

WSR 08-15-110
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed July 18, 2008, 2:58 p.m., effective August 18, 2008]

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

Purpose: The department is amending this rule to update and clarify existing sections, clarify/add criteria regarding the department's patient review and coordination (PRC) program; add language regarding the monthly capitated premiums the department pays to managed care organizations (MCOs); remove language regarding information on the original agreement when the provider may bill the client for non-covered services; add language regarding MCO coverage of emergency services; and add language to clarify the department pays MCOs a delivery case rate separate from the capitation payment when an enrollee delivers a child(ren) and the MCO pays for any part of labor and delivery.

Citation of Existing Rules Affected by this Order: Amending WAC 388-538-050, 388-538-060, 388-538-061, 388-538-067, 388-538-068, 388-538-070, 388-538-095, 388-538-100, 388-538-110, 388-538-111, 388-538-112, 388-538-120, 388-538-130, and 388-538-140.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.522.

Adopted under notice filed as WSR 08-09-029 on April 8, 2008.

Changes Other than Editing from Proposed to Adopted Version: **Current language in subsection (8) deleted: The department helps facilitate the choice of a PCP by providing information regarding available providers in the MCOs in the client's service area. Subsection (8) was replaced as follows: (8) The department: (a) Helps facilitate the choice of a PCP by providing information regarding available providers contracted with the MCOs in the client's service area; and (b) Upon request, will assist clients in identifying an MCO with which their provider participates.**

A final cost-benefit analysis is available by contacting Michael Paulson, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1641, fax (360) 753-7315, e-mail paulsmj@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 14, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 14, Repealed 0.

Date Adopted: July 18, 2008.

Blake D. Chard
for Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-050 Definitions. The following definitions and abbreviations and those found in WAC 388-500-0005, Medical definitions, apply to this chapter. References to managed care in this chapter do not apply to mental health managed care administered under chapter 388-865 WAC.

"Action" means one or more of the following:

- (1) The denial or limited authorization of a requested service, including the type or level of service;
- (2) The reduction, suspension, or termination of a previously authorized service;
- (3) The denial, in whole or in part, of payment for a service;
- (4) The failure to provide services in a timely manner, as defined by the state; or
- (5) The failure of a managed care organization (MCO) to act within the time frames provided in 42 C.F.R. 438.408(b).

"Ancillary health services"((—)) means healthcare services ((ordered by a provider, including but not limited to, laboratory services, radiology services, and physical therapy)) that are auxiliary, accessory, or secondary to a primary healthcare service.

"Appeal"((—)) means a request by an enrollee or provider with written permission of an enrollee for reconsideration of an action.

"Assign" or "assignment"((—)) means the department selects an MCO or primary care case management (PCCM) provider to serve a client who has not selected an MCO or PCCM provider.

"Auto enrollment"((—))((When)) means the department has automatically ((enrolls)) enrolled a client into an MCO in ((his or her)) the client's area of residence.

"Basic health" or "BH"((—))((The health care)) means the healthcare program authorized by chapter 70.47 RCW and administered by the health care authority (HCA).

"Basic health plus"—Refer to WAC 388-538-065.

"Children with special ((health care)) healthcare needs"((—)) means children ((under)) younger than age nineteen ((years of age)) who are identified by the department as having special ((health care)) healthcare needs. This includes:

- (1) Children designated as having special ((health care)) healthcare needs by the department of health (DOH) and receiving services under the Title V program;
- (2) Children eligible for Supplemental Security Income under Title ((+6)) XVI of the Social Security Act (SSA); and
- (3) Children who are in foster care or who are served under subsidized adoption.

"Client"((—)) means, for the purposes of this chapter, an individual eligible for any medical assistance program, including managed care programs, but who is not enrolled with an MCO or PCCM provider. In this chapter, "client" refers to a person before he or she is enrolled in managed

care, while "enrollee" refers to an individual eligible for any medical assistance program who is enrolled in managed care.

"Department"~~((—))~~ means the department of social and health services (DSHS).

"Disenrollment" See "end enrollment."

"Emergency medical condition"~~((—))~~ means a condition meeting the definition in 42 C.F.R. 438.114(a).

"Emergency services"~~((—))~~ means services defined in 42 C.F.R. 438.114(a).

