii) Have household income of two hundred percent federal poverty level or below.
- (d) Families that include a child with special needs;
- (e) Teen parents (under age twenty-two) who are not living with a parent/guardian, and are attending high school full-time with an on-site child care center;
- (f) Families that are homeless according to the McKinney-Vento Act definition; and
- (g) Families that include a child enrolled in Early Head Start-Child Care Partnership slots.

(2) As provided in WAC 170-290-0001, WCCC is administered to the extent of available funds. If available funds are insufficient to allow all priority groups to not be placed on the wait list and be eligible to receive WCCC subsidies, only the highest ranked groups that can be served within available funds will be prioritized. The priority groups are ranked in the order listed in subsection (1) of this section, highest to lowest.

(3) If funds are not available, an applicant or reapplicant not belonging to a group on the priority list will have their name placed on the wait list upon approval of eligibility. The name will be placed on the wait list based on the date of the application or reapplication and served as funds become available.

(4) If the applicant or reapplicant remains on the wait list for twelve months or longer, a new eligibility determination will be required when subsidy child care becomes available.

NEW SECTION

WAC 170-290-2220 Benefits start. (1) DSHS notifies the consumer that subsidy child care is available by sending written notice.

(2) If otherwise eligible, the consumer's twelve-month eligibility period begins on the date the consumer is removed from the wait list.

NEW SECTION

WAC 170-290-2230 Withdrawal from and reinstatement to the wait list. (1) The consumer will be withdrawn from the wait list when the consumer does not return the requested income verification of new employment by the sixtieth day per WAC 170-290-0012.

(2) The consumer must reapply for eligibility per WAC 170-290-2210, if the required information is received after the end of the advance notice period.

(3) If the consumer is withdrawn from the wait list for not returning information and the consumer provides the requested information during the ten-day advance notice period and remains eligible for child care:

(a) DSHS may reinstate the consumer to the wait list; and

(b) DSHS may reinstate the consumer on the wait list using the same application date prior to the withdrawal from the wait list.

NEW SECTION

WAC 170-290-2240 Provider payments. (1) The consumer chooses an eligible provider under WAC 170-290-0125 and the provider cares for the children during an eligibility period.

(2) Provider payment begin date is:

(a) The date the family comes off the wait list when an eligible provider is already providing care;

(b) The date an eligible provider begins to provide care after the family comes off the wait list; or

(c) The date a provider becomes an eligible provider, when providing care before the provider is eligible and the family comes off the wait list.

(3) DSHS will send an authorization letter to the consumer and provider stating the payment begin date.

NEW SECTION

WAC 170-290-3506 Wait list for seasonal child care. The wait list for seasonal child care is determined as provided in WAC 170-290-2210 through 170-290-2240.

WSR 17-09-068

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed April 18, 2017, 11:58 a.m., effective May 19, 2017]

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

Purpose: WAC 458-20-269 Waiver of public disclosure of certain new tax preferences, the department is adopting a new rule under chapter 458-20 WAC that explains:

- Amounts claimed by taxpayers for any new tax preference are subject to public disclosure, with certain limitations, pursuant to RCW 82.32.808(7);
- Under certain circumstances, the department may waive this public disclosure requirement;
- What the good cause waiver standard is, including the tax preferences eligible for the good cause waiver; and
- The procedure for applying for a good cause waiver and the appeal process.

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

Adopted under notice filed as WSR 17-05-078 on February 14, 2017.

Changes Other than Editing from Proposed to Adopted Version: In subsections (3)(b) and (5)(a) of the adopted version of the rule, language was added to clarify that the tax preference amount represents the amount of the tax reduced or saved by the taxpayer in a calendar year.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 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: April 18, 2017.

Kevin Dixon
Rules Coordinator

NEW SECTION

WAC 458-20-269 Waiver of public disclosure of certain new tax preferences. (1) **Introduction.** RCW 82.32.-808(7) explains that the amount claimed by a taxpayer for any new tax preference is subject to public disclosure, with certain limitations. Under certain circumstances, the department may waive this public disclosure requirement for those new tax preferences specifically provided in chapter 13, Laws of 2013 2nd sp. sess.

(2) **Definitions.**

(a) **"New tax preference"** means a "tax preference" as defined in (b) of this subsection 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.

(b) **"Tax preference"** means, with respect to any state tax administered by the department (except for the Washington estate and transfer tax in chapter 83.100 RCW and chapter 458-57 WAC), 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.

(3) **When will the department disclose new tax preference amounts?**

(a) New tax preference amounts claimed by a taxpayer that do not require a survey under RCW 82.32.585 are subject to public disclosure, upon request, twenty-four months after the taxpayer first claimed the new tax preference reportable under RCW 82.32.808(6). Taxpayers reporting a tax preference requiring a survey should refer to RCW 82.32.585 and WAC 458-20-268 Annual surveys for certain tax preferences, for those requirements.

(b) Any new tax preference, other than a tax preference requiring a survey under RCW 82.32.585, claimed by a tax-

payer in a calendar year for which the amount of the tax reduced or saved is less than ten thousand dollars is not subject to public disclosure.

(4) When may the department waive public disclosure of new tax preference amounts?

(a) **Good cause waiver.** RCW 82.32.808 (7)(b) provides that the department may waive public disclosure of new tax preference amounts for good cause. A waiver is available only for the following new tax preferences:

(i) Paymaster services business and occupation (B&O) tax deduction (RCW 82.04.43393);

(ii) Clay targets retail sales (RCW 82.08.205) and use (RCW 82.12.205) tax exemptions;

(iii) Food flavoring products retail sales (RCW 82.08.-210) and use (82.12.210) tax exemptions;

(iv) Cooperative finance organizations B&O tax deduction (RCW 82.04.43394);

(v) Investment data for investment firms retail sales (RCW 82.08.207) and use (RCW 82.12.207) tax exemptions;

(vi) Large private airplane retail sales (RCW 82.08.215) and use (RCW 82.12.215) tax exemptions;

(vii) Blood banks B&O tax exemption (RCW 82.04.-324); and

(viii) Mint growers retail sales (RCW 82.08.220) and use (RCW 82.12.220) tax exemptions.

(b) **What is good cause?** Good cause is demonstrated by a reasonable showing of economic harm to a taxpayer if public disclosure of the new tax preference amount were to occur. To make a reasonable showing of economic harm, the taxpayer must provide facts that demonstrate that economic harm is likely to occur, and not merely speculative or theoretical. Economic harm may include, but is not limited to, a quantifiable financial loss such as decreased income, lost profits, and diminished business value. It may also include a reduction in a business's goodwill or an unfair competitive advantage to the taxpayer's competitors if the tax preference information is released.

