

**WSR 10-04-022**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**  
[Filed January 26, 2010, 11:12 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-104 Small business tax relief based on income of business, explains the small business B&O tax credit and WAC 458-61A-202 Inheritance or devise, applies to transfers of real property by inheritance or devise which are not subject to the real estate excise tax.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Marilou Rickert, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail MarilouR@dor.wa.gov, AND RECEIVED BY April 5, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are being amended for the sole purpose of implementing E2SB 5688 (chapter 521, Laws of 2009). E2SB 5688 requires agencies to "amend their rules to reflect the intent of the legislature to ensure that all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because that individual is or was a spouse in a marital relationship are granted or imposed on equivalent terms to an individual because that individual is or was in a state registered domestic partnership."

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: To implement E2SB 5688 (chapter 521, Laws of 2009).

Statutory Authority for Adoption: E2SB 5688 (chapter 521, Laws of 2009).

Statute Being Implemented: E2SB 5688 (chapter 521, Laws of 2009).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

January 26, 2010  
Alan R. Lynn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 04-14-052, filed 6/30/04, effective 7/31/04)

**WAC 458-20-104 Small business tax relief based on income of business.** (1) **Introduction.** This rule explains the business and occupation (B&O) tax credit for small businesses provided by RCW 82.04.4451. This credit is commonly referred to as the small business B&O tax credit or small business credit (SBC). The amount of small business B&O tax credit available on a tax return can increase or decrease, depending on the reporting frequency of the account and the net B&O tax liability for that return. This rule also explains the public utility tax income exemption provided by RCW 82.16.040. The public utility tax exemption is a fixed amount, or threshold, based on the reporting frequency assigned to the account. Readers should refer to WAC 458-20-22801 (Tax reporting frequency—Forms) for an explanation of how the department of revenue (department) assigns a particular reporting frequency to each account. Readers may also want to refer to WAC 458-20-101 for an explanation of Washington's tax registration and tax reporting requirements.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the income exemption for the public utility tax or small business B&O tax credit. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **The public utility tax income exemption.** Persons subject to public utility tax (PUT) are exempt from payment of this tax for any reporting period in which the gross taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the maximum exemption for the assigned reporting period. The public utility tax exemption amounts are:

|  |                     |
|--|---------------------|
| for taxpayers reporting monthly.....   | \$2,000 per month   |
| for taxpayers reporting quarterly..... | \$6,000 per quarter |
| for taxpayers reporting annually ..... | \$24,000 per annum  |

(a) **What if the taxable income equals or exceeds the maximum exemption?** If the taxable income for a reporting period equals or exceeds the maximum exemption, tax must be remitted on the full taxable amount.

(b) **How does the exemption apply if a business does not operate for the entire tax reporting period?** The public utility tax maximum exemptions apply to the entire tax reporting period, even though the business may not have operated during the entire period.

(c) **Do taxable amounts for B&O tax or other taxes affect this exemption?** The public utility tax exemption is not affected by taxable amounts reported in the B&O tax section or any of the other tax sections of the tax return.

(d) **Example.** Taxpayer registers with the department and is assigned a quarterly tax reporting frequency. Taxpayer begins business activities on February 1st. During the two months of the first quarter that the taxpayer is in business,

taxpayer's public utility gross income is seven thousand dollars. After deductions provided by chapter 82.16 RCW (Public utility tax) are computed, the total taxable amount is five thousand dollars. In this case, the taxpayer does not owe any public utility tax because the taxable amount of five thousand dollars is less than the six thousand dollar exemption threshold for quarterly taxpayers. The fact that the taxpayer was in business during only two months out of the three months in the quarter has no effect on the threshold amount. However, if there were no deductions available to the taxpayer, the taxable amount would have been seven thousand dollars. The public utility tax would then have been due on the full taxable amount of seven thousand dollars.

(3) **The small business B&O tax credit.** Persons subject to the B&O tax may be eligible to claim a small business B&O tax credit against the amount of B&O tax otherwise due. The small business B&O tax credit operates completely independent of the public utility tax exemption described above in subsection (2) of this rule. RCW 82.04.4451 authorizes the department to create a tax credit table for use by all taxpayers when determining the amount of their small business B&O tax credit. Taxpayers must use the tax credit table to determine the appropriate amount of their small business B&O tax credit. A tax credit table for each of the monthly, quarterly, and annual reporting frequencies is provided in subsection (7) of this rule. The statute provides that taxpayers who use the tables will not owe any more tax than if they used the statutory credit formula to determine the amount of the credit.

(a) **How is the credit applied if a business does not operate during the entire tax reporting period?** The small business B&O tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

(b) **Can a husband and wife or partners in a state registered domestic partnership both take the credit?** Spouses or state registered domestic partners operating dis-

tinct and separate businesses are each eligible for the small business B&O tax credit. For both spouses or both domestic partners to qualify, each must have a separate tax reporting number and file ((their)) his or her own business tax returns.

**(c) How do I determine the amount of the credit?**

Taxpayers eligible for the small business B&O tax credit must follow the steps outlined in subsection (5) of this rule to determine the amount of credit available. Taxpayers who have other B&O tax credits to apply on a tax return, in addition to the small business B&O tax credit, may use the multiple B&O tax credit worksheet in subsection (4) of this rule before determining the amount of small business B&O tax credit available. Subsection (7) of this rule contains the tax credit tables that correspond with the monthly, quarterly, and annual reporting frequencies.

**(d) Can I carryover the small business B&O tax credit to future tax reporting periods?** Use of the small business B&O tax credit may not result in a B&O tax liability of less than zero, and thus there will be no unused credit.

**(e) Do I have to report and pay retail sales tax even if I do not owe any B&O tax?** Persons making retail sales must collect and pay all applicable retail sales taxes even if B&O tax is not due. There is no comparable retail sales tax exemption.

**(4) Multiple business and occupation tax credit worksheet.** The small business B&O tax credit should be computed after claiming any other B&O tax credits available under Title 82 RCW (Excise taxes). Examples of other B&O tax credits to be taken before computing the small business B&O tax credit include the multiple activities tax credit, high technology credit, commute trip reduction credit, pollution control credit, and cogeneration fee credit. The following multiple B&O tax credit worksheet describes the process taxpayers must follow to apply credits in the appropriate order. Refer to subsection (6) of this rule for an example illustrating the use of the multiple B&O tax credit worksheet.

MULTIPLE B&O TAX CREDIT WORKSHEET

1. Determine the total Business and Occupation (B&O) tax due from the B&O section of your excise tax return. \$\_\_\_\_\_
  
2. Add together the credit amounts taken for:
 

|   |         |         |
|---|---------|---------|
| Multiple Activities Tax Credit<br>from Schedule C (if applicable).                            | \$_____ |         |
| (Add any other B&O tax credits from Title 82 RCW that will be applied to this return period.) | +       | \$_____ |
| Total (Enter 0 if none of these credits are being taken.)                                     |         | \$_____ |
  
3. Subtract line 2 from line 1. This is the total B&O tax allowable for the Small Business Credit. \$\_\_\_\_\_
  
4. Find the tax credit table which matches the reporting frequency assigned to the account, then find the total B&O tax due amount which includes your figure from item 3, above.
  
5. Read across to the next column. This is the amount of the Small Business Credit to be used on the excise tax return. \$\_\_\_\_\_

**(5) Using the tax credit table to determine your small business B&O tax credit.** The following steps explain how to use the small business B&O tax credit table:

(a) **Step one.** Determine the total B&O tax amount due from the excise tax return. This amount will normally be the total of the tax amounts due calculated for each classification in the B&O tax section of the excise tax return. However, if additional B&O tax credits will be taken on the return, refer to subsection (4) of this rule and the multiple B&O tax credit worksheet before going to step two.

(b) **Step two.** Find the small business B&O tax credit table that matches the assigned reporting frequency (i.e., the monthly table shown in subsection (7)(b) of this rule, the quarterly table in subsection (7)(c) of this rule, or the annual table in subsection (7)(d) of this rule).

(c) **Step three.** Find the "If Your Total Business and Occupation Tax is" column of the tax credit table and come down the column until you find the range of amounts which includes the total B&O tax due figure obtained from the excise tax return or multiple B&O tax credit worksheet.

(d) **Step four.** Read across to the "Your Small Business Credit is" column. The figure shown is the amount of the small business B&O tax credit that can be claimed on the "Small Business B&O Tax Credit" line in the "Credits" section of the excise tax return.

(6) **Example.** ABC reports quarterly. This quarter, ABC reports one hundred ninety dollars under the wholesaling classification and seventy dollars under the manufacturing classification for a total B&O tax liability of two hundred sixty dollars. ABC completes Schedule C, and determines it is entitled to a multiple activities tax credit (MATC) of seventy dollars. Using the multiple B&O tax credit worksheet, ABC enters two hundred sixty dollars on line one, enters seventy dollars on line two, and enters one hundred ninety dollars on line three (line two subtracted from line one). Line three, one hundred ninety dollars is the total B&O tax. ABC will use this amount to determine whether it is eligible for a small business B&O tax credit.

(7) **Tax credit tables.** Corresponding tax credit tables for the monthly, quarterly, and annual reporting frequencies appear below. Taxpayers must use the tax credit table that corresponds to their assigned reporting frequency to determine the correct amount of small business B&O tax credit available.

(a) **Example illustrating the use of the small business B&O tax credit tables.** The facts are the same as in the previous example in subsection (6) of this rule. After completing the multiple B&O tax credit worksheet, ABC has one hundred ninety dollars of B&O tax liability left for potential application of the small business B&O tax credit. ABC refers to the quarterly small business B&O tax credit table, which is located below in subsection (7)(c) of this rule, and finds the "If Your Total Business and Occupation Tax is" column. Following down that column, ABC finds the tax range of one hundred eighty six to one hundred ninety one dollars and comes over to the "Your Small Business Credit is" column, which shows that a credit in the amount of twenty-five dollars is available. Before calculating the total amount due for the tax return, ABC enters its small business B&O tax credit of twenty-five dollars in the "Credits" section.