"End enrollment"~~((—))~~ means ending the enrollment of an enrollee ~~((is currently enrolled in managed care, either with an MCO or with a PCCM provider, and his or her enrollment is discontinued and he or she returns to the fee-for-service delivery system))~~ for one of the reasons outlined in WAC 388-538-130. ~~((This is also referred to as "disenrollment."))~~

"Enrollee"~~((—))~~ means an individual eligible for any medical assistance program ~~((who is))~~ enrolled in managed care ~~((through))~~ with an MCO or PCCM provider that has a contract with the state.

"Enrollee's representative"~~((—))~~ means an individual with a legal right or written authorization from the enrollee to act on behalf of the enrollee in making decisions.

"Enrollees with special health care needs"~~((—))~~ ~~((Persons))~~ means enrollees having chronic and disabling conditions ~~((, including persons with special health care needs that meet all of the following))~~ and the conditions:

- (1) Have a biologic, psychologic, or cognitive basis;
- (2) Have lasted or are virtually certain to last for at least one year; and
- (3) Produce one or more of the following conditions stemming from a disease:
 - (a) Significant limitation in areas of physical, cognitive, or emotional function;
 - (b) Dependency on medical or assistive devices to minimize limitation of function or activities; or
 - (c) In addition, for children, any of the following:
 - (i) Significant limitation in social growth or developmental function;
 - (ii) Need for psychological, educational, medical, or related services over and above the usual for the child's age; or
 - (iii) Special ongoing treatments, such as medications, special diet, interventions, or accommodations at home or school.

"Exemption"~~((—))~~ means department approval of a client's preenrollment request to remain in the fee-for-service delivery system for one of the reasons outlined in WAC 388-538-130.

"Grievance"~~((—))~~ means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Grievance system"~~((—))~~ means the overall system that includes grievances and appeals handled at the MCO level and access to the department's hearing process.

"~~((Health care)) Healthcare service~~" or "service"~~((—))~~ means a service or item provided for the prevention, cure, or treatment of an illness, injury, disease, or condition.

"Healthy Options program" or "HO program"~~((—))~~ means the department's prepaid managed care health pro-

gram for Medicaid-eligible clients and clients enrolled in the state children's health insurance program (SCHIP).

"Managed care"~~((—))~~ means a comprehensive ~~((health care))~~ healthcare delivery system that includes preventive, primary, specialty, and ancillary services. These services are provided through either an MCO or PCCM provider.

"Managed care contract"~~((—))~~ means the agreement between the department and an MCO to provide prepaid contracted services to enrollees.

"Managed care organization" or "MCO"~~((—))~~ means an organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with the department under a comprehensive risk contract to provide prepaid ~~((health care))~~ healthcare services to eligible clients under the department's managed care programs.

"Mandatory enrollment"~~((—))~~ means the department's requirement that a client enroll in managed care.

"Mandatory service area"~~((—))~~ means a service area in which eligible clients are required to enroll in an MCO.

~~((**"Medicare/Medicaid integration program" or "MMIP"**—The department's prepaid managed care program that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare only or eligible for Medicare and Medicaid. Clients eligible for Medicaid only are not eligible for this program.))~~

"Nonparticipating provider"~~((—))~~ means a healthcare provider that does not have a written agreement with an MCO but that provides MCO-contracted ~~((health care))~~ healthcare services to managed care enrollees with the MCO's authorization.

"Participating provider"~~((—))~~ means a healthcare provider with a written agreement with an MCO to provide ~~((health care))~~ healthcare services to the MCO's managed care enrollees. A participating provider must look solely to the MCO for payment for such services.

"Primary care case management" or "PCCM"~~((—))~~ means the ~~((health care))~~ healthcare management activities of a provider that contracts with the department to provide primary ~~((health care))~~ healthcare services and to arrange and coordinate other preventive, specialty, and ancillary health services.

"Primary care provider" or "PCP"~~((—))~~ means a person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant who supervises, coordinates, and provides health services to a client or an enrollee, initiates referrals for specialist and ancillary care, and maintains the client's or enrollee's continuity of care.