(5) What is the process for applying for the waiver?

(a) Taxpayers do not need to request a waiver for a new tax preference for any calendar year for which the amount of tax reduced or saved for that new tax preference is less than ten thousand dollars. Such amounts are not subject to public disclosure as described in subsection (3)(b) of this rule.

(b) Taxpayers eligible to claim a waiver of disclosure under subsection (4) of this rule may apply to the department at any time, but should note that any reported new tax preference amount is no longer confidential twenty-four months after the tax preference is first claimed as described in subsection (3)(a) of this rule.

(c) To apply for the waiver, the taxpayer must provide the department with a completed waiver request form and include a detailed explanation describing how disclosure of the new tax preference information will cause economic harm. The required waiver request form can be found on the department's web site at dor.wa.gov.

(d) Taxpayers who have their waiver requests approved prior to the date of disclosure, as described in subsection (3)(a) of this rule, will not have their new tax preference amount subject to public disclosure.

(e) An approval by the department to waive public disclosure of new tax preference information will remain in effect indefinitely unless the department has reason to believe that good cause no longer exists. If this occurs, the department will contact the taxpayer for additional information prior to any public disclosure of new tax preference information.

(6) Denial of good cause waiver request.

(a) Taxpayers who have their waiver requests denied may submit additional documentation to the department to support their eligibility for the waiver within thirty days of the postmark date of the department's determination. Upon receiving the additional information from the taxpayer, the department will conduct a second review and notify the taxpayer whether good cause exists. If additional documentation is not submitted, then the initial determination is considered the final determination.

(b) A final determination by the department to deny a waiver request is considered a final agency action for purposes of review under RCW 34.05.570(4) and may be appealed to superior court as provided in RCW 34.05.514.

WSR 17-09-074

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed April 19, 2017, 7:07 a.m., effective May 20, 2017]

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

Purpose: This rule-making order amends chapter 16-520 WAC, Seed potatoes, by including public records disclosure procedures as required by RCW 42.56.040.

Citation of Existing Rules Affected by this Order: Amending WAC 16-520-010.

Statutory Authority for Adoption: RCW 15.66.055 and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-05-040 on February 8, 2017.

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 8 [6], 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: April 19, 2017.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

WAC 16-520-010 Definitions. Definitions for terms used in this chapter are also found in chapter 15.66 RCW, Washington State Agricultural Commodity Commissions Act. For the purposes of the seed potato marketing order, the following definitions shall apply:

~~((1)) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this marketing order or chapter 15.66 RCW;~~

(2)) "Act" means the Washington State Agricultural Commodity Commissions Act, chapter 15.66 RCW;

~~((3)) "Affected area" means and includes all of the state of Washington;~~

"Affected producer" means any producer who is subject to this marketing order;

"Commercial quantities" means five thousand hundred-weight or more;

"Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this marketing order or chapter 15.66 RCW;

"Disclosure" means inspection or copying;

"Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of seed potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

"Hundredweight" and "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of seed potatoes;

"Marketing season" and "fiscal year" are synonymous and mean the twelve-month period beginning July 1st of any year and ending upon the last day of June, both dates inclusive;

"Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government;

~~((4)) "Producer" means any person engaged in the business of producing or causing to be produced for market in the state of Washington seed potatoes in commercial quantities. "To produce" means to act as a producer;~~

~~((5)) "Commercial quantities" means five thousand hundred-weight or more;~~

~~(6) "Hundredweight" or "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of seed potatoes;~~

(7)) "Public records" 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 the commission regardless of physical form or characteristics;

"Sale" means a transaction wherein the property in or to seed potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

"Seed potato commission" and "commission" are synonymous and mean the commission established under WAC 16-520-020 consistent with chapter 15.66 RCW;

"Seed potatoes" means and includes all kinds and varieties of Irish seed potatoes grown in the state of Washington and marketed, sold or intended for use for seed purposes(;

~~(8) "Seed potato commission" or "commission" are synonymous and mean the commission established under WAC 16-520-020 consistent with chapter 15.66 RCW;~~

~~(9) "Marketing season" or "fiscal year" are synonymous and mean the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive;~~

~~(10) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of seed potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;~~

~~(11) "Sale" means a transaction wherein the property in or to seed potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;~~

~~(12) "Affected area" means and includes all of the state of Washington.~~

~~(13) "Affected producer" means any producer who is subject to this marketing order).~~

NEW SECTION

WAC 16-520-071 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Washington State Seed Potato Commission, P.O. Box 286, Lynden, WA 98264. The request may also be submitted by fax to 360-354-7619. The written request should include:

- The name, address and telephone number or other contact information of the person requesting the records;
- The calendar date on which the request is made; and
- Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

- Public records made available for inspection may not be removed from the area the commission makes available for inspection.
- Inspection of any public record will be conducted in the presence of the public records officer or designee.
- Public records may not be marked or altered in any manner during the inspection.
- The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment

shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

NEW SECTION

WAC 16-520-075 Response to public records requests. (1) The public records officer shall respond to public records requests within five business days by:

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

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

(e) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

NEW SECTION

WAC 16-520-080 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) The commission charges a fee of fifteen cents per page of black and white photocopy plus postage for reimbursement of the costs of providing public records.

(3) Requests for records in special formatting, including color copies, will be charged at the amount necessary to reimburse the commission for its actual production costs. If the public records officer deems it more efficient to have copying or duplicating done outside the commission, the charges will be based on the actual cost of such outside copying or duplicating service. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of the invoice and is payable to the Washington state seed potato commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

NEW SECTION

WAC 16-520-085 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.66 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.66 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2)).

NEW SECTION

WAC 16-520-090 Review of denial of public records requests. (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission 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.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

NEW SECTION

WAC 16-520-095 Records index. The commission shall establish a records index, which shall be made available for public review.

WSR 17-09-075
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed April 19, 2017, 7:08 a.m., effective May 20, 2017]

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

Purpose: This rule-making order amends chapter 16-505 WAC, Washington beer commission, by including public records disclosure procedures as required by RCW 42.56.-040.

Statutory Authority for Adoption: RCW 15.89.070 and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-05-085 on February 14, 2017.

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 7, 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: April 19, 2017.

Derek I. Sandison
 Director

NEW SECTION

WAC 16-505-005 Definitions. "Disclosure" means inspection or copying.