(b) **Monthly filers.** Persons assigned a monthly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

| If Your Total Business and Occupation Tax is: |               | Your Small Business Credit is:                |
|---|---------------|---|
| At Least                                      | But Less Than |   |
| \$0   | \$36          | The Amount of Business and Occupation Tax Due |
| \$36  | \$41          | \$35  |
| \$41  | \$46          | \$30  |
| \$46  | \$51          | \$25  |
| \$51  | \$56          | \$20  |
| \$56  | \$61          | \$15  |
| \$61  | \$66          | \$10  |
| \$66  | \$71          | \$5   |
| \$71  | or more       | \$0   |

(c) **Quarterly filers.** Persons assigned a quarterly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

| If Your Total Business and Occupation Tax is: |               | Your Small Business Credit is:                |
|---|---------------|---|
| At least                                      | But Less Than |   |
| \$0   | \$106         | The Amount of Business and Occupation Tax Due |
| \$106   | \$111         | \$105   |
| \$111   | \$116         | \$100   |
| \$116   | \$121         | \$95  |
| \$121   | \$126         | \$90  |
| \$126   | \$131         | \$85  |
| \$131   | \$136         | \$80  |
| \$136   | \$141         | \$75  |
| \$141   | \$146         | \$70  |
| \$146   | \$151         | \$65  |
| \$151   | \$156         | \$60  |
| \$156   | \$161         | \$55  |
| \$161   | \$166         | \$50  |
| \$166   | \$171         | \$45  |
| \$171   | \$176         | \$40  |
| \$176   | \$181         | \$35  |
| \$181   | \$186         | \$30  |
| \$186   | \$191         | \$25  |
| \$191   | \$196         | \$20  |
| \$196   | \$201         | \$15  |
| \$201   | \$206         | \$10  |
| \$206   | \$211         | \$5   |
| \$211   | or more       | \$0   |

(d) **Annual filers.** Persons assigned an annual reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

| <b>If Your Total Business and Occupation Tax is:</b> |                      | <b>Your Small Business Credit is:</b>         |
|--|----------------------|---|
| <b>At Least</b>                                      | <b>But Less Than</b> | The Amount of Business and Occupation Tax Due |
| \$0  | \$421                | \$420   |
| \$421  | \$426                | \$415   |
| \$426  | \$431                | \$410   |
| \$431  | \$436                | \$405   |
| \$436  | \$441                | \$400   |
| \$441  | \$446                | \$395   |
| \$446  | \$451                | \$390   |
| \$451  | \$456                | \$385   |
| \$456  | \$461                | \$380   |
| \$461  | \$466                | \$375   |
| \$466  | \$471                | \$370   |
| \$471  | \$476                | \$365   |
| \$476  | \$481                | \$360   |
| \$481  | \$486                | \$355   |
| \$486  | \$491                | \$350   |
| \$491  | \$496                | \$345   |
| \$496  | \$501                | \$340   |
| \$501  | \$506                | \$335   |
| \$506  | \$511                | \$330   |
| \$511  | \$516                | \$325   |
| \$516  | \$521                | \$320   |
| \$521  | \$526                | \$315   |
| \$526  | \$531                | \$310   |
| \$531  | \$536                | \$305   |
| \$536  | \$541                | \$300   |
| \$541  | \$546                | \$295   |
| \$546  | \$551                | \$290   |
| \$551  | \$556                | \$285   |
| \$556  | \$561                | \$280   |
| \$561  | \$566                | \$275   |
| \$566  | \$571                | \$270   |
| \$571  | \$576                | \$265   |
| \$576  | \$581                | \$260   |
| \$581  | \$586                | \$255   |
| \$586  | \$591                | \$250   |
| \$591  | \$596                | \$245   |
| \$596  | \$601                | \$240   |
| \$601  | \$606                | \$235   |
| \$606  | \$611                | \$230   |
| \$611  | \$616                |   |

| <b>If Your Total Business and Occupation Tax is:</b> | <b>Your Small Business Credit is:</b> |
|--|---------------------------------------|
| <b>At Least</b>                                      | <b>But Less Than</b>                  |
| \$616  | \$621                                 |
| \$621  | \$626                                 |
| \$626  | \$631                                 |
| \$631  | \$636                                 |
| \$636  | \$641                                 |
| \$641  | \$646                                 |
| \$646  | \$651                                 |
| \$651  | \$656                                 |
| \$656  | \$661                                 |
| \$661  | \$666                                 |
| \$666  | \$671                                 |
| \$671  | \$676                                 |
| \$676  | \$681                                 |
| \$681  | \$686                                 |
| \$686  | \$691                                 |
| \$691  | \$696                                 |
| \$696  | \$701                                 |
| \$701  | \$706                                 |
| \$706  | \$711                                 |
| \$711  | \$716                                 |
| \$716  | \$721                                 |
| \$721  | \$726                                 |
| \$726  | \$731                                 |
| \$731  | \$736                                 |
| \$736  | \$741                                 |
| \$741  | \$746                                 |
| \$746  | \$751                                 |
| \$751  | \$756                                 |
| \$756  | \$761                                 |
| \$761  | \$766                                 |
| \$766  | \$771                                 |
| \$771  | \$776                                 |
| \$776  | \$781                                 |
| \$781  | \$786                                 |
| \$786  | \$791                                 |
| \$791  | \$796                                 |
| \$796  | \$801                                 |
| \$801  | \$806                                 |
| \$806  | \$811                                 |
| \$811  | \$816                                 |
| \$816  | \$821                                 |
| \$821  | \$826                                 |
| \$826  | \$831                                 |
| \$831  | \$836                                 |

| If Your Total Business and Occupation Tax is: | Your Small Business Credit is: |
|---|--------------------------------|
| At Least                                      | But Less Than                  |
| \$836   | \$841                          |
| \$841   | or more                        |
|   | \$5                            |
|   | \$0                            |

**AMENDATORY SECTION** (Amending WSR 08-24-095, filed 12/2/08, effective 1/2/09)

**WAC 458-61A-202 Inheritance or devise.** (1) **Introduction.** Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse or surviv-

ing domestic partner in accordance with a community property agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The conveyance of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, retaining a life estate for themselves. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, retaining a life estate for themselves, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a testamentary trust without probate, a certified copy of the death certificate, and a copy of the trust agreement showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator;

(d) **Joint tenants and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Court order.** If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order.

(f) **Other.** If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir of the property.

**WSR 10-04-030**  
**EXPEDITED RULES**  
**PUGET SOUND PARTNERSHIP**

[Filed January 26, 2010, 8:27 p.m.]

Title of Rule and Other Identifying Information: Chapters 400-04, 400-06, and 400-12 WAC.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL

ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Thuch Mam, Puget Sound Partnership, P.O. Box 40900, Olympia, WA 98504-0900, AND RECEIVED BY April 6, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed changes is to update the portion of chapters 400-04 and 400-06 WAC that still refer to the Puget Sound water quality authority by name and description. The Puget Sound partnership, per chapter 90.71 RCW, has replaced the "authority." In addition to a change in the title of the agency, the acting director has changed from being called a "chair" to the "director." The changes made reflect this difference in terminology. The sections of chapter 400-06 WAC on communications and public records that referred to the Puget Sound water quality authority past procedures and operations were eliminated because there is no longer any statutory authority to support those portions of the rule. No replacement was created because the procedures and the operations of the partnership are clearly laid out in chapter 90.71 RCW. The only substantive change to this section is to add the possibility of the partnership accommodating e-mail and fax requests for public record, as well as a change in the amount charged for that information from "twenty-five cents per page" to "the amount necessary to cover reasonable costs." Finally, chapter 400-12 WAC, Local planning and management of nonpoint source pollution, will be completely repealed. This section no longer has any statutory authority and is not being implemented or enforced by the partnership or the department of ecology.

Statutory Authority for Adoption: Chapter 90.71 RCW.

Statute Being Implemented: Chapter 90.71 RCW.

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

Name of Proponent: Puget Sound partnership, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Townsend, P.O. Box 40900, Olympia, WA 98504-0900, (360) 725-5444; Implementation and Enforcement: David Dicks, P.O. Box 40900, Olympia, WA 98504-0900, (360) 725-5444.

January 26, 2010  
Caitlin B. Imaki  
Summer Intern

## Chapter 400-04 WAC

### PUGET SOUND ((WATER QUALITY AUTHORITY)) PARTNERSHIP—STATE ENVIRONMENTAL POLICY ACT PROCEDURES

AMENDATORY SECTION (Amending Order 86-01, Resolution No. 4, filed 2/3/86)

**WAC 400-04-010 Authority.** The Puget Sound ((water quality authority)) partnership adopts these procedures under the State Environmental Policy Act (SEPA), RCW 43.21C-120 and the SEPA rules, WAC 197-11-904.

AMENDATORY SECTION (Amending Order 86-01, Resolution No. 4, filed 2/3/86)

**WAC 400-04-020 Adoption by reference.** The ((authority)) partnership hereby adopts by reference the following sections of the 1984 SEPA rules, chapter 197-11 of the Washington Administrative Code.

#### PART ONE - PURPOSE/AUTHORITY

197-11-030 Policy.

#### PART TWO - GENERAL REQUIREMENTS

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.

#### PART THREE - CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATION

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.

#### PART FOUR - ENVIRONMENTAL IMPACT STATEMENT (EIS)

- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.

|            |   |            |   |
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| 197-11-406 | EIS timing.   | 197-11-708 | Adoption.                               |
| 197-11-408 | Scoping.  | 197-11-710 | Affected tribe.                         |
| 197-11-410 | Expanded scoping. (Optional)                            | 197-11-712 | Affecting.                              |
| 197-11-420 | EIS preparation.  | 197-11-714 | Agency.                                 |
| 197-11-425 | Style and size.   | 197-11-716 | Applicant.                              |
| 197-11-430 | Format.   | 197-11-718 | Built environment.                      |
| 197-11-435 | Cover letter or memo.                                   | 197-11-720 | Categorical exemption.                  |
| 197-11-440 | EIS contents.   | 197-11-722 | Consolidated appeal.                    |
| 197-11-442 | Contents of EIS on nonproject proposals.                | 197-11-724 | Consulted agency.                       |
| 197-11-443 | EIS contents when prior nonproject EIS.                 | 197-11-726 | Cost-benefit analysis.                  |
| 197-11-444 | Elements of the environment.                            | 197-11-728 | County/city.                            |
| 197-11-448 | Relationship of EIS to other considerations.            | 197-11-730 | Decisionmaker.                          |
| 197-11-450 | Cost-benefit analysis.                                  | 197-11-732 | Department.                             |
| 197-11-455 | Issuance of DEIS.                                       | 197-11-734 | Determination of nonsignificance (DNS). |
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|            | PART FIVE - COMMENTING                                  | 197-11-738 | EIS.                                    |
| 197-11-500 | Purpose of this part.                                   | 197-11-740 | Environment.                            |
| 197-11-502 | Inviting comment.                                       | 197-11-742 | Environmental checklist.                |
| 197-11-504 | Availability and cost of environmental documents.       | 197-11-744 | Environmental document.                 |
| 197-11-508 | SEPA register.  | 197-11-746 | Environmental review.                   |
| 197-11-535 | Public hearings and meetings.                           | 197-11-748 | Environmentally sensitive area.         |
| 197-11-545 | Effect of no comment.                                   | 197-11-750 | Expanded scoping.                       |
| 197-11-550 | Specificity of comments.                                | 197-11-752 | Impacts.                                |
| 197-11-560 | FEIS response to comments.                              | 197-11-754 | Incorporation by reference.             |
| 197-11-570 | Consulted agency costs to assist lead agency.           | 197-11-756 | Lands covered by water.                 |
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| 197-11-704 | Action.   | 197-11-788 | Responsible official.                   |
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 197-11-912 Procedures on consulted agencies.  
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 197-11-916 Application to ongoing actions.  
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 197-11-938 Lead agencies for specific proposals.  
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AMENDATORY SECTION (Amending WSR 90-17-063, filed 8/15/90, effective 9/15/90)

**WAC 400-04-040 Additional definitions.** ((+)) "Authority" shall mean the agency of the Puget Sound water quality authority consisting of the eleven member authority and/or agency staff.