"Prior authorization" or "PA"~~((—))~~ means a process by which enrollees or providers must request and receive department approval for services provided through the department's fee-for-service system, or MCO approval for services provided through the MCO, for certain medical services, equipment, drugs, and supplies, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. ~~((Expedited prior authorization and limitation extension are forms of prior authorization. See WAC 388-501-0165.))~~

"Timely" ~~((—))~~ means in relation to the provision of services, ~~((means))~~ an enrollee has the right to receive medically necessary ~~((health care))~~ healthcare as expeditiously as the enrollee's health condition requires. In relation to authorization of services and grievances and appeals, "timely" means according to the department's managed care program contracts and the time frames stated in this chapter.

"Washington Medicaid integration partnership" or "WMIP" ~~((—))~~ means the managed care program that is designed to integrate medical, mental health, chemical dependency treatment, and long-term care services into a single coordinated health plan for eligible aged, blind, or disabled clients.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-060 Managed care and choice. (1) Except as provided in subsection (2) of this section, the department requires a client to enroll in managed care when that client:

- (a) Is eligible for one of the medical assistance programs for which enrollment is mandatory;
- (b) Resides in an area where enrollment is mandatory; and
- (c) Is not exempt from managed care enrollment or the department has not ended the client's managed care enrollment, consistent with WAC 388-538-130, and any related hearing has been held and decided.

(2) American Indian/Alaska Native (AI/AN) clients who meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants may choose one of the following:

- (a) Enrollment with a managed care organization (MCO) available in their area;
- (b) Enrollment with an Indian or tribal primary care case management (PCCM) provider available in their area; or
- (c) The department's fee-for-service system.

(3) ~~((A client may))~~ To enroll with an MCO or PCCM provider ((by calling the department's toll-free enrollment line or by sending a completed enrollment form to the department's unit responsible for managed care enrollment as listed on the department's enrollment form-)), a client may:

(a) ~~((A client must enroll with an MCO or PCCM provider available in the area where the client lives.))~~ Call the department's toll-free enrollment line at 800-562-3022;

(b) ~~((All family members must either enroll with the same MCO or enroll with PCCM providers.))~~ Mail a postage-paid completed managed care enrollment form (healthy options sign-up form, DSHS 13-664) to the department's unit responsible for managed care enrollment; or

(c) ~~((Enrollees may request an MCO or PCCM provider change at any time))~~ Fax the managed care enrollment form (healthy options sign-up form, DSHS 13-664) to the department at 360-725-2144.

(4) A client must enroll with an MCO provider available in the area where the client resides.

(5) All family members of an enrollee placed in the patient review and coordination (PRC) program under WAC 388-501-0135 must enroll with the same MCO but may

enroll in a different MCO than the family member placed in the PRC program.

~~((d))~~ (6) When a client requests enrollment with an MCO or PCCM provider, the department enrolls a client effective the earliest possible date given the requirements of the department's enrollment system. The department does not enroll clients retrospectively.

~~((f))~~ (7) The department assigns a client who does not choose an MCO or PCCM provider as follows:

(a) If the client has a family member ~~((s))~~ or family members enrolled with an MCO, the client is enrolled with that MCO;

(b) If the client does not have a family member or family members enrolled with an MCO that is currently under contract with the department, and the client was previously enrolled with the MCO or PCCM provider, and the department can identify the previous enrollment, the client is reenrolled with the same MCO or PCCM provider;

(c) ~~((If a client does not choose an MCO or a PCCM provider, but indicates a preference for a provider to serve as the client's primary care provider (PCP), the department attempts to contact the client to complete the required choice. If the department is not able to contact the client in a timely manner, the department documents the attempted contacts and, using the best information available, assigns the client as follows. If the client's preferred PCP is:~~

~~(i) Available with one MCO, the department assigns the client in the MCO where the client's PCP provider is available. The MCO is responsible for PCP choice and assignment;~~

~~(ii) Available only as a tribal PCCM provider and the client meets the criteria of subsection (2) of this section, the department assigns the client to the preferred provider as the client's PCCM provider;~~

~~(iii) Available with multiple MCOs or through an MCO and as a PCCM provider, the department assigns the client to an MCO as described in (d) of this subsection;~~

~~(iv) Not available through any MCO or as a PCCM provider, the department assigns the client to an MCO or PCCM provider as described in (d) of this subsection.~~

~~((d))~~ If the client cannot be assigned according to (a) ~~((s))~~ or (b) ~~((r or e))~~ of this subsection, the department assigns the client as follows:

(i) If an AI/AN client does not choose an MCO or PCCM provider, the department assigns the client to a tribal PCCM provider if that client ~~((lives))~~ resides in a zip code served by a tribal PCCM provider. If there is no tribal PCCM provider in the client's area, the client continues to be served by the department's fee-for-service system. A client assigned under this subsection may request to end enrollment at any time.