"Public records" 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 the commission regardless of physical form or characteristics.

NEW SECTION

WAC 16-505-020 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to: Washington Beer Commission, 11112 117th Place N.E., Kirkland, WA 98033. The request may also be submitted by email to eric@washingtonbeer.com. The written request should include:

- (a) The name, address, and telephone number or other contact information of the person requesting the records;
- (b) The calendar date on which the request is made; and
- (c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records

officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee;

(c) Public records may not be marked or altered in any manner during the inspection;

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

NEW SECTION

WAC 16-505-075 Response to public records requests. (1) The public records officer shall respond to public records requests within five business days by:

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

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

(e) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

NEW SECTION

WAC 16-505-080 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) The commission charges a fee of fifteen cents per page of black and white photocopy plus postage for reimbursement of the costs of providing public records.

(3) Requests for records in special formatting, including color copies, will be charged at the amount necessary to reim-

burse the commission for its actual production costs. If the public records officer deems it more efficient to have copying or duplicating done outside the commission, the charges will be based on the actual cost of such outside copying or duplicating service. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of the invoice and is payable to the Washington beer commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

NEW SECTION

WAC 16-505-085 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.89 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.89 RCW with respect to domestic or export marketing activities or individual producer's production information (reference 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2)).

NEW SECTION

WAC 16-505-090 Review of denial of public records requests. (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission 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.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

NEW SECTION

WAC 16-505-095 Records index. The commission shall establish a records index, which shall be made available for public review.

WSR 17-09-086

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed April 19, 2017, 10:38 a.m., effective May 20, 2017]

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

Purpose: WAC 458-20-267 (Rule 267) Annual reports for certain tax ~~adjustments~~ preferences, defines what a tax preference is, how to determine if a report must be filed, how to file a report, and what information must be included in the report. WAC 458-20-268 (Rule 268) Annual surveys for certain tax preferences, 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 is amending Rules 267 and 268 to incorporate language regarding the due date and penalty for late filing for annual reports and annual surveys, from ESHB 2540, 2016 regular session (chapter 175, Laws of 2016). These rules are further being amended as follows:

- The deletion of the listing of individual tax preferences requiring an annual report and redirecting taxpayers to the department's web site that lists which tax preferences require an annual report;
- Added/updated definitions for "person" and "tax preference";
- Deleted past statute information; and
- Updated rule title (Rule 267 only) and examples.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-267 Annual reports for certain tax ~~adjustments~~ preferences and 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 17-05-061 on February 13, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 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 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 19, 2017.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-06-040, filed 2/24/16, effective 3/26/16)

WAC 458-20-267 Annual reports for certain tax ((adjustments)) preferences. (1) **Introduction.** ((In order to take certain tax exemptions, credits, and rates ("tax adjustments");)) Taxpayers taking certain tax preferences must file an annual report with the department of revenue ((the "department") detailing employment, wages, and employer-provided health and retirement benefits.

~~((a) Reporting requirements for tax adjustments.))~~ (department) providing information about their business. This rule explains ((the reporting requirements for tax adjustments provided to computer data centers, the aerospace industry, aluminum manufacturing, electrolytic processing, solar electric manufacturing, semiconductor manufacturing, newspaper industries, and government funded mental health services. Unless the context clearly requires otherwise, the term "tax" is defined under RCW 82.32.020. This rule explains who is required to file annual reports;)) how to file a report((s, and what)), the information that must be included in the report((s)), due dates for filing, and other filing requirements.

~~((b))~~ (a) Definitions. For purposes of this rule the following definitions apply:

(i) Person. "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) Tax preference. As defined under RCW 43.136.021, "tax preference" means:

(A) 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; and

(B) Includes only the tax preferences requiring a report under RCW 82.32.534.

(b) Annual survey. Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual survey requirements, refer to RCW 82.32.585 and WAC 458-20-268.

(c) Examples. This rule includes ((a number of)) examples that identify a set of facts and then state a conclusion. These examples ((are only)) should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances ((and apply both this rule and other statutory and common law authority)).

(2) ((Who is required to file the report?)) A recipient of the benefit of the following tax adjustments must complete and file an annual report with the department:

(a) Tax adjustments for the aerospace industry:

(i) The business and occupation ("B&O") tax rate provided by RCW 82.04.260(11) for manufacturers and process-

sors for hire of commercial airplanes, component parts, and tooling specially designed for use in manufacturing commercial airplanes or components of such airplanes;

(ii) The B&O tax credit provided by RCW 82.04.4461 for qualified aerospace product development expenditures;

(iii) The B&O tax rate for FAR 145 Part-certified repair stations under RCW 82.04.250(3);

(iv) The retail sales and use tax exemption provided by RCW 82.08.980 and 82.12.980 for constructing new buildings used for manufacturing superefficient airplanes;

(v) The leasehold excise tax exemption provided by RCW 82.29A.137 for facilities used for manufacturing super-efficient airplanes;

(vi) The property tax exemption provided by RCW 84.36.655 for property used for manufacturing superefficient airplanes; and

(vii) The B&O tax credit for property taxes and leasehold excise taxes paid on property used for manufacturing of commercial airplanes as provided by RCW 82.04.4463.

(viii) An annual report must be filed with the department for any person who takes any of the above tax adjustments of this subsection for employment positions in Washington; however, persons engaged in manufacturing commercial airplanes or components of such airplanes may report per manufacturing job site.

~~((b) Tax adjustments for the aluminum smelter industry:~~

(i) The B&O tax rate provided by RCW 82.04.2909 for aluminum smelters;

(ii) The B&O tax credit for property taxes provided by RCW 82.04.4481 for aluminum smelter property;

(iii) The retail sales and use tax exemption provided by RCW 82.08.805 and 82.12.805 for property used at aluminum smelters; and

(iv) The use tax exemption provided by RCW 82.12.022 (5) for the use of natural or manufactured gas at aluminum smelters;

~~((c) Tax adjustment for the electrolytic processing industry.~~ The public utility tax exemption provided by RCW 82.16.0421 for sales of electricity to electrolytic processing businesses.

~~((d) Tax adjustment for the solar electric manufacturing industry.~~ The B&O tax rate for manufacturers of solar energy systems using photovoltaic modules, or silicon components of such systems provided by RCW 82.04.294.

~~((e) Tax adjustments for the semiconductor manufacturing and processing industry.~~

(i) The B&O tax rate for manufacturers or processors for hire of semiconductor materials provided by RCW 82.04.2404.