((2) "Chair" shall mean the chair of the authority as stated in RCW 90.70.011.)) "Director" means the executive director of the partnership as established in RCW 90.71.240.

"Ecosystem coordination board" or "ECB" means the representative group that advises and assists the leadership council as established in RCW 90.71.250.

"Leadership council" means the seven-member group appointed by the governor as established in RCW 90.71.220.

"Partnership" means the agency of the Puget Sound partnership consisting of the seven-member leadership council, an executive director, an ecosystem coordination board, and a Puget Sound science panel and/or agency staff.

"Science panel" means the group that advises and assists the leadership council as established in RCW 90.71.270.

AMENDATORY SECTION (Amending Order 86-01, Resolution No. 4, filed 2/3/86)

**WAC 400-04-504 Availability of environmental documents.** There shall be established at the offices of the ((authority)) partnership a file containing all official ((authority)) partnership SEPA documents. Agencies and the public shall have access to this file.

AMENDATORY SECTION (Amending Order 86-01, Resolution No. 4, filed 2/3/86)

**WAC 400-04-510 Public notice.** When these rules require notice to be given under this section, the ((authority)) partnership shall inform the public and other agencies that an environmental document is being prepared or is available, and public hearing(s), if any, will be held by the following notice procedures:

(1) Publish notice in at least one newspaper of general circulation in each county, city, or general area in which the proposal is located or which the proposal affects;

(2) Notifying the news media via news releases, public service announcements and personal contact; and

(3) Sending notice to the official ((authority)) partnership mailing list. The official ((authority)) partnership list shall be kept on file and be available for inspection by the public. Individual members of the ((authority's)) partnership's advisory bodies shall receive notice.

(4) Any other of the notice procedures listed in WAC 197-11-510, as appropriate.

AMENDATORY SECTION (Amending Order 86-01, Resolution No. 4, filed 2/3/86)

**WAC 400-04-680 Appeals.** There shall be no administrative appeals of ((authority)) partnership SEPA determinations. Any person may informally request, either orally or in writing, the responsible official to reconsider a determination. The official shall reconsider the determination and provide a response, but as this is not a formal appeal as described by RCW 43.21C.075 and WAC 197-11-680, the official is not required to make a record or furnish reasons for the decision. Any informal request to reconsider ((an authority)) a partnership SEPA determination shall be made within thirty days of the determination.

**AMENDATORY SECTION** (Amending Order 86-01, Resolution No. 4, filed 2/3/86)

**WAC 400-04-902 ((Authority)) Partnership SEPA policies.** The ((authority)) partnership adopts by reference the state environmental policy as set forth in SEPA, RCW 43.21C.020. To carry out this policy, the ((authority)) partnership will use all practicable means consistent with other essential considerations of state policy to improve and coordinate plans, functions, and resources, and to mitigate adverse impacts resulting from proposals to the end that the state and its citizens may:

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage;

(5) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(6) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;

(7) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources((;));

(8) Manage public waters and adjacent lands, fisheries, wetlands, and other natural resources wisely)).

**AMENDATORY SECTION** (Amending Order 86-01, Resolution No. 4, filed 2/3/86)

**WAC 400-04-910 Designation of responsible official.** The ((authority's chair)) partnership's director, or the ((chair's)) director's designee, shall serve as the responsible official.

**Chapter 400-06 WAC****((PROCEDURES—OPERATIONS)) COMMUNICATIONS—PUBLIC RECORDS****AMENDATORY SECTION** (Amending Order 86-02, Resolution No. 5, filed 2/3/86)

**WAC 400-06-010 Purpose.** The purpose of this chapter is to describe the ((authority, its procedures and operations,)) partnership's communications to ensure compliance by the ((authority)) partnership with the provisions of chapter ((42.17)) 42.56 RCW ((Initiative 276)), and in particular, to implement sections 25 through 32 of that act,)) dealing with public records.

**AMENDATORY SECTION** (Amending WSR 90-17-063, filed 8/15/90, effective 9/15/90)

**WAC 400-06-020 Definitions.** (1) The terms "((person)) agency," "public record," and "writing" shall have the meaning as stated in RCW ((42.17.020)) 42.56.010.

(2) "((Authority)) Partnership" means the Puget Sound ((water quality authority)) partnership.

(3) "((Chair)) Director" means the ((chair of the authority as stated in RCW 90.70.011)) executive director of the partnership as established in RCW 90.71.240.

(4) "Public records officer" means the ((authority)) partnership staff member so designated by the ((chair)) director.

**AMENDATORY SECTION** (Amending Order 86-02, Resolution No. 5, filed 2/3/86)

**WAC 400-06-090 Public records available.** All public records of the agency, as defined in WAC 400-06-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW ((42.17.340)) 42.56.210.

**AMENDATORY SECTION** (Amending Order 86-02, Resolution No. 5, filed 2/3/86)

**WAC 400-06-110 Requests for public records.** In accordance with requirements of chapter ((42.17)) 42.56 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing (or by fax or electronic mail if desired) upon a form prescribed by the ((authority)) partnership, which shall be available at its office. A request that is made other than upon the form prescribed by the office is permissible, but must provide the information listed in (a) through (e) of this subsection. The form shall be presented to the public records officer; or to any member of the ((authority's)) partnership's staff, if the public records officer is not available, at the office of the agency during customary office hours. The request shall include the following information:

(a) The name, address, telephone numbers, and organization represented, if any, of the person requesting the record;

(b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index; and

(e) If the requested matter is not identifiable by reference to the ((authority's)) partnership's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist

the member of the public in appropriately identifying the public record requested.

**AMENDATORY SECTION** (Amending Order 86-02, Resolution No. 5, filed 2/3/86)

**WAC 400-06-120 Copying.** No fee shall be charged for the inspection of public records. The ((authority)) partnership shall charge a reasonable fee ((of twenty five cents per page of copy for providing copies of public records and for use of the authority's copy equipment. This charge is)) in the amount necessary to reimburse the ((authority)) partnership for its actual costs incident to ((such)) copying, including staff time directly related to copying and mailing.

**AMENDATORY SECTION** (Amending Order 86-02, Resolution No. 5, filed 2/3/86)

**WAC 400-06-130 Exemptions.** (1) The ((authority)) partnership reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 400-06-110 is exempt under ((the)) any provision((s)) of ((RCW 42.17.310)).

(2) In addition, pursuant to RCW 42.17.260(1), the authority reserves the right to delete identifying details when it makes available or publishes any public record, in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy. The public records officer will fully justify such deletion in writing.

((3))) chapter 42.56 RCW.

(2) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

**AMENDATORY SECTION** (Amending Order 86-02, Resolution No. 5, filed 2/3/86)

**WAC 400-06-140 Review of denials of public records request.** (1) Any person who objects to the denial of a request for public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member, which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the ((chair)) director who shall consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the ((authority)) partnership has returned the petition with a decision, or until the close of the second business day following denial of inspection, whichever occurs first.

**AMENDATORY SECTION** (Amending Order 86-02, Resolution No. 5, filed 2/3/86)

**WAC 400-06-150 Protection of public records.** (1) No person shall knowingly alter, deface, or destroy public records of the ((authority)) partnership.

(2) Original copies of public records of the ((authority)) partnership shall not be removed from the offices of the ((authority)) partnership.

(3) Care and safekeeping of public records of the ((authority)) partnership, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.

(5) Boisterous or otherwise disruptive conduct by those requesting public records of the ((authority)) partnership shall not be permitted.

**AMENDATORY SECTION** (Amending WSR 90-17-063, filed 8/15/90, effective 9/15/90)

**WAC 400-06-160 Records index.** (1) A chronological index is maintained providing identifying information as to all governmental records issued, adopted, or promulgated on or after August 21, 1985, which are deemed by the ((authority)) partnership to fall within the purview of RCW ((42.17.260)) 42.56.070 and which are not exempted under ((the)) any provision((s)) of chapter 42.56 RCW ((42.17.310)).

(2) The current index promulgated by the ((authority)) partnership shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection. The records index shall be updated at least annually.

**AMENDATORY SECTION** (Amending WSR 91-20-076, filed 9/27/91, effective 10/28/91)

**WAC 400-06-170 Communications.** All communications regarding the actions or decisions of the ((authority))

(())) partnership, including activities pertaining to the administration or enforcement of chapter ((42.17)) 42.56 RCW or these rules, shall be addressed to the Public Records Officer, Puget Sound ((Water Quality Authority, Mailstop PV 15)) Partnership, P.O. Box 40900, Olympia, Washington 98504-0900((; and

((2) Relating to the development of the plan shall be addressed to Director of Planning, Puget Sound Water Quality Authority, Mailstop PV 15, P.O. Box 40900, Olympia, Washington 98504-0900)).

**AMENDATORY SECTION** (Amending Order 86-02, Resolution No. 5, filed 2/3/86)

**WAC 400-06-180 Request for public record—Form.**

STATE OF WASHINGTON  
PUGET SOUND ((WATER QUALITY AUTHORITY))  
PARTNERSHIP REQUEST FOR PUBLIC RECORD

Date of Request: .....

Requested By: .....

Public Records or Information Requested: .....

Requester Must Read and Sign:

I ((understand)) understand that I must abide by the rules and regulations published by the Puget Sound ((Water Quality Authority)) Partnership for the protection of public records, a copy of which I have read and understand.

I understand that I will be charged ((twenty-five cents per copy for all standard letter size copies I desire and that other size publications are available at cost)) a reasonable fee to reimburse the partnership actual costs associated with fulfilling my request.

Requester's Signature .....

Completed by ((Authority)) Partnership Public Records Officer:

Date of Receipt: .....

Number of Copies: .....

Amount Received: \$ .....

Reason if ((Authority)) Partnership is Unable to Comply:

Public Records Officer Signature: .....

Public records of the agency are provided for inspection and copying subject to the following regulations:

- (1) No person shall knowingly alter, deface, or destroy public records of the ((authority)) partnership.
- (2) Original copies of public records of the agency shall not be removed from the offices of the ((authority)) partnership.
- (3) Care and safekeeping of public records of the ((authority)) partnership, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.
- (4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.