(ii) If a non-AI/AN client does not choose an MCO provider, the department assigns the client to an MCO available in the area where the client ~~((lives))~~ resides. The MCO is responsible for primary care provider (PCP) choice and assignment.

(iii) For clients who are new recipients ~~((to medical assistance))~~ or who have had a break in eligibility of greater than two months, the department sends a written notice to each household of one or more clients who are assigned to an MCO or PCCM provider. The assigned client has ten calen-

dar days to contact the department to change the MCO or PCCM provider assignment before enrollment is effective. The notice includes the name of the MCO or PCCM provider to which each client has been assigned, the effective date of enrollment, the date by which the client must respond in order to change the assignment, and the toll-free telephone number of either:

- (A) The MCO (for enrollees assigned to an MCO); or
- (B) The department (for enrollees assigned to a PCCM provider).

(iv) If the client has a break in eligibility of less than two months, the client will be automatically reenrolled with his or her previous MCO or PCCM provider and no notice will be sent.

~~((5))~~ (8) The department:

(a) Helps facilitate the choice of a PCP by providing information regarding available providers contracted with the MCOs in the client's service area; and

(b) Upon request, will assist clients in identifying an MCO with which their provider participates.

(9) An MCO enrollee's selection of ~~((the enrollee's))~~ a PCP or ~~((the enrollee's))~~ assignment to a PCP occurs as follows:

(a) An MCO enrollee(s) may choose:

- (i) A PCP or clinic that is in the enrollee's MCO and accepting new enrollees; or
- (ii) A different PCP(s) or clinic(s) participating with the enrollee's MCO for different family members.

(b) The MCO assigns a PCP or clinic that meets the access standards set forth in the relevant managed care contract if the enrollee does not choose a PCP or clinic(s).

(c) An MCO enrollee(s) may change PCPs or clinics in an MCO for any reason, with the change becoming effective no later than the beginning of the month following the enrollee's request~~((; or))~~.

(d) ~~((In accordance with this subsection,))~~ An MCO enrollee(s) may file a grievance with the MCO ~~((and may change plans))~~ if the MCO does not approve an enrollee's request to change PCPs or clinics.

(e) MCO enrollees required to participate in the department's PRC program may be limited in their right to change PCPs (see WAC 388-501-0135).

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-061 Voluntary enrollment into managed care—Washington Medicaid integration partnership (WMIP) ~~((or Medicare/Medicaid integration program (MMIP)))~~. (1) The purpose of this section is to describe the managed care requirements for clients eligible for ~~((either))~~ the Washington Medicaid Integration Partnership (WMIP) ~~((or the Medicare/Medicaid Integration Program (MMIP)))~~.

(2) Unless otherwise stated in this section, all of the provisions of chapter 388-538 WAC apply to clients enrolled in WMIP ~~((and MMIP))~~.

(3) The following sections of chapter 388-538 WAC do not apply to WMIP enrollees ~~((or MMIP enrollees))~~:

(a) WAC 388-538-060. However, WAC ~~((388-538-060(5)))~~ 388-538-060(9), describing enrollees' ability to choose their PCP, does apply to WMIP enrollees ~~((and MMIP enrollees))~~;

(b) WAC 388-538-063;

(c) WAC 388-538-065;

(d) WAC 388-538-068; and

(e) WAC 388-538-130. However, WAC 388-538-130 (3) and (4), describing the process used when the department receives a request from an MCO to remove an enrollee from enrollment in managed care, do apply to WMIP enrollees ~~((and MMIP enrollees))~~. Also, WAC 388-538-130(9), describing the MCO's ability to refer enrollees to the department's "Patient Review and ~~((Restriction))~~ Coordination" program, does apply to WMIP enrollees ~~((and MMIP enrollees))~~.

(4) The process for enrollment of WMIP ~~((and MMIP))~~ clients is as follows:

(a) Enrollment in WMIP ~~((and MMIP))~~ is voluntary, subject to program limitations in ~~((subsection))~~ (b) and ~~((e))~~ (d) of this subsection.