(ii) The sales and use tax exemptions for sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials provided by RCW 82.08.9651, 82.12.9651, and 82.12.970.

~~((f) Tax adjustments for various industries.~~

(i) The B&O tax rate for printing a newspaper, publishing a newspaper, or both provided by RCW 82.04.260(14).

(ii) The sales tax exemption for sales of eligible server equipment to be installed without intervening use in an eligible computer data center under RCW 82.08.986.)) **Tax pref-**

erences requiring an annual report. Taxpayers may refer to the department's web site at dor.wa.gov for the "[Annual Tax Incentive Report for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet](#)." This worksheet lists tax preferences that require an annual report. Taxpayers may also contact the telephone information center at 800-647-7706 to determine whether they must file an annual report.

(3) How to file annual reports.

(a) **Electronic filing.** Reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives the report in an electronic format. A person accesses electronic filing through their department "My Account(~~("- To file and submit electronically, go to <http://dor.wa.gov/TaxIncentiveReporting>)")~~)" at dor.wa.gov.

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

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the report may obtain the annual report form 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)~~) by calling the telephone information center (~~(at)~~) 800-647-7706(~~(t)~~), or by contacting the (~~(department's taxpayer account administration division)~~) department at:

(~~(Department of Revenue)~~)
 Attn: Tax Incentive Team
 Taxpayer Account Administration
 (~~(Attn: Local Finance Team)~~)
 Department of Revenue
 Post Office Box 47476
 Olympia, WA 98504-7476
 (~~(Fax: 360-586-0527)~~)

(d) **Special requirement for persons who did not file an annual report during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual report with the department during the previous calendar year, the report must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the report.

(e) **Due date(~~(s)~~) of annual report.** Every person claiming a tax preference that requires a report under RCW 82.32.-534 must file the report annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the report is as follows:

(i) (~~(For reports due in 2011 or later.~~ For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this rule, the report 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.

(ii) ~~(For reports due in 2010 or earlier.~~ For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this rule, with the exception of the tax rate provided by RCW 82.04.2404, the report must be filed or postmarked by March 31st following any calendar year in which the tax credit, tax exemption, or tax rate is claimed. For persons claiming the tax rate provided by RCW 82.04.2404 the report must be filed or postmarked by April 30th following any calendar year in which the tax rate is claimed.

(iii) ~~(i) April 30th for reports due prior to 2017.~~

~~(ii) May 31st for reports due in or after 2017.~~

(f) **Due date extensions.** The department may extend the due date for (~~(timely)~~) filing annual reports as provided in subsection (18) of this rule.

(~~(f) Examples.~~

(i) (~~(g) Example 1.~~ An aerospace firm (~~(begins taking)~~) first claimed the B&O tax rate provided by RCW 82.04.260 (11) for manufacturers and processors for hire of commercial airplanes and component parts on (~~(October 1, 2010)~~) April 1, 2015. By April 30, (~~(2014)~~) 2016, the aerospace firm must (~~(provide)~~) submit an annual report covering calendar years (~~(2009 and 2010)~~) 2014 and 2015. If the aerospace firm continues to (~~(take)~~) claim the B&O tax rate provided by RCW 82.04.260(11) during calendar year (~~(2011, a single)~~) 2016, an annual report is due (~~(on April 30, 2012)~~) by May 31, 2017, covering calendar year (~~(2011)~~) 2016.

(~~(ii)~~) (~~(h) Example 2.~~ An aluminum smelter (~~(begins taking)~~) first claimed the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 31, (~~(2010)~~) 2015. By April 30, (~~(2011)~~) 2016, the aluminum smelter must provide an annual report covering calendar years (~~(2009 and 2010)~~) 2014 and 2015. If the aluminum smelter continues to (~~(take)~~) claim the B&O tax rate provided by RCW 82.04.-2909 during calendar year (~~(2011, a single)~~) 2016, an annual report is due (~~(on April 30, 2012)~~) by May 31, 2017, covering calendar year (~~(2011)~~) 2016.

(4) **What employment positions are included in the annual report?**

(a) **General rule.** Except as provided in (b) of this subsection, the report must include information detailing employment positions in the state of Washington.

(b) **Alternative method.** Persons engaged in manufacturing commercial airplanes or their components may report employment positions per job at the manufacturing site.

(i) **What is a "manufacturing site"?** For purposes of the annual report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax (~~(adjustment)~~) preference. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports (~~(nonqualifying activities)~~) the qualifying activity, such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities. It may also include portions of the manufacturing site that support nonqualifying activities.

(ii) (~~(A)~~) **If the person files per job at the manufacturing site, which manufacturing site is included in the annual report for the aerospace manufacturing industry tax (~~(adjustments)~~) preferences?** The location(s) where a

person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration ((~~(the)~~)FAA(~~(the)~~)) for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

((~~(B)~~)) (iii) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the ((~~department's taxpayer account administration division~~)) department at:

((~~Department of Revenue~~))
Attn: Tax Incentive Team
 Taxpayer Account Administration
 ((~~Attn: Local Finance Team~~))
Department of Revenue
 Post Office Box 47476
 Olympia, WA 98504-7476
 ((~~Fax: 360-586-0527~~))

(c) Examples.

((~~(i)~~)) (c) **Example 3.** ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax ((~~adjustment~~)) preference.

((~~(ii)~~)) (d) **Example 4.** Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260((~~(4)~~)) (11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. If filing per manufacturing site, Acme Engines must file an annual report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax ((~~adjustment~~)) preference.

((~~(iii)~~)) (e) **Example 5.** Tacoma Rivets, with one in-state manufacturing site located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax ((~~adjustment~~)) preference.

((~~(iv)~~)) (f) **Example 6.** Dynamic Aerospace Composites is a company that ((~~only~~)) manufactures only FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites.

((~~(v)~~)) (g) **Example 7.** Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual report for any employment positions in Washington that are directly related to the qualifying activity.

(5) What jobs are included in the annual report?

((~~(a)~~)) The annual report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection (4)(b) of this rule, at the manufacturing site as of December 31st of the calendar year for which an applicable tax ((~~adjustment~~)) preference is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax ((~~adjustment~~)) preference are included in the report if the job is located in ((~~the state of~~)) Washington state or, for persons filing as provided in subsection (4)(b) of this rule, at the manufacturing site.

((~~(b)~~)) **Examples.**

((~~(i)~~)) (a) **Example 8.** XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. XYZ Aluminum's annual report for its Tacoma, WA location will include all of its employment positions in this state, including its nonmanufacturing employment positions.