- (5) Boisterous or otherwise disruptive conduct by those requesting public records of the ((authority)) partnership shall not be permitted.

I have read, understand, and will comply with the above-stated regulations.

.....  
(Signature and date)

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

|                |  |
|----------------|--|
| WAC 400-06-030 | Authority operations and procedures.                             |
| WAC 400-06-050 | Puget Sound water quality authority officers—Terms.              |
| WAC 400-06-060 | Puget Sound water quality authority—Regular meetings.            |
| WAC 400-06-070 | Puget Sound water quality authority—Description of organization. |

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

|                |  |
|----------------|--|
| WAC 400-12-100 | Authority.   |
| WAC 400-12-110 | Purpose.   |
| WAC 400-12-120 | Applicability.   |
| WAC 400-12-200 | Definitions.   |
| WAC 400-12-210 | Overview.  |
| WAC 400-12-220 | Public involvement.  |
| WAC 400-12-305 | Initial watershed ranking.   |
| WAC 400-12-320 | Five-year review.  |
| WAC 400-12-400 | Lead agency for watershed planning.                                      |
| WAC 400-12-410 | Watershed management committees.   |
| WAC 400-12-415 | Planning and implementing entities.                                      |
| WAC 400-12-420 | Schedule for preparation and review of action plan.                      |
| WAC 400-12-500 | Overview.  |
| WAC 400-12-515 | Phase 1—Watershed characterization and goals and objectives development. |

|                |   |
|----------------|---|
| WAC 400-12-525 | Phase 2—Action plan non-point pollution control strategy. |
| WAC 400-12-535 | Phase 3—Action plan implementation strategy.              |
| WAC 400-12-545 | Phase 4—Action plan review and approval.                  |
| WAC 400-12-555 | SEPA review.  |
| WAC 400-12-565 | Revisions.  |
| WAC 400-12-605 | Decision of department.                                   |
| WAC 400-12-615 | Responsibilities of implementing entities.                |
| WAC 400-12-625 | Lead agency responsibilities.                             |
| WAC 400-12-635 | Department responsibilities.                              |
| WAC 400-12-645 | County responsibilities.                                  |
| WAC 400-12-700 | Default procedure.  |
| WAC 400-12-710 | Exceptions.   |
| WAC 400-12-720 | Severability.   |

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeals marketing orders for the wheat and barley commissions.

Reasons Supporting Proposal: SHB 1254, chapter 33, Laws of 2009 (later codified as chapter 15.115 RCW) replaced the wheat commission and barley commission with the Washington grain commission. On August 14, 2009, the grain commission certified to the director, department of agriculture that the transition from the wheat and barley commissions to the grain commission had been completed. Per RCW 15.115.130(5), "... The Washington wheat commission and Washington barley commission cease to exist as of the date that certification is received by the director. Once the director has received the certification, the director is authorized and shall take action to repeal the marketing orders addressing wheat or barley."

Statutory Authority for Adoption: RCW 15.115.130, chapter 34.05 RCW.

Statute Being Implemented: RCW 15.115.130.

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

Name of Proponent: Washington grain commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-1802.

January 28, 2010

Dan Newhouse

Director

#### WSR 10-04-044

##### EXPEDITED RULES

##### DEPARTMENT OF AGRICULTURE

[Filed January 28, 2010, 7:10 a.m.]

Title of Rule and Other Identifying Information: Repeal WAC 16-528-002 Director's final decision approving a marketing order, 16-528-004 Marketing order for Washington wheat—Policy statement, 16-528-005 Marketing order purpose, 16-528-010 Definitions, 16-528-020 Wheat commission—Structure—Powers, duties—Procedure, 16-528-040 Assessments and collection, 16-528-050 Effective time, 16-528-060 Separability, 16-530-005 Marketing order for Washington barley—Policy statement, 16-530-006 Marketing order purposes, 16-530-010 Definition of terms, 16-530-020 Barley commission, 16-530-040 Assessments and collection, 16-530-050 Effective time, and 16-530-060 Separability.

##### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kelly Frost, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY April 6, 2010.

##### REPEALER

The following sections of the Washington Administrative Code are repealed:

|                |  |
|----------------|--|
| WAC 16-528-002 | Director's final decision approving a marketing order. |
| WAC 16-528-004 | Marketing order for Washington wheat—Policy statement. |
| WAC 16-528-005 | Marketing order purposes.                              |
| WAC 16-528-010 | Definitions.   |
| WAC 16-528-020 | Wheat commission—Structure—Powers, duties—Procedure.   |
| WAC 16-528-040 | Assessments and collection.                            |
| WAC 16-528-050 | Effective time.  |
| WAC 16-528-060 | Separability.  |

##### REPEALER

The following sections of the Washington Administrative Code are repealed:

|                |   |
|----------------|---|
| WAC 16-530-005 | Marketing order for Washington barley—Policy statement. |
|----------------|---|

|                |                             |
|----------------|-----------------------------|
| WAC 16-530-006 | Marketing order purposes.   |
| WAC 16-530-010 | Definition of terms.        |
| WAC 16-530-020 | Barley commission.          |
| WAC 16-530-040 | Assessments and collection. |
| WAC 16-530-050 | Effective time.             |
| WAC 16-530-060 | Separability.               |

Statutory Authority for Adoption: RCW 28A.155.090.  
 Statute Being Implemented: Chapter 28A.155 RCW.  
 Rule is necessary because of federal law, 34 C.F.R. §§300.507 and 300.511.  
 Name of Proponent: OSPI, governmental.  
 Name of Agency Personnel Responsible for Drafting: Pamela McPartland, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6075; Implementation and Enforcement: Douglas Gill, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6075.

January 25, 2010

Randy Dorn

State Superintendent

**WSR 10-04-049**  
**EXPEDITED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 28, 2010, 11:37 a.m.]

Title of Rule and Other Identifying Information: WAC 392-172A-05080 Right to a due process hearing, this rule describes the right of parents and school districts to file a request for a due process hearing on certain special education matters. The rule also describes the timeline for filing and information about services available to assist parents with this process.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Douglas Gill, Office of the Superintendent of Public Instruction (OSPI), P.O. Box 47200, Olympia, WA 98504-7200, e-mail doug.gill@k12.wa.us, AND RECEIVED BY 5:00 p.m. on April 5, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is clarifying the timeframe in which a request for a due process hearing for special education matters must be made. The current rule could create procedural ambiguity with respect to the timeframe for filing a due process hearing request. The proposed changes will clarify the filing timeframe.

Reasons Supporting Proposal: OSPI received a petition for rule making regarding WAC 392-172A-05080, which recommended an amendment to this rule because of ambiguous language. WAC 392-172A-05080 implements two federal regulations, 34 C.F.R. §§300.507 and 300.511. The WAC as currently drafted describes the content of a request for a due process hearing, but does not provide a clear description of the timeframe in which a request for a due process hearing must be made. To avoid confusion for parents, school districts, attorneys, and other interested parties, OSPI is clarifying this rule.

OSPI is using expedited rule making for this amendment because it is adopting without material change a federal regulation, as allowed by RCW 34.05.353 (1)(b).

**AMENDATORY SECTION** (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

**WAC 392-172A-05080 Right to a due process hearing.** (1) A parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation or educational placement, or the provision of FAPE to a student.

(2) The due process hearing request must ((allege a violation that occurred not more than)) be made within two years ((before)) of, and allege a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

(3)(a) Information about any free or low-cost legal and other relevant services available in the area is maintained on OSPI's web site and is provided by the office of administrative hearings to parents whenever a due process hearing request is filed by either the parent or the school district; and

(b) Districts must provide this information to parents whenever a parent requests the information.

**WSR 10-04-069**  
**EXPEDITED RULES**  
**STATE BOARD OF HEALTH**

[Filed January 29, 2010, 5:01 p.m.]

Title of Rule and Other Identifying Information: WAC 246-760-100 Auditory and visual standards—School districts.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS

ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Teresa Cooper, Washington State Department of Health, P.O. Box 47880, Olympia, WA 98504-7880, (360) 236-3530, AND RECEIVED BY April 5, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates and corrects the rule regarding visual screening of children in public schools. Ophthalmologists, optometrists and opticians, who donate their services, may participate in vision screenings in schools.

Reasons Supporting Proposal: The current rule prohibits ophthalmologists [ophthalmologists], optometrists and opticians from participating in visual screening of children in schools. ESSB 5889 was passed in 2009, and expressly allows these vision professionals to perform screening in schools. The rule revision is necessary to make the rule consistent with statute.

An expedited rule-making process was chosen for this proposal because it is a legislative requirement.

Statutory Authority for Adoption: RCW 28A.210.020.

Statute Being Implemented: RCW 28A.210.020.

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

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

Name of Agency Personnel Responsible for Drafting: Teresa Cooper, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3530; Implementation and Enforcement: Superintendent of Public Instruction, 600 Washington Street S.E., Olympia, WA 98501, (360) 725-6000.

January 29, 2010

Craig McLaughlin  
Executive [Executive] Director

**AMENDATORY SECTION** (Amending WSR 02-20-079, filed 9/30/02, effective 10/31/02)

**WAC 246-760-100 What are the qualifications for visual screening personnel?** (1) Screening must be performed by persons competent to administer screening procedures as a function of their professional training and background or special training and demonstrated competence under supervision.

(2) Technicians and nonprofessional volunteers must have adequate preparation and thorough understanding of the tests as demonstrated by their performance under supervision.

(3) Supervision, training, reporting and referral shall be the responsibility of a professional person specifically designated by the school administration. He or she may be a school nurse or public health nurse, a special educator, teacher or administrator who possesses basic knowledge of the objectives and methods of visual acuity screening, supervisory

experience and ability, demonstrated ability to teach others and demonstrated capacity to work well with people.

((4) Screening may not be performed by ophthalmologists, optometrists, or opticians or any individuals who may have a conflict of interest.))

**WSR 10-04-075**  
**EXPEDITED RULES**  
**HORSE RACING COMMISSION**

[Filed February 1, 2010, 2:37 p.m.]

Title of Rule and Other Identifying Information: WAC 260-40-065 Coupled and multiple entries and 260-60-300 Who may claim, removes the criteria which requires coupling of entries with common ownership. Additionally, changes the number of entries that can be made by a single trainer from two to three in an overnight race with certain restrictions that is referenced in both listed WACs.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Douglas L. Moore, Washington Horse Racing Commission, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462, doug.moore@whrc.state.wa.us, AND RECEIVED BY April 5, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington Horse Racing Commission is attempting to assist the associations and provide the betting public with better field size by allowing the uncoupling of common ownership entries and also would allow a trainer to enter a third horse in a race when there are at a minimum of six other entries prior to entering the third horse. The third horse entered by a trainer would not be allowed to prevent a single entry of another trainer from being excluded from the race in the case of an overfilled race.