(b) For WMIP, the department automatically enrolls clients, with the exception of American Indian/Alaska natives and clients eligible for both Medicare and Medicaid, when they:

(i) Are aged, blind, or disabled;

(ii) Are twenty-one years of age or older; and

(iii) Receive categorically needy medical assistance.

(c) ~~((For MMIP, clients may enroll when they:~~

~~(i) Are sixty-five years of age or older; and~~

~~(ii) Receive Medicare and/or Medicaid.~~

~~((d))~~ American Indian/Alaska native (AI/AN) clients and clients who are eligible for both Medicare and Medicaid who meet the eligibility criteria in (b) ~~((or (e)))~~ of this subsection may voluntarily enroll or end enrollment in WMIP ~~((or MMIP))~~ at any time.

~~((e))~~ (d) The department will not enroll a client in WMIP ~~((or MMIP))~~, or will end an enrollee's enrollment in WMIP ~~((or MMIP))~~ when the client has, or becomes eligible for, CHAMPUS/TRICARE or any other third-party ~~((health care))~~ healthcare coverage that would:

(i) Require the department to either exempt the client from enrollment in managed care; or

(ii) End the enrollee's enrollment in managed care.

~~((f))~~ (e) A client or enrollee in WMIP ~~((or MMIP))~~, or the client's or enrollee's representative, may end enrollment from the MCO at any time without cause. The client may then reenroll at any time with the MCO. The department ends enrollment for clients prospectively to the first day of the month following the request to end enrollment, except as provided in ~~((subsection (g)))~~ (f) of this subsection.

~~((g) Clients))~~ (f) A client or enrollee may request that the department retroactively end enrollment from WMIP ~~((and MMIP))~~. On a case-by-case basis, the department may retroactively end enrollment from WMIP ~~((and MMIP))~~ when, in the department's judgment:

(i) The client or enrollee has a documented and verifiable medical condition; and

(ii) Enrollment in managed care could cause an interruption of on-going treatment that could jeopardize the client's or

enrollee's life or health or ability to attain, maintain, or regain maximum function.

(5) In addition to the scope of medical care services described in WAC 388-538-095, WMIP (~~and MMIP are designed to include the following services:~~

(a) ~~For WMIP enrollees~~) includes mental health, chemical dependency treatment, and long-term care services (~~and~~

(b) ~~For MMIP enrollees long-term care services~~).

(6) The department sends each client written information about covered services when the client is eligible to enroll in WMIP (~~or MMIP~~), and any time there is a change in covered services. In addition, the department requires MCOs to provide new enrollees with written information about covered services. This notice informs the client about the right to end enrollment and how to do so.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-067 Managed care provided through managed care organizations (MCOs). (1) Managed care organizations (MCOs) may contract with the department to provide prepaid (~~health care~~) healthcare services to eligible clients. The MCOs must meet the qualifications in this section to be eligible to contract with the department. The MCO must:

(a) Have a certificate of registration from the office of the insurance commissioner (OIC) that allows the MCO to provide the healthcare services (~~in subsection (1) of this section~~);

(b) Accept the terms and conditions of the department's managed care contract;

(c) Be able to meet the network and quality standards established by the department; and

(d) Accept the prepaid rates published by the department.

(2) The department reserves the right not to contract with any otherwise qualified MCO.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-068 Managed care provided through primary care case management (PCCM). A provider may contract with the department as a primary care case management (PCCM) provider to coordinate (~~health care~~) healthcare services to eligible clients under the department's managed care program. The PCCM provider or the individual providers in a PCCM group or clinic must:

(1) Have a core provider agreement with the department;

(2) Be a recognized urban Indian health center or tribal clinic;

(3) Accept the terms and conditions of the department's PCCM contract;

(4) Be able to meet the quality standards established by the department; and

(5) Accept PCCM rates published by the department.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-070 Managed care payment. (1) The department pays managed care organizations (MCOs) monthly capitated premiums that:

(a) Have been (~~determined using generally accepted actuarial methods~~) developed in accordance with generally accepted actuarial principles and practices;

(b) Are appropriate for the populations to be covered and the services to be furnished under the MCO contract;

(c) Have been certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board;

(d) Are based on historical analysis of financial cost and/or rate information; and

(~~(e)~~) (e) Are paid based on legislative allocations.