((~~(ii)~~)) (b) **Example 9.** AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate

provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection (4)(b) of this rule, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

(6) How is employment detailed in the annual report?

The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

- (a) Major group;
- (b) Minor group;
- (c) Broad occupation; and
- (d) Detailed occupation.

All occupations are clustered into one of twenty-three major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by consulting the United States Department of Labor, Bureau of Labor Statistics online at www.bls.gov/soc. The annual report does not require names of employees.

(7) What is total employment? The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax ((~~adjustment~~) preference) is taken. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(8) What are full-time, part-time, and temporary employment positions? An employer must provide information on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time, or temporary employment positions on December 31st of the calendar year for which an applicable tax ((~~adjustment~~) preference) is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(a) Full-time and part-time employment positions. ((~~In order~~)) For a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that 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.

A part-time position is a position in which the employee works less than the hours required for a full-time position. 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, but receives wages equivalent to a full-time job. 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 full-time wages, the position should be reported as a full-time employment position.

(b) Temporary positions. A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual report.

~~(c) (~~Examples. Assume these facts for the following examples.~~)~~ **The following facts apply to the examples in (c) of this subsection.** National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax ((~~adjustments~~) preferences) available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) **Example 10.** Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) **Example 11.** National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday thru Friday. The second shift works six hours from 6:00 p.m. to midnight Monday thru Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second

shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) **Example 12.** On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

(iv) **Example 13.** On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) **Example 14.** All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

(9) **What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(10) **How are wages detailed for the annual report?**

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

Up to \$10.00 an hour;
 \$10.01 an hour to \$15.00 an hour;
 \$15.01 an hour to \$20.00 an hour;
 \$20.01 an hour to \$30.00 an hour; and
 \$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax ((~~adjustment~~)) preference is claimed.

(b) ((~~Examples. Assume these facts for the following examples.~~)) **The following facts apply to the examples in (b) of this subsection.** Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax ((~~adjustments~~)) preferences available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs five hundred people at the manufacturing site, which constitutes its entire work force in this state. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) **Example 15.** One hundred employees classified as SOC Production Occupations are paid \$12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid \$17.00 an hour. One hundred employees classified as SOC Production Occupations are paid \$25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid \$10.01 an hour to \$15.00 an hour; 50% are paid \$15.01 an hour to \$20.00 an hour; and 25% are paid \$20.01 an hour to \$30.00 an hour.

(ii) **Example 16.** Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of \$42,000; another ten employees are paid \$50,000 annually; and the remaining employees are all paid over \$70,000 annually. ((~~In order~~)) To report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid \$20.01 an hour to \$30.00 an hour and 60% are paid \$30.00 an hour or more.

(iii) **Example 17.** All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive \$10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a \$10,000 bonus for exceeding company's sales goals. ((~~In order~~)) To report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations

tions are paid \$10.01 an hour to \$15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid \$15.01 an hour to \$20.00 an hour.

(iv) **Example 18.** Ten of the employees classified as SOC Office and Administrative Support Occupations earn \$9.50 an hour. The remaining ten employees classified as SOC Office and Administrative Support Occupations earn wages between \$10.01 an hour to \$15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least \$10.50 an hour, but no more than \$15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour.

(11) **Reporting workers furnished by staffing companies.** For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual report must provide the following 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.

(12) **What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "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.

(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.

(c) "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 care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.

(d) "Medical 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.

(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.

(13) **How are employer-provided health benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax (~~(adjustment)~~) preference is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medical care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

~~((b) Examples.))~~

(i) **Example 19.** On December 31st, Acme Engines has one hundred employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working ninety days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.

(ii) **Example 20.** Apex Aluminum has fifty employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Aluminum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires ten new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.

~~((c))~~ **(b) Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in ~~((c))~~ **(b)(i)** of this subsection, the person may consolidate the detail required in ~~((c))~~ **(b)** through ~~((c))~~ **(d)** of this subsection by using ranges to describe the information. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not

require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site or as otherwise reported. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. ~~(In those instances where)~~ Under those circumstances in which the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses, state registered domestic partners, and unmarried dependent children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

~~((d))~~ **(c) Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities

by enrolled employees in the form of copayments, co-insurance, or deductibles. Copayments and co-insurance mean an amount specified in a medical care plan (~~(which)~~ that is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means nonemergency medical care services provided in an office setting by the employee's primary care provider.

~~((e))~~ **(d) Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

~~((f))~~ **Examples.**

~~(i) Assume the following facts for the following examples.)~~ **(e) The following facts apply to the examples in (e) of this subsection.** Mosaic Aerospace employs one hundred employees and offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.

~~((A))~~ **(i) Example 21.** Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace \$750 a month for each employee covered by Plan A. Enrolled employees must pay \$150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a \$10.00 copayment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a \$200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a \$500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a \$10.00 copayment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, copayment for prescription drug benefits is not required.

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a \$10.00 copayment for primary care provider services and a \$200 deductible for hospital services because this is the lowest cost option within Plan A. Mosaic Aerospace will report that employees have a

\$10.00 copayment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit copayment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

~~((B))~~ **(ii) Example 22.** Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace \$1,000 a month for each employee covered by Plan B. Enrolled employees must pay \$300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a \$200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a \$250 annual deductible.

Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a \$200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a \$250 annual deductible and 20% co-insurance obligation.

~~((C))~~ **(iii) Example 23.** On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax ~~((adjustments))~~ preferences available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had fifty employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is offering employees two managed care plans. Mosaic Aerospace may report each managed care plan separately or may consolidate the detail required in ~~((e))~~ **(b)** through ~~((e))~~ **(d)** of this subsection for this type of medical care plan by using ranges to report the information.

~~((H))~~ **(iv) Example 24.** Aero Turbines employs one hundred employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits \$500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services. The high deductible medical care plan has an annual deductible of \$2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The per-

centage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of \$500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of \$2,000 and employees have 25% co-insurance obligation.

(14) What are employer-provided retirement benefits? For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. 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 extending to the termination of employment or beyond. Retirement plans include 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. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

(15) How are employer-provided retirement benefits detailed in the annual report? The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax ~~((adjustment))~~ preference is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

(a) Detail by SOC major group. For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

~~((b) Examples.)~~

(i) Example 25. Lincoln Airplane has one hundred employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligible to participate in a

401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) **Example 26.** Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

((e)) (b) **Detail by retirement plan.** The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site, or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

((d) **Examples.**

((i)) (A) **Example 27.** General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs one hundred employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of \$10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General

Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

((A)) (I) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a 401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.