Reasons Supporting Proposal: Purses are derived from the mutuel handle and it is documented that increased handle and field size are directly connected.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

February 1, 2010  
Douglas L. Moore  
Deputy Secretary

**AMENDATORY SECTION** (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

**WAC 260-40-065 ((Coupled and)) Multiple entries.**

((1) Two or more horses owned or leased in whole or part by the same owner must be joined as a coupled entry and single betting interest when entered in the same race. Coupled entries may be uncoupled in stakes races. Common ownership entries may be uncoupled in stakes races with the approval of the board of stewards.

(2) A coupled entry may not exclude a single entry, except in a race where the conditions are specific as to preference.

(3) At the time of making a same ownership entry, the trainer, owner, or authorized agent must select which horse will run in the event the coupled entry is not allowed.

(4) A trainer, owner, or authorized agent may not enter and start more than ((two)) three horses of the same or separate ownership in a purse race or overnight event, except under the following conditions:

((a)) (1) Stake races;

((b)) (2) Races in which there are fees required to nominate or enter; and

((c)) Allowance/optional claiming or maiden special weight races. In these races a trainer may not enter more than three horses.) (3) The third entry may not exclude a single entry, or be allowed if there are less than ((seven)) six entries received prior to the entry of the trainer's third horse.

**AMENDATORY SECTION** (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

**WAC 260-60-300 Who may claim.** (1) In claiming races, any horse is subject to be claimed for its entered price by any owner licensed by the commission, including a prospective owner who has been issued a claiming certificate, or by a licensed authorized agent for the account of such owner.

(2) In order to claim a horse as a prospective owner, a person will submit to the stewards a completed application for a prospective owner's license and the name of a licensed trainer who will assume the care and responsibility for any horse claimed. The stewards may issue a claiming certificate to the applicant upon satisfactory evidence that the applicant is eligible for an owner's license. Once the prospective owner has successfully claimed a horse and made payment of labor and industry fees due, he/she will be considered an owner. At that time the owner should contact a commission office for a new identification badge.

(3) The names of licensed prospective owners who have been issued a claiming certificate must be prominently displayed in the offices of the commission and the racing secretary.

(4) A claiming certificate will expire forty-five days from the date of issue, but may be extended with approval of the stewards; at the conclusion of the race meet at which it was issued, upon the claim of a horse, or upon issuance or denial of an owner's license, whichever comes first.

(5) No owner or prospective owner may claim more than one horse in any one race.

(6) An authorized agent may claim up to two horses, if each horse is claimed on behalf of entirely different owner-

ships, and the ownerships do not have a common interest in both claims. An authorized agent may not make a claim on the same horse for different owners.

(7) No more than two claims may be entered with the same trainer listed in any one race.

(8) No trainer may enter or start more than ((two)) three horses for a claiming price in one race.

**WSR 10-04-083**

**WITHDRAWAL OF**

**EXPEDITED RULE MAKING**

**DEPARTMENT OF HEALTH**

(By the Code Reviser's Office)

[Filed February 2, 2010, 8:39 a.m.]

WAC 246-830-460, proposed by the department of health in WSR 09-15-196 appearing in issue 09-15 of the State Register, which was distributed on August 5, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 10-04-086**

**EXPEDITED RULES**

**OFFICE OF**

**FINANCIAL MANAGEMENT**

[Filed February 2, 2010, 10:51 a.m.]

Title of Rule and Other Identifying Information: WAC 82-50-021 Official state lagged semi-monthly pay dates established.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Roselyn Marcus, Office of Financial Management (OFM), P.O. Box 43113 Olympia, WA 98504-3113, AND RECEIVED BY April 6, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 82-50-021 publishes the official lagged, semi-monthly pay dates for state officers and employees. This WAC, which provides pay dates for the current and ensuing calendar years, is amended each year to add pay dates for the ensuing year and delete the pay dates for the previous year. The purpose of this filing is to establish official pay dates for state officers and employees for calendar year 2011 and delete the obsolete pay dates for calendar year 2009.

Reasons Supporting Proposal: The statute requires that OFM annually update and publish state pay dates.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Statute Being Implemented: RCW 42.16.010(1) and 42.16.017.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Nielson, 6639 Capitol Boulevard, Tumwater, (360) 725-0226; Implementation and Enforcement: Wendy Jarrett, 6639 Capitol Boulevard, Tumwater, (360) 725-0185.

February 2, 2010

Roselyn Marcus

Director of Legal Affairs

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-11-008, filed 5/7/09, effective 6/7/09)

**WAC 82-50-021 Official lagged, semimonthly pay dates established.** Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semi-monthly pay dates for calendar years ((2009 and)) 2010 and 2011:

((CALENDAR YEAR 2009

Friday, January 9, 2009  
Monday, January 26, 2009  
Tuesday, February 10, 2009  
Wednesday, February 25, 2009  
Tuesday, March 10, 2009  
Wednesday, March 25, 2009  
Friday, April 10, 2009  
Friday, April 24, 2009  
Monday, May 11, 2009  
Friday, May 22, 2009  
Wednesday, June 10, 2009  
Thursday, June 25, 2009  
Friday, July 10, 2009  
Friday, July 24, 2009  
Monday, August 10, 2009  
Tuesday, August 25, 2009  
Thursday, September 10, 2009  
Friday, September 25, 2009  
Friday, October 9, 2009  
Monday, October 26, 2009  
Tuesday, November 10, 2009  
Wednesday, November 25, 2009  
Thursday, December 10, 2009  
Thursday, December 24, 2009

CALENDAR YEAR 2010

Monday, January 11, 2010  
Monday, January 25, 2010  
Wednesday, February 10, 2010  
Thursday, February 25, 2010  
Wednesday, March 10, 2010  
Thursday, March 25, 2010  
Friday, April 9, 2010  
Monday, April 26, 2010  
Monday, May 10, 2010  
Tuesday, May 25, 2010  
Thursday, June 10, 2010  
Friday, June 25, 2010  
Friday, July 9, 2010  
Monday, July 26, 2010  
Tuesday, August 10, 2010  
Wednesday, August 25, 2010  
Friday, September 10, 2010  
Friday, September 24, 2010  
Friday, October 8, 2010  
Monday, October 25, 2010  
Wednesday, November 10, 2010  
Wednesday, November 24, 2010  
Friday, December 10, 2010  
Thursday, December 23, 2010

CALENDAR YEAR 2010

Wednesday, February 10, 2010  
Thursday, February 25, 2010  
Wednesday, March 10, 2010  
Thursday, March 25, 2010  
Friday, April 9, 2010  
Monday, April 26, 2010  
Monday, May 10, 2010  
Tuesday, May 25, 2010  
Thursday, June 10, 2010  
Friday, June 25, 2010  
Friday, July 9, 2010  
Monday, July 26, 2010  
Tuesday, August 10, 2010  
Wednesday, August 25, 2010  
Friday, September 10, 2010  
Friday, September 24, 2010  
Friday, October 8, 2010  
Monday, October 25, 2010  
Wednesday, November 10, 2010  
Wednesday, November 24, 2010  
Friday, December 10, 2010  
Thursday, December 23, 2010

CALENDAR YEAR 2011

Thursday, February 10, 2011  
Friday, February 25, 2011  
Thursday, March 10, 2011  
Friday, March 25, 2011  
Monday, April 11, 2011  
Monday, April 25, 2011  
Tuesday, May 10, 2011  
Wednesday, May 25, 2011  
Friday, June 10, 2011  
Friday, June 24, 2011  
Monday, July 11, 2011  
Monday, July 25, 2011  
Wednesday, August 10, 2011  
Thursday, August 25, 2011  
Friday, September 9, 2011  
Monday, September 26, 2011  
Friday, October 7, 2011  
Tuesday, October 25, 2011  
Thursday, November 10, 2011  
Wednesday, November 23, 2011  
Friday, December 9, 2011  
Friday, December 23, 2011

**WSR 10-04-093**

**EXPEDITED RULES**

**DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed February 2, 2010, 2:06 p.m.]

Title of Rule and Other Identifying Information: Chapter 296-155 WAC, Part O, Concrete, concrete forms, shoring, and masonry construction.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Naomi Goodman, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, AND RECEIVED BY April 5, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to update the American National Standards Institute (ANSI) reference to the most current edition. The proposed change will update from the 1970 edition to the 1997 edition. The ANSI being updated is A10.9-1997, Concrete and Masonry Work Safety Requirements. In addition, an internal reference will also be updated.

**WAC 296-155-680 General provisions.**

- Subsection (1), update the American National Standards Institute (ANSI) reference from "A10.9-1970 Safety Requirements for Concrete Construction and Masonry Work" to "A10.9-1997 Concrete and Masonry Work Safety Requirements."
- Subsection (7)(c), after the word "guyed" change the "and" to "or."

**WAC 296-155-683 Concrete finishing.**

- Subsection (1), update the reference from "chapter 296-155 WAC, Part J-1, Scaffolds" to "chapter 296-874 WAC, Scaffolds."

**Reasons Supporting Proposal:** The revisions will make the requirements of division of occupational safety and health's concrete, concrete forms, shoring, and masonry construction standard consistent with current industry practices, thereby eliminating confusion and clarifying employer obligations. Eliminating confusion and clarifying employer obligations should increase employee safety while reducing compliance costs.

**Statutory Authority for Adoption:** RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

**Statute Being Implemented:** Chapter 49.17 RCW.

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

**Name of Proponent:** Department of labor and industries, governmental.

**Name of Agency Personnel Responsible for Drafting:** Tracy Spencer, Tumwater, (360) 902-5530; **Implementation and Enforcement:** Michael Silverstein, Tumwater, (360) 902-4805.

February 2, 2010  
Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 00-14-058, filed 7/3/00, effective 10/1/00)

**WAC 296-155-680 General provisions.** (1) General. All equipment, material and construction techniques used in concrete construction and masonry work shall meet the applicable requirements for design, construction, inspection, testing, maintenance and operations as prescribed in ANSI ((A10.9-1970)) A10.9-1997, ((Safety Requirements for)) Concrete ((Construction)) and Masonry Work Safety Requirements.

(2) Construction loads. No construction loads shall be placed on a concrete structure or portion of a concrete structure unless the employer determines, based on information received from a person who is qualified in structural design, that the structure or portion of the structure is capable of supporting the loads.

(3) Vertical loads. Vertical loads consist of a dead load plus an allowance for live load. The weight of formwork together with the weight of freshly placed concrete is dead load. The live load consists of the weight of workers, equipment, runways and impact, and shall be computed in pounds per square foot (psf) of horizontal projection.

(4) Lateral loads. Braces and shores shall be designed to resist all foreseeable lateral loads such as wind, cable tensions, inclined supports, impact of placement, and starting and stopping of equipment. The assumed value of load due to wind, impact of concrete, and equipment acting in any direction at each floor line shall not be less than one hundred pounds per lineal foot of floor edge or two percent of total dead load of the floor, whichever is greater. Wall forms shall be designed for a minimum wind load of ten psf, and bracing for wall forms should be designed for a lateral load of at least one hundred pounds per lineal foot of wall, applied at the top. Walls of unusual height require special consideration.

(5) Special loads. Formwork shall be designed for all special conditions of construction likely to occur, such as unsymmetrical placement of concrete, impact of machine-delivered concrete, uplift, and concentrated loads.

(6) Form supports and wedges shall be checked during concrete placement to prevent distortion or failure.

(7) Reinforcing steel.

(a) All protruding reinforcing steel, onto and into which employees could fall, shall be guarded to eliminate the hazard of impalement.

(b) Wire mesh rolls: Wire mesh rolls shall be secured at each end to prevent dangerous recoiling action.

(c) Guying: Reinforcing steel for walls, piers, columns, and similar vertical structures shall be guyed ((and)) or supported to prevent overturning and to prevent collapse.

(8) Post-tensioning operations.

(a) No employee (except those essential to the post-tensioning operations) shall be permitted to be behind the jack during tensioning operations.

(b) Signs and barriers shall be erected to limit employee access to the post-tensioning area during tensioning operations.

(9) Working under loads.

(a) No employee shall be permitted to work under concrete buckets while buckets are being elevated or lowered into position.

(b) To the extent practical, elevated concrete buckets shall be routed so that no employee, or the fewest number of employees, are exposed to the hazards associated with falling concrete buckets.

(10) Personal protective equipment.

(a) No employee shall be permitted to apply a cement, sand, and water mixture through a pneumatic hose unless the employee is wearing protective head and face equipment.

(b) No employee shall be permitted to place or tie reinforcing steel more than six feet (1.8 m) above any adjacent working surface unless the employee is protected by personal fall arrest systems, safety net systems, or positioning device systems meeting the criteria of chapter 296-155 WAC, Part C-1.

(c) Each employee on the face of formwork or reinforcing steel shall be protected from falling 6 feet (1.8m) or more to lower levels by personal fall arrest systems, safety net systems, or positioning device systems meeting the criteria of chapter 296-155 WAC, Part C-1.

**AMENDATORY SECTION** (Amending WSR 98-05-046, filed 2/13/98, effective 4/15/98)

**WAC 296-155-683 Concrete finishing.** (1) Scaffolds for use of cement finishers shall comply with the requirements of chapter ((296-155)) 296-874 WAC, ((Part J-1,)) Scaffolds.

(2) Where grinders, chippers, and other equipment is used which creates a thrust force while working on scaffolding, such scaffold shall be securely tied to a structure or held in with weighted drop lines.

(3) Grinding and dressing operations carried on within closed rooms, stairwells, elevator shafts, etc., shall be provided with forced air ventilation.

(4) Grinding machine operators shall wear respirators whenever machines are in operation or where dust hazard exists.

(5) Eye protection shall be worn by workers engaged in grinding, chipping, or sacking concrete as required by WAC 296-155-215.

Adopting these changes will keep the department in compliance with the law.

Statutory Authority for Adoption: RCW 49.17.050.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. parts 1910, 1915, 1917 and 1918.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Michael Silverstein, Tumwater, (360) 902-4805.

February 2, 2010

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 00-21-103, filed 10/18/00, effective 2/1/01)

**WAC 296-56-60109 Eye protection.** (1)(a) When employees perform work hazardous to the eyes, the employer shall provide eye protection equipment ((marked or labeled as meeting the manufacturing specifications of American National Standards Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1 1989, and shall direct that it be used)) that complies with ANSI Z87.1, American National Standard Practice for Occupational and Educational Eye and Face Protection, edition 1989, revision 1998, or edition 2003.

Employers may provide alternate eye and face protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

(b) For employees wearing corrective spectacles, eye protection equipment required by (a) of this subsection shall be of a type which can be worn over spectacles. Prescription ground safety lenses may be substituted if they provide equivalent protection.

(c) For additional requirements covering eye protection against radiant energy, see WAC 296-56-60235(8).

(2) Eye protection equipment shall be maintained in good condition.

(3) Used eye protection equipment shall be cleaned and disinfected before reissuance to another employee.

**AMENDATORY SECTION** (Amending WSR 00-21-103, filed 10/18/00, effective 2/1/01)

**WAC 296-56-60111 Head protection.** (1) Employees exposed to impact, falling or flying objects, or electric shocks or burns shall wear protective hats.

((Protective hats shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standard Safety Requirements for Industrial Head Protection, ANSI Z89.1 1986.)) The employer must ensure that all protective helmets comply with one of the following consensus standards:

- ANSI Z89.1-2003, American National Standard for Industrial Head Protection.

- ANSI Z89.1-1997, American National Standard for Industrial Head Protection.
- ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.

Employers may use alternate head protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

(3) Protective hats previously worn shall be cleaned and disinfected before issuance by the employer to another employee.

**AMENDATORY SECTION** (Amending WSR 99-02-024, filed 12/30/98, effective 3/30/99)

**WAC 296-56-60113 Foot protection.** (1) The employer shall ensure that each affected employee wears protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects or objects piercing the sole.

(2) ((Protective shoes shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standard for Men's Safety Toe Footwear, ANSI Z41.1-1991.)) The employer must ensure that all protective footwear complies with one of the following consensus standards:

- ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear.
- ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear.
- ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear.

Employers may use alternate footwear if they can demonstrate it is at least as effective as those constructed in accordance with one of the above consensus standards.

(3) The employer shall, through means such as vendors or local stores, make safety shoes readily available to all employees.

**AMENDATORY SECTION** (Amending WSR 98-02-006, filed 12/26/97, effective 3/1/98)

**WAC 296-304-09005 Eye and face protection.** (1) The employer must provide each affected employee with eye and face protection according to the following requirements:

(a) Each affected employee must use appropriate eye or face protection when exposed to eye or face hazards caused by flying particles, molten metal, liquid chemicals, acid or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

(b) Each affected employee must use eye or face protection that provides side protection when there is a hazard from flying objects. A detachable side protector (e.g., a clip-on or slide-on side shield) that meets the requirements of this section is acceptable.

(c) Each affected employee who wears prescription lenses must:

- Use eye protection that incorporates the prescription in its design; or

• Be protected by eye protection that can be worn over prescription lenses without disturbing the proper position of either the PPE or the prescription lenses.

(d) Each affected employee must use equipment with filter lenses of a shade that provides appropriate protection from injurious light radiation. Tables I-1A and I-1B lists the appropriate shade numbers for various operations. If filter lenses are used in goggles worn under a helmet with a lens, the shade number of the lens in the helmet may be reduced so that the shade numbers of the two lenses will equal the value shown in the Tables I-1A and I-1B.

(2) The employer must ensure that all protective eye and face devices ((meet the following criteria:

(a) Protective eye and face devices purchased after February 20, 1995, comply with the American National Standards Institute, ANSI Z87.1-1989, "Practice for Occupational and Educational Eye and Face Protection," or the employer demonstrates that the devices are equally effective.

(b) Eye and face protective devices purchased before February 20, 1995,)) comply with ((")ANSI Z87.1, American National Standard Practice for Occupational and Educational Eye and Face Protection, ((Z87.1-1979, or the employer demonstrates that the devices are equally effective)) edition 1989, revision 1998, or edition 2003.

Employers may use alternate eye and face protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

**AMENDATORY SECTION** (Amending WSR 98-02-006, filed 12/26/97, effective 3/1/98)

**WAC 296-304-09011 Head protection.** (1) The employer must provide each affected employee with head protection according to the following requirements:

(a) Each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head.

(b) Each affected employee wears a protective helmet designed to reduce electrical shock hazards where there is potential for electric shock or burns from contact with exposed electrical conductors that could contact the head.

(2) The employer must ensure that all protective helmets ((meet the following criteria:

(a) Protective helmets purchased before February 20, 1995, comply with the "American National Standard Safety Requirements for Industrial Head Protection, Z89.1-1969," or the employer demonstrates that they are equally effective.

(b) Protective helmets purchased after February 20, 1995, comply with ANSI Z89.1-1986, "Personnel Protection—Protective Headwear for Industrial Workers Requirements," or the employer demonstrates that they are equally effective)) comply with one of the following consensus standards:

- ANSI Z89.1-2003, American National Standard for Industrial Head Protection.
- ANSI Z89.1-1997, American National Standard for Industrial Head Protection.

- ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.

Employers may use alternate head protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

**AMENDATORY SECTION** (Amending WSR 98-02-006, filed 12/26/97, effective 3/1/98)

**WAC 296-304-09013 Foot protection.** (1) The employer must ensure that each affected employee wears protective footwear when working in areas where:

- There is a danger of foot injuries from falling or rolling objects;
- There is a danger of foot injuries from objects piercing the sole; or
- Where an employee's feet are exposed to electrical hazards.

(2) The employer must ensure that all protective footwear ((meets the following criteria:

(a) Protective footwear purchased before February 20, 1995, complies with the ANSI standard "USA Standard for Men's Safety Toe Footwear," ANSI Z41-1983, or the employer demonstrates that footwear is equally effective.

(b) Protective footwear purchased after February 20, 1995, complies with ANSI Z41-1991, "American National Standard for Personal Protection—Protective Footwear," or the employer demonstrates that footwear is equally effective)) complies with one of the following consensus standards:

- ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear.

- ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear.

- ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear.

Employers may use alternate footwear if they can demonstrate it is at least as effective as those constructed in accordance with one of the above consensus standards.

**AMENDATORY SECTION** (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-16050 Make sure your employees use appropriate eye and face protection.** You must:

- Make sure that employees exposed to hazards that could injure their eyes and/or face use appropriate protection. Examples of these hazards include:

- Flying particles.
- Molten metal.
- Liquid chemicals.
- Acids or caustic liquids.
- Chemical gases or vapors.
- Any light that could injure the eyes such as lasers, ultraviolet, or infrared light.
- Objects that puncture.

- Make sure employees exposed to hazards from flying objects have eye protection with side protection, such as safety glasses with clip-on or slide-on side shields.

- Make sure eye protection for employees who wear prescription lenses:

- Incorporates the prescription into the design of the eye protection; or

- Is large enough to be worn over the prescription lenses without disturbing them.