((B)) (II) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

((C)) (III) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of \$10,000 or 7% of an employee's annual compensation.

((D)) (IV) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.

((i)) (B) **Example 28.** Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs two hundred employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, seventy-five have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

((A)) (I) Washington Alloys ~~((e))~~ may report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys ~~((e))~~ may report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.

((B)) (II) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to

participate. Of the employment positions eligible to participate, 66.6% are enrolled.

~~((H))~~ (III) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in 401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

(16) Additional reporting for aluminum smelters and electrolytic processing businesses. For an aluminum smelter or electrolytic processing business, the annual report must indicate the quantity of product produced in this state during the time period covered by the report.

(17) Are annual reports confidential? Except for the additional information that the department may request which it deems necessary to measure the results of, or to determine eligibility for the tax preference, annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(18) What are the consequences for failing to file a complete annual report?

~~(a) ((If a person claims a tax adjustment that requires an annual report under this rule but fails to submit a complete report by the due date or any extension under RCW 82.32.590 the amount of the tax adjustment claimed for the previous calendar year becomes immediately due and payable. Interest, but not penalties, will be assessed on these amounts due. 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 preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid.~~

~~(b))~~ **What is a "complete annual report((:))"?** An annual report is complete if:

(i) The annual report 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 report questions required by this rule.

~~((The answer))~~ Responses such as "varied," "various," or "please contact for information" ((is not a)) are not considered good faith responses to a question.

~~((e))~~ (b) **Amounts due for late filing.** Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this rule, but fails to submit a complete report by the due dates described in subsection (3)(e) of this section, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:

(i) For reports due prior to July 1, 2017, one hundred percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.

(ii) For reports due on or after July 1, 2017:

(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(B) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection

tion for failure to timely submit a report for the same tax preference.

(c) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)(ii) of this subsection.

(d) **Extension for circumstances beyond the control of the taxpayer.** If the department finds ~~((that))~~ the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the report. 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 under RCW 82.32.590.

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

~~((d))~~ (c) **One-time only extension.** A taxpayer who fails to file an annual report, as required under this rule, by the due date of the report 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) ~~((A))~~ The extension is for ninety days from the original due date of the annual report.

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

AMENDATORY SECTION (Amending WSR 16-12-072, filed 5/27/16, effective 6/27/16)

WAC 458-20-268 Annual surveys for certain tax preferences. (1) **Introduction.** Taxpayers taking certain tax preferences must file an annual survey with the department of revenue (department) providing information about their business ~~((activities and employment))~~. This rule ~~((defines what a tax preference is and))~~ explains ~~((how to determine if a survey must be filed,))~~ how to file a survey, ~~((and what))~~ the information that must be included in the survey~~((RCW 82.32.585))~~, due dates for filing, and other filing requirements.

(a) **Definitions.** For ~~((the))~~ purposes 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.))~~ **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) 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-);~~ and

(B) Includes only the tax preferences requiring a survey under RCW 82.32.585.

(b) **Annual reports.** Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual report requirements (~~(for certain tax incentive programs see)~~), refer to RCW 82.32.534 and WAC 458-20-267.

(c) **Examples.** This rule (~~(contains)~~) includes examples that identify a (~~(number)~~) set of facts and then state a conclusion. These examples should only be used (~~(only)~~) as a general guide. The (~~(tax results of other situations must be determined after a review of all of the)~~) department will evaluate each case on its particular facts and circumstances.

(2) **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(9))~~) 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)~~) their department "My Account(~~(. " To file and submit electronically, go to the department's web site at dor.wa.gov/TaxIncentiveReporting))" at dor.wa.gov.~~

(b) **Required paper form.** If the department waives the electronic filing requirement for a person that shows good cause, that person must use the annual survey form 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)~~) Persons 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 annual survey form from the department's web site at dor.wa.gov. It may also be obtained (~~(from the department's district offices, by telephoning)~~) by calling the telephone information center (~~((800-647-7706(9))~~), or by contacting the department at:

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

(d) (~~(Surveys are due by April 30th. RCW 82.32.585 requires recipients of sales tax deferrals, or lessees required to file the annual survey, to file the survey every year, by~~

April 30th for eight years following the year in which the project is operationally complete.

~~(e))~~ **Special requirement for persons who did not file an annual survey during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the survey must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the survey.

(e) **Due date of annual survey.** Every person claiming a tax preference that requires a survey under RCW 82.32.585 must file the survey annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the survey is as follows:

(i) April 30th for surveys due prior to 2017.

(ii) May 31st for surveys due in or after 2017.

(iii) If the tax preference is a deferral of tax, the first survey must be filed by April 30th (if prior to 2017) or by May 31st (if in or after 2017) of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete. Thereafter, a survey must also be filed for each of the seven succeeding calendar years by April 30th (if prior to 2017) or by May 31st (if in or after 2017).

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

~~((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.

(g) **Examples.**

(i) **Example 1.** Advanced Computing, Inc. qualified for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2014. Advanced Computing filed an annual survey in March 2014 for credit claimed under RCW 82.04.4452 in 2013. Advanced Computing must electronically file an annual survey with the department by April 30, 2015, for credits taken in calendar year 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 investment project was operationally complete in 2012. Biotechnology filed an annual survey on April 30, 2013, for the sales and use tax deferral under chapter 82.63 RCW. Surveys are due from Biotechnology by April 30th each year through 2016 and by May 31st beginning in 2017 and each (~~(following)~~) subsequent year, with its last survey due (~~(April 30, 2020))~~ May 31, 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.

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. To pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials \$5,000 less in rent each year. Advanced Materials is a first-time filer of annual surveys. Advanced Materials must file its annual survey with the department covering the 2014 calendar year by April 30, 2015. Surveys are due from Advanced Materials by April 30th for 2016 and by May 31st for each ~~((following))~~ subsequent year, with its last survey due ~~((April 30, 2022))~~ May 31, 2022.

~~((iv))~~ (j) **Example 4.** Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in 2015. Fruit Canning is a first-time filer of annual surveys. Fruit Canning must file an annual survey with the department by April 30, 2016, covering calendar years 2014 and 2015. If Fruit Canning claims the B&O tax exemption during subsequent years, it must file an annual survey for each of those years by ~~((April 30th))~~ May 31st of each ~~((following))~~ subsequent year.

(4) **What information does the annual survey require?** The annual survey 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 state:

(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 preferences.