- Make sure PPE used to protect the eyes and face meet the ((following specific ANSI (American National Standards Institute) standards. Most commercially available PPE is marked with the specific ANSI requirements.

- PPE bought before February 20, 1995, must meet ANSI standard Z87.1-1968.

- PPE bought on or after February 20, 1995, must meet ANSI standard Z87.1-1989.

- If you use eye or face protection that does not meet these ANSI standards, you must show they are equally effective)) specifics of either the 1989 version, the 1998 revision, or the 2003 version of ANSI Z87.1, American National Standard Practice for Occupational and Education Eye and Face Protection.

Other protective eye and face protection devices may be used if the employer demonstrates that they are at least as effective as those constructed in accordance with one of the above consensus standards.

Note: ANSI is the American National Standards Institute that publishes nationally recognized safety and health requirements. Their address is:

ANSI (American National Standards Institute)  
1819 L Street NW  
Washington, DC 20036  
Phone: (202) 293-8020  
Fax: (202) 293-9287  
<http://www.ansi.org>

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16055 Make sure your employees use appropriate head protection.** You must:

- Make sure employees wear appropriate protective helmets.

- Where employees are exposed to hazards that could cause a head injury. Examples of this type of hazard include:

- Flying or propelled objects.
- Falling objects or materials.

- Where employees are working around or under scaffolds or other overhead structures.

- That helmets meet the ((following specific ANSI standards (most commercially available PPE is marked with specific ANSI requirements):

- Protective helmets bought before February 20, 1995, must meet ANSI standard Z89.1-1969.

- Protective helmets bought after February 20, 1995, must meet ANSI standard Z89.1-1986.

- If) specifications of either the 1997 or 2003 version of ANSI Z89.1, American National Standard for Industrial Head Protection, or the 1986 version of ANSI Z89.1, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.

– You may use protective helmets that do not meet these ANSI standards((, you must show)) if you can demonstrate that they are equally effective as those constructed in accordance with the above ANSIs.

(2) Make sure employees working near exposed electrical conductors that could contact their head wear a protective helmet designed (that meet the above ANSI standards) to reduce electrical shock hazard.

- Caps with metal buttons or metal visors must **not** be worn around electrical hazards.

(3) Make sure employees working around machinery or in locations that present a hair-catching or fire hazard wear caps or head coverings that completely cover their hair.

- Employees must wear a hair net that controls all loose ends when:

– Hair is as long as the radius of pressure rolls with exposed in-running nip points.

– Hair is twice as long as the circumference of exposed revolving shafts or tools in fixed machines.

- Employees must wear a hair covering of solid material when:

– The employee is exposed to an ignition source and may run into an area containing class-1 flammable liquids, such as ether, benzene, or combustible atmospheres if their hair is on fire.

#### AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

#### **WAC 296-800-16060 Make sure your employees use appropriate foot protection.** You must:

- (1) Use appropriate foot protection.

• Where employees are exposed to hazards that could injure their feet. Examples of these hazards are:

- Falling objects
- Rolling objects
- Piercing/cutting injuries
- Electrical hazards

• That meets ((specific ANSI requirements. (Most commercially available PPE is marked with specific ANSI requirements.))

~~PPE bought before February 20, 1995, must meet ANSI standard Z41.1 1967.~~

~~PPE bought after February 20, 1995, must meet ANSI standard Z41-1991)) the specifications of one of the following consensus standards:~~

• ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear.

• ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear.

• ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear.

– ((If you use foot protection)) Protective footwear that does not meet these ((ANSI)) standards((,)) may be used if you ((must show)) demonstrate that it is equally effective as that constructed in accordance with one of the above consensus standards.

(2) Make sure your employees wear clogs or other suitable footwear to protect against slipping while they are working on top of logs.

#### **WSR 10-04-095**

#### **EXPEDITED RULES**

#### **DEPARTMENT OF LABOR AND INDUSTRIES**

[Filed February 2, 2010, 2:33 p.m.]

Title of Rule and Other Identifying Information: WAC 296-800-320 Accident reporting and investigating.

#### **NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Naomi Goodman, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, AND RECEIVED BY April 6, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The definition of the term "hospitalization" is being clarified to reduce confusion and bring our rules into line with OSHA's interpretation of the word.

Reasons Supporting Proposal: There was some confusion about the requirement to report a hospitalization within eight hours in chapter 296-800 WAC, Safety and health core rules. This rule making will clarify that employers or an agent for the employer must report an employee's hospitalization within eight hours of the time the incident is reported to the employer or an agent of the employer.

Statutory Authority for Adoption: RCW 49.17.050.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, division of occupational safety and health, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Michael Silverstein, Tumwater, (360) 902-4805.

February 2, 2010

Judy Schurke

Director

#### AMENDATORY SECTION (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

#### **WAC 296-800-32005 Report the death, probable death of any employee, or the in-patient hospitalization of**

**any employee within 8 hours.** (1) You must report to us within eight hours of an incident that:

- Causes a fatal or possibly fatal injury
- Causes injury requiring in-patient hospitalization of any employee

To report, contact your nearest labor and industries office by phone or in person, or call the OSHA toll-free hotline, 1-800-321-6742.

**EXCEPTION:** *((If you do not learn of a reportable incident when it happens, you must report it within eight hours of learning about the incident.) If any employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this subsection, the employer shall make a report within eight hours of the time the incident is reported to any agent or employee of the employer.)*

(2) Your report must include:

- Establishment name
- Location of the incident
- Time of the incident
- Number of fatalities, hospitalized employees, or pesticide exposures
- Contact person
- Phone number
- Brief description of the incident

(3) Fatalities or hospitalizations that occur within thirty days of an incident must also be reported.

**WSR 10-04-099  
EXPEDITED RULES  
DEPARTMENT OF REVENUE**

[Filed February 3, 2010, 8:36 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-279 Clean alternative fuel vehicles and high gas mileage vehicles, this rule explains the retail sales and use tax exemptions available for clean alternative fuel vehicles and high gas mileage vehicles.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jay M. Jetter, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JayJ@dor.wa.gov, AND RECEIVED BY April 5, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-20-279 to recognize ESSB 6170 (sections 801 and 802, chapter 469, Laws of 2009). Section 801 repeals the sales and use tax exemptions for high mileage hybrid vehicles provided by RCW 82.08.813 and 82.12.813. Section 802 exempts the sale of high mileage

hybrid vehicles from the 0.3% additional motor vehicles sales tax imposed by RCW 82.08.020(3) until January 1, 2011.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: To incorporate provisions of ESSB 6170.

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

Statute Being Implemented: RCW 82.08.809 and 82.12.809, and chapter 469, Laws of 2009.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay M. Jetter, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6057; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

February 3, 2010

Alan R. Lynn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-02-051, filed 12/31/08, effective 1/31/09)

**WAC 458-20-279 Clean alternative fuel vehicles and high gas mileage vehicles.** (1) **Introduction.** *((For the period January 1, 2009, through December 31, 2010, RCW 82.08.809 and 82.12.809 provide a retail sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles that are exclusively powered by a clean alternative fuel. For the same period, RCW 82.08.813 and 82.12.813 provide a retail sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles that utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.)) This section provides ((additional)) information about the requirements for the ((exemptions provided by RCW 82.08.809, 82.08.813, 82.12.809, and 82.12.813)) retail sales and use tax exemptions provided for clean alternative fuel vehicles by RCW 82.08.809 and 82.12.809, respectively, and the exemption from the 0.3 percent retail sales tax on retail sales of motor vehicles provided for high gas mileage vehicles by RCW 82.08.020(7) ("the exemptions").)*

(2) **Exemption periods.** The exemptions provided for clean alternative fuel vehicles and high gas mileage vehicles differ.

(a) **Clean alternative fuel vehicles.** The exemptions provided for new passenger cars, light duty trucks, and medium duty passenger vehicles that are exclusively powered by a clean alternative fuel apply to purchases made from January 1, 2009, through December 31, 2010.

(b) **High gas mileage vehicles.** The exemptions provided for new passenger cars, light duty trucks, and medium duty passenger vehicles that utilize hybrid technology and

have a United States Environmental Protection Agency estimated highway gasoline mileage rating of at least forty miles per gallon apply as follows:

(i) January 1, 2009, through July 31, 2009. The exemptions apply to all retail sales and use taxes.

(ii) August 1, 2009, through December 31, 2010. The exemption is limited to the 0.3 percent retail sales tax imposed by RCW 82.08.020(3) on retail sales of motor vehicles.

(3) **Definitions.** The following definitions apply throughout this section:

(a) "Clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California code of regulations, effective January 1, 2005, and the rules of the Washington state department of ecology. See RCW 82.08.809(3) and 82.12.-809(2).

(b) "Gross vehicle weight rating" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle. See WAC 173-423-040(4).

(c) "Hybrid technology" means propulsion units powered by both electricity and gasoline. See RCW 82.08.813(3) and 82.12.813(2).

(d) "Light duty truck" is any vehicle certified to the standards in Title 13, CCR, section 1961 (a)(1) rated at eight thousand five hundred pounds gross vehicle weight or less, and any other motor vehicle rated at six thousand pounds gross vehicle weight or less, which is designed primarily for the purposes of transportation of property or is a derivative of such vehicle, or is available with special features enabling off-street or off-highway operation and use. See WAC 173-423-040(8).

(e) "Medium duty passenger vehicle" is any medium duty vehicle with a gross vehicle weight rating of less than ten thousand pounds that is designed primarily for the transportation of persons. The medium duty passenger vehicle definition does not include any vehicle which:

(i) Is an "incomplete truck," i.e., is a truck that does not have the primary load carrying device or container attached; or

(ii) Has a seating capacity of more than twelve persons; or

(iii) Is designed for more than nine persons in seating rearward of the driver's seat; or

(iv) Is equipped with an open cargo area of seventy-two inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for the purpose of this definition. See WAC 173-423-040(9).

(f) "Medium duty vehicle" is a vehicle with a gross vehicle weight rating of eight thousand five hundred one to fourteen thousand pounds. See WAC 173-423-100(2).

(g) "Model year" is the manufacturer's annual production period which includes January 1 of a calendar year. If the manufacturer has no annual production period, "model year" is the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis. See WAC 173-423-040(10).

(h) "New motor vehicle" is any motor vehicle that:

(i) Is self-propelled;

(ii) Is required to be registered and titled under Title 46 RCW;

(iii) Has not been previously titled to a retail purchaser or lessee; and

(iv) Is not a vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "secondhand" within the ordinary meaning thereof. See RCW 46.70.011 and 46.04.660.

The model year of the vehicle is not determinative of whether it meets the definition of "new motor vehicle."

(i) "Passenger car" means every motor vehicle except motorcycles and motor-driven cycles designed primarily for transportation of persons and having a design capacity of twelve persons or less. See WAC 173-423-040(13) and RCW 46.04.382.