(i) RCW 82.32.585 requires the department to report to the legislature summary descriptive statistics by category and the effectiveness of certain tax 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))~~ 82.08.025651 and 82.12.025651; 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 and reductions in force. Vacant positions are not included in total employment.

(b) ~~((Examples. Assume these facts for the following examples.))~~ **The following facts apply to the examples in (b)(i) through (iv) of this subsection.** National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield 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.

(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 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 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 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. 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.))~~ **The following facts apply to the examples in (f)(i) through (iv) of this subsection.** Acme Computer, Inc. develops computer software and 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 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.

(ii) **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, 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.))~~ **The following facts apply to the examples in (c)(i) through (vi) of this subsection.** Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices. Worldwide Materials 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 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.~~) **The following facts apply to the examples in (d)(i) through (v) of this subsection.** Medical Resource, Inc. is a pharmaceutical manufacturer 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 also hires a staffing company to furnish seventy-five workers.

(i) **Example 19.** Medical Resource 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 must report two hundred employees as having employer-provided medical benefits, because that is the number of employees enrolled in the health plans it offers.

(ii) **Example 20.** Medical Resource 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 must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) **Example 21.** Medical Resource 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. Medical Resource employment 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 must report two hundred and fifty employment positions as having dental benefits, because that is the number of employees enrolled in this dental plan.

(iv) **Example 22.** Medical Resource offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource 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 must report two hundred employment positions as having employer-provided retirement benefits, because that is the number of employees enrolled in the 401(k) Plan.

(v) **Example 23.** Medical Resource 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 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'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 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 (c) of this subsection.

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to timely file a complete annual survey, 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 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 preference is less than ten thousand dollars.** If the tax preference is less than ten thousand dollars during the period covered by the annual survey, the taxpayer may request that the department treat the amount of the tax preference as confidential under RCW 82.32.330.

(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 considered good faith responses to a question.

~~(b) **(When annual survey is not submitted timely.** If a person claims a tax 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 preference claimed for the previous calendar year becomes immediately due. If the tax 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 at the rate for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid.~~

~~(e)) **Amounts due for late filing.** Unless the tax preference is a deferral of tax, as described in (c) of this subsection, or as otherwise provided by law, if a person claims a tax preference that requires an annual survey under this rule, but fails to submit a complete survey by the due dates described in subsection (3)(e) of this rule, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:~~

~~(i) For surveys due prior to July 1, 2017, one hundred percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.~~

~~(ii) For surveys due on or after July 1, 2017:~~

~~(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and~~

~~(B) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection for failure to timely submit a survey for the same tax preference.~~

~~(c) **Tax deferrals.** If the tax preference is a deferral of tax, twelve and one-half percent of the deferred tax is imme-~~

~~diately 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.~~

~~(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)(ii) and (c) of this subsection.~~

~~(e) **Extension for circumstances beyond the control of the taxpayer.** If the department finds 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((-)) under 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.

~~((+)) (f) **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 17-09-087

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed April 19, 2017, 10:43 a.m., effective May 20, 2017]

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

Purpose: WAC 458-20-193 (Rule 193) Interstate sales of tangible personal property, explains the application of the business and occupation (B&O) tax, and retail sales and use tax to interstate sales of tangible personal property. The department is amending Rule 193 to incorporate language from SHB 2938, 2016 regular session (chapter 137, Laws of 2016). This legislation prohibits the department of revenue, for purposes of B&O tax, and retail sales and use tax, from making a determination of nexus based solely on the attendance of one or more representatives of a business at a single trade convention per year in this state.

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 17-05-094 on February 14, 2017.

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: April 19, 2017.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-12-083, filed 5/31/16, effective 7/1/16)

WAC 458-20-193 Interstate sales of tangible personal property. (1) **Introduction.** 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.

(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.

(b) This rule 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 all situations must be determined after a review of all the facts and circumstances.

(c) **Use tax.** This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington 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. For information on payment or collection responsibilities for use tax see WAC 458-20-178 and 458-20-221.

(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) and (b) of this ~~((rule))~~ subsection, the nexus standard described here is used to determine whether a person who sells tangible personal property has nexus with Washington for B&O and retail sales tax purposes.

(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) **Trade conventions.** For the nexus standard described in this Part I, commonly referred to as the physical presence nexus standard, the department may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per calendar year in Washington state in determining if such person is physically present in this state for the purposes of establishing substantial nexus with this state. This does not apply to persons making retail sales at a trade convention in this state, including persons taking orders for products or services where receipt will occur at a later time in Washington state. RCW 82.32.531.

Definitions. The following definitions apply only to (b) of this subsection:

(i) "Not marketed to the general public" means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

(ii) "Physically present in this state" and "substantial nexus with this state" have the same meaning as provided in RCW 82.04.067.

(iii) "Trade convention" means an exhibition for a specific industry or profession, which is not marketed to the general public, for the purposes of:

(A) Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or

(B) The exchange of information, ideas, and attitudes in regards to that industry or profession.

(c) **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) and (b) 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;
- (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)(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)))~~), except as described in subsection (101)(b) of this rule;

(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 that makes retail sales of tangible personal property and has nexus with Washington is subject to B&O tax on that person's retail 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.**

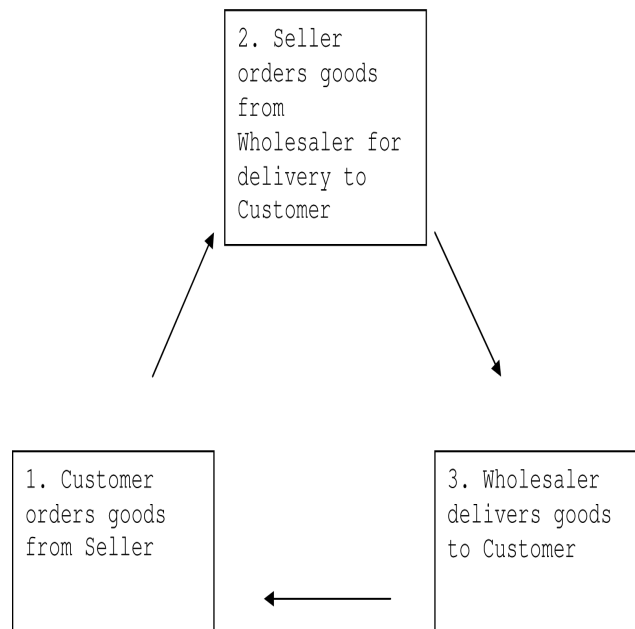
(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

(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 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.

(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 17-09-089

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed April 19, 2017, 10:51 a.m., effective May 20, 2017]

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

Purpose: The department is adopting new WAC 458-20-265 Sales and use tax exemption—Airplane maintenance repair stations, this rule explains the retail sales and use tax exemptions, as described in RCW 82.08.025661 and 82.12.025661, for the construction of airplane maintenance repair stations operated by an eligible maintenance repair operator.

This rule incorporates language from 2SHB 2839, 2016 regular session (chapter 191, Laws of 2016) and explains the exemption qualifications, including how to apply for the exemption and when remittances are provided for sales or use tax paid on prior eligible purchases.

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

Adopted under notice filed as WSR 17-05-063 on February 13, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 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 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 19, 2017.

Kevin Dixon
Rules Coordinator

NEW SECTION

WAC 458-20-265 Sales and use tax exemption—Airplane maintenance repair stations. (1)(a) **Introduction.**

This rule explains the retail sales and use tax exemption, as described in RCW 82.08.025661 and 82.12.025661, for the construction of airplane maintenance repair stations operated by an eligible maintenance repair operator.

(b) **Other rules that may apply.** Readers may also want to refer to additional rules for further information, including the following:

(i) WAC 458-20-229 Refunds.

(ii) WAC 458-20-267 Annual reports for certain tax preferences.

(iii) WAC 458-20-268 Annual surveys for certain tax preferences.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Airplane maintenance repair station"** has the same meaning as "repair station" adopted by the National Air Transportation Association and is a maintenance facility that has a certificate issued by the Federal Aviation Administration under Title 14 of the Code of Federal Regulations (14 C.F.R.) Part 145 that is engaged in the maintenance, preventive maintenance, inspection, alteration of airplanes, and alteration of airplane products.

(b) **"Commercial airplane,"** as defined in RCW 82.32.550(1), is an airplane certified by the Federal Aviation Administration for transporting persons or property, and any military derivative of such an airplane.

(c) **"Component,"** as defined in RCW 82.32.550(2), means a part or system certified by the Federal Aviation Administration for installation or assembly into a commercial airplane.

(d) **"Eligible maintenance repair operator"** means a person classified by the Federal Aviation Administration as qualified to operate a Federal Aviation Regulation Part 145 certified repair station that is located in an international airport owned by a county with a population greater than one million five hundred thousand.

(e) **"Operationally complete"** means constructed to the point of being functionally capable of hosting the repair and maintenance of airplanes.

(3) Retail sales or use tax exemption.

(a) Subject to the requirements of RCW 82.08.025661 and this rule, state and local retail sales and use taxes do not apply to the items and services as described in (b) of this subsection that are charged or sold to, or purchased or used by:

(i) An eligible maintenance repair operator engaged in the maintenance of airplanes; or

(ii) A port district, political subdivision, or municipal corporation, if the new airplane maintenance repair station is to be leased to an eligible maintenance repair operator engaged in the maintenance of airplanes.

(b) The exempt items and services include:

(i) Labor and services to construct a new airplane maintenance repair station;

(ii) Tangible personal property that will be incorporated as an ingredient or component during the course of constructing the new airplane maintenance repair station; and

(iii) Labor and services to install, during the course of constructing the new airplane maintenance repair station, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565.

(c) To qualify for the exemption described in this rule, the port district, political subdivision, or municipal corporation must have first entered into an agreement with an eligible maintenance repair operator to build the new facility, prior to starting construction of the new facility.

(4) Remittance application. The exemption described in this rule is a remittance.

(a) A business claiming the state and local retail sales or use tax exemption must first pay all applicable state and local retail sales or use taxes on all purchases qualifying for the exemption under subsection (3)(b) of this rule.

(b) The business may then file a quarterly remittance application with the department for the previously paid retail sales or use tax that is determined by the department to qualify for the exemption. The remittance form may be sent electronically to the department or to the mailing address found in (b)(ii) of this subsection.

(i) The remittance application must specify and separately identify the amount of the exempted state and local retail sales and use taxes claimed and the qualifying purchases or acquisitions for which the exemption is claimed, along with any supporting documents required by the department. Refer to the department's web site at dor.wa.gov for documentation requirements.

(ii) The application for remittance is titled "Application for Refund or Credit" and is available on the department's

web site at dor.wa.gov. You may also contact the telephone information center at 800-647-7706 or write to the following address:

Attn: New Construction for FAR Part 145
Repair Station Refunds
Taxpayer Account Administration Division
Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476

(c) Local retail sales and use taxes that qualify for this exemption are eligible for remittance beginning on the exemption's effective date of July 1, 2016.

(d) State retail sales and use taxes that qualify for this exemption are eligible for remittance the later of either:

(i) The date on which the airplane maintenance and repair station has been operationally complete for four years; or

(ii) December 1, 2021.

(e) The business must provide written notice to the department when the maintenance and repair station is operationally complete as defined in subsection (2)(e) of this rule. The notice should be sent electronically to the department or to the mailing address found in (b)(ii) of this subsection.

(f) The state and local retail sales and use taxes described in this rule are not eligible for remittance on purchases of items or services under subsection (3)(b) of this rule that occur on or after the exemption's expiration date of January 1, 2027.

(5) Department must determine eligibility.

(a) The department must determine eligibility for the exemption based on information provided by the business and through audit and other administrative records.

(b) The business must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this rule, construction invoices and documents including, but not limited to, invoices, proof of tax paid, and documents describing the location and size of new structures.

(c) By the end of the calendar quarter that follows the quarter in which the refund application was submitted, the department will remit qualified exempted amounts to a qualifying business, in accordance with subsection (4)(c) and (d) of this rule, for local and state retail sales and use taxes.

(d) The department may not remit the state portion of the retail sales and use taxes paid if the business did not report at least one hundred average employment positions to the employment security department for September 1, 2020, through September 1, 2021, with an average annualized wage of eighty thousand dollars. The business must provide the department with the unemployment insurance number provided to the employment security department for verification of employment levels.

If a new airplane maintenance repair station owned by a port district, political subdivision, or municipal corporation is leased to an eligible maintenance repair operator engaged in the maintenance of airplanes, only the business lessee, and not the lessor, must meet the employment requirement described in (d) of this subsection.

(6) **Annual report and annual survey required.** An eligible maintenance repair operator receiving a remittance under this rule must electronically file with the department an annual report under RCW 82.32.534 and an annual survey under RCW 82.32.585. For more information about filing an annual report or survey, visit the department's web site at dor.wa.gov or contact the telephone information center at 800-647-7706.