((3)) (4) **New passenger cars, light duty trucks, and medium duty passenger vehicles.** In order to qualify for the exemptions, the vehicle must meet the definition of "passenger car," "light duty truck," or "medium duty passenger vehicle" in addition to meeting the definition of "new motor vehicle."

(5) **Purchases of previously owned clean alternative fuel or high gas mileage vehicles.** The exemptions do not apply to purchases of used vehicles, even if they are exclusively powered by clean alternative fuel or utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon. The exemptions only apply to purchases of new clean alternative fuel or new high gas mileage vehicles ((purchased between January 1, 2009, and December 31, 2010)).

(a) **Example 1.** Mike purchases a *used* 2007 model year hybrid vehicle from a dealer or private party in July 2009. The purchase would not qualify for the exemptions. The exemptions only apply to new vehicles.

(b) **Example 2.** Nicole purchases a *new* 2008 model year hybrid vehicle in July 2009 from a dealer. This purchase would be exempt (assuming it meets the other requirements). A new vehicle could be any model year as long as it has not been previously titled to a retail purchaser or lessee.

((4)) (c) **Example 3.** Joe purchases a *new* 2009 model year hybrid vehicle on August 5, 2009, from a dealer. This purchase is not exempt from all retail sales taxes but, assuming it meets the other requirements, is exempt from the 0.3 percent retail sales tax on retail sales of motor vehicles.

(6) **Conversions.** For purposes of this section, a conversion refers to the alteration of an otherwise nonqualifying vehicle exclusively powered by gasoline or diesel into a qualifying vehicle that either:

(a) Is exclusively powered by clean alternative fuel; or

(b) Utilizes hybrid technology and has a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(i) **Purchases of converted vehicles.** The purchase of a new vehicle that is converted prior to or as part of the retail

sale to the purchaser and that otherwise satisfies the requirements of the exemptions will qualify for the exemptions. If the conversion is performed after the retail sale, the purchase of the vehicle will not qualify for the exemptions.

(ii) **Purchases of the service of converting vehicles.** While the purchase of a new vehicle converted by the seller prior to or as part of the retail sale to the purchaser qualifies for the exemptions as described in subsection ((4)) (6)(a) of this section, the purchase of the service of converting a vehicle does not qualify for the exemptions. However, if the seller hires a third party to convert the vehicle, it can give the third party a resale certificate (WAC 458-20-102A) for work completed before January 1, 2010, or a reseller permit (WAC 458-20-102) for work completed on or after January 1, 2010. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(A) **Example 1.** Tom wants to purchase a new nonqualifying vehicle from Dealer but have it converted as a part of the purchase transaction. Dealer hires John's Shop to convert the vehicle for Tom, and Tom purchases the converted vehicle from Dealer. Tom's purchase of the converted vehicle qualifies for the exemptions.

(B) **Example 2.** Tom purchases a new nonqualifying vehicle from Dealer. Tom then hires John's Shop to convert the vehicle. The purchase of the nonqualifying vehicle does not qualify for the exemptions, even if Dealer delivers the vehicle directly to John's Shop on Tom's behalf for conversion.

((5)) (7) **Use tax.** The use of a qualifying vehicle by the original title holder is exempt from use tax if the vehicle is purchased ((between January 1, 2009, and December 31, 2010)) during the applicable exemption period specified in subsection (2) of this section.

(a) **Example 1.** Will, a Washington resident, purchases a new qualifying clean alternative fuel vehicle in Oregon from Dealer on February 1, 2009, and returns to Washington in the vehicle on February 2, 2009. Will's use of the vehicle in Washington is exempt from use tax.

(b) **Example 2.** Oliver, an Oregon resident, purchases a new qualifying hybrid vehicle from Dealer in Oregon on April 1, 2009. Oliver moves to Washington on May 15, 2009. Oliver's use of the vehicle in Washington is exempt from use tax. Note: In the absence of the exemptions discussed in this section, Oliver's purchase would be subject to use tax since his first use of the vehicle in Washington occurred within 90 days of his acquisition and use of the vehicle in another state. See RCW 82.12.0251.

((6)) (8) **Extended warranties and maintenance agreements.** The sale of an extended warranty or maintenance agreement is subject to retail sales tax even though the vehicle itself may qualify for the exemptions. See WAC 458-20-257.

((7)) (9) **Replacement parts and/or repair services.** The sale of replacement parts or repair services is subject to retail sales tax even though the vehicle itself may have qualified for the exemptions. Only the purchase and use of a qualifying vehicle is exempt from retail sales and use ((tax)) taxes.

((8)) (10) **Accessories.** A qualifying vehicle includes all accessories installed or sold as part of the sale of the vehicle.

(a) **Example 1.** A dealership installs a ski rack and applies pinstriping on an otherwise qualifying vehicle on January 5, 2009, before a customer purchases the vehicle. Any separate, itemized charges for the accessories listed on the vehicle sales invoice are exempt from retail sales tax.

(b) **Example 2.** On January 5, 2009, a customer purchases an otherwise qualifying vehicle, and as a condition of the purchase requires that the seller install stereo speakers and apply paint sealant. The seller does not have the accessories in stock, but the customer takes delivery of the vehicle. The customer then brings the vehicle back to the seller, and the accessories are installed and applied on January 12, 2009. Any separate, itemized charges for the accessories listed on the vehicle sales invoice are exempt from retail sales tax.

((9)) (11) **Leases.** A vehicle is exempt from retail sales and use taxes on a lease if the other requirements are met. If the vehicle is new, registered, and titled in the lessee's name ((between January 1, 2009, and December 31, 2010)) during the applicable exemption period specified in subsection (2) of this section, the retail sales tax exemption will apply only to amounts due ((between January 1, 2009, and December 31, 2010)) during the exemption period. See also WAC 458-20-103 and 458-20-235.

(a) **Example 1.** Alex leases a new hybrid vehicle that he registers and titles on December 8, 2008. None of his lease payments will qualify for the exemptions because the vehicle was registered and titled prior to January 1, 2009.

(b) **Example 2.** Beth leases a new ((hybrid)) clean alternative fuel vehicle that she registers and titles on December 8, 2010. Assuming that the other requirements of the exemptions are met, any amounts due under the lease before January 1, 2011, are exempt from retail sales tax.

((10)) (12) **Payments made prior to January 1, 2009.** Any payment made toward the purchase of an otherwise qualifying vehicle prior to the effective date of the exemptions, January 1, 2009, qualifies for the exemptions if:

(a) The vehicle sold is titled and registered on or after January 1, 2009, but before the applicable exemption expires; and

(b) The purchaser takes possession of the vehicle on or after January 1, 2009, but before the applicable exemption expires. See WAC 458-20-103, 458-20-197, and 458-20-235.

**Example.** Greg makes a down payment toward the purchase of a new qualifying hybrid vehicle on November 7, 2008, but does not actually take possession of the vehicle at the dealership lot until January 2, 2009. The vehicle is titled and registered on January 9, 2009. The purchase of the vehicle is exempt from all retail sales ((tax)) taxes.

((11)) (13) **Payments made prior to ((January 1, 2011)) the expiration date of the applicable exemption.**

Any payment made toward the purchase of an otherwise qualifying vehicle prior to the expiration date of the ((exemptions, January 1, 2011,)) applicable exemption does not qualify for the exemption(s) if:

(a) The vehicle sold is titled or registered on or after ((January 1, 2011,)) the expiration date of the exemption; or ((if))

(b) The purchaser takes possession of the vehicle on or after ((January 1, 2011)) the expiration date of the exemption. See WAC 458-20-103, 458-20-197, and 458-20-235.

**Example.** Craig makes a down payment toward the purchase of a new qualifying clean alternative fuel vehicle on November 7, 2010, but does not actually take possession of the vehicle at the dealership lot until January 2, 2011. The vehicle is titled and registered on January 11, 2011. The purchase of the vehicle is subject to retail sales tax and the 0.3 percent retail sales tax imposed by RCW 82.08.020(3) on retail sales of motor vehicles.

Name of Agency Personnel Responsible for Drafting: Jim Winterstein, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-5880; Implementation and Enforcement: Brad Flaherty, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

February 3, 2010

Alan R. Lynn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-02-025, filed 12/29/09, effective 1/1/10)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year ((2009)) 2010, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is 7.53 percent; and
- (2) The property tax component for each county is:

| COUNTY       | PERCENT | COUNTY       | PERCENT |
|--------------|---------|--------------|---------|
| Adams        | 1.22    | Lewis        | 0.90    |
| Asotin       | 1.25    | Lincoln      | 1.15    |
| Benton       | 1.15    | Mason        | 0.90    |
| Chelan       | 0.95    | Okanogan     | 0.94    |
| Clallam      | 0.83    | Pacific      | 1.14    |
| Clark        | 1.01    | Pend Oreille | 0.86    |
| Columbia     | 1.09    | Pierce       | 1.09    |
| Cowlitz      | 1.03    | San Juan     | 0.50    |
| Douglas      | 0.95    | Skagit       | 0.90    |
| Ferry        | 0.89    | Skamania     | 0.79    |
| Franklin     | 1.34    | Snohomish    | 0.91    |
| Garfield     | 1.12    | Spokane      | 1.13    |
| Grant        | 1.22    | Stevens      | 0.94    |
| Grays Harbor | 1.08    | Thurston     | 0.99    |
| Island       | 0.69    | Wahkiakum    | 0.79    |
| Jefferson    | 0.79    | Walla Walla  | 1.14    |
| King         | 0.88    | Whatcom      | 0.94    |
| Kitsap       | 0.90    | Whitman      | 1.27    |
| Kittitas     | 0.73    | Yakima       | 1.12    |
| Klickitat    | 0.84    |              |         |

Title of Rule and Other Identifying Information:  
Amending WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.

**WSR 10-04-106**  
**EXPEDITED RULES**

**DEPARTMENT OF REVENUE**

[Filed February 3, 2010, 10:45 a.m.]

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jim Winterstein, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, e-mail JimW@dor.wa.gov, AND RECEIVED BY April 5, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to provide county assessors with the rate of interest and property tax component used in valuing farm and agricultural land classified under chapter 84.34 RCW (the open space program).

This rule was recently amended to provide the information for assessment year 2010 (WSR 10-02-025). This amendment did not, however, correctly identify 2010 as the assessment year to which the values apply. The department is proposing to amend this rule to correct this oversight. There is no change to the rate of interest and property tax component values.

Reasons Supporting Proposal: This change is needed to clarify that the values in the rule apply to the 2010 assessment year.

Statutory Authority for Adoption: RCW 84.34.065 and 84.34.141.

Statute Being Implemented: RCW 84.34.065.

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

Name of Proponent: Department of revenue, governmental.