(2) The department pays primary care case management (PCCM) providers a monthly case management fee according to contracted terms and conditions.

(3) The department does not pay providers under the fee-for-service system for (~~services~~) a service that (~~are~~) is the MCO's responsibility, even if the MCO has not paid for the service for any reason. The MCO is solely responsible for payment of MCO-contracted (~~health care~~) healthcare services.

(4) The department pays an enhancement rate to federally qualified (~~health care~~) healthcare centers (FQHC) and rural health clinics (RHC) for each client enrolled with MCOs through the FQHC or RHC. The enhancement rate from the department is in addition to the negotiated payments FQHCs and RHCs receive from the MCOs for services provided to MCO enrollees.

(5) The department pays MCOs a delivery case rate, separate from the capitation payment, when an enrollee delivers a child (~~ren~~) and the MCO pays for any part of labor and delivery.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-538-095 Scope of care for managed care enrollees. (1) Managed care enrollees are eligible for the scope of medical care services as described in WAC 388-501-0060 for categorically needy clients.

(a) A client is entitled to timely access to medically necessary services as defined in WAC 388-500-0005.

(b) The managed care organization (MCO) covers the services included in the MCO contract for MCO enrollees. MCOs may, at their discretion, cover additional services not required under the MCO contract. However, the department may not require the MCO to cover any additional services outside the scope of services negotiated in the MCO's contract with the department.

(c) The department covers medically necessary services described in WAC 388-501-0060 and 388-501-0065 that are excluded from coverage in the MCO contract.

(d) The department covers services through the fee-for-service system for enrollees with a primary care case management (PCCM) provider. Except for emergencies, the

PCCM provider must either provide the covered services needed by the enrollee, or refer the enrollee to other providers who are contracted with the department for covered services. The PCCM provider is responsible for instructing the enrollee regarding how to obtain the services that are referred by the PCCM provider. ~~((The))~~ Services that require PCCM provider referral are described in the PCCM contract. The department informs an enrollee~~((s))~~ about the enrollee's program coverage, limitations to covered services, and how to obtain covered services.

(e) MCO enrollees may obtain ~~((certain))~~ specific services described in the managed care contract from either an MCO provider or from a ~~((department-enrolled))~~ provider with a ~~((current core provider))~~ separate agreement with the department without needing to obtain a referral from the PCP or MCO. These services ~~((are described in the managed care contract, and))~~ are communicated to enrollees by the department and MCOs as described in (f) of this subsection.

(f) The department sends each client written information about covered services when the client is required to enroll in managed care, and any time there is a change in covered services. This information describes covered services, which services are covered by the department, and which services are covered by MCOs. In addition, the department requires MCOs to provide new enrollees with written information about covered services.

(2) For services covered by the department through PCCM contracts for managed care:

(a) The department covers medically necessary services included in the categorically needy scope of care and rendered by providers who have a current core provider agreement with the department to provide the requested service;

(b) The department may require the PCCM provider to obtain authorization from the department for coverage of nonemergency services;

(c) The PCCM provider determines which services are medically necessary;

(d) An enrollee may request a hearing for review of PCCM provider or the department coverage decisions (see WAC 388-538-110); and

(e) Services referred by the PCCM provider require an authorization number in order to receive payment from the department.

(3) For services covered by the department through contracts with MCOs:

(a) The department requires the MCO to subcontract with a sufficient number of providers to deliver the scope of contracted services in a timely manner. Except for emergency services, MCOs provide covered services to enrollees through their participating providers;

(b) The department requires MCOs to provide new enrollees with written information about how enrollees may obtain covered services;

(c) For nonemergency services, MCOs may require the enrollee to obtain a referral from the primary care provider (PCP), or the provider to obtain authorization from the MCO, according to the requirements of the MCO contract;

(d) MCOs and their providers determine which services are medically necessary given the enrollee's condition, according to the requirements included in the MCO contract;

(e) The department requires the MCO to coordinate benefits with other insurers in a manner that does not reduce benefits to the enrollee or result in costs to the enrollee;

(f) A managed care enrollee does not need a PCP referral to receive women's ~~((health care))~~ healthcare services, as described in RCW 48.42.100, from any women's ~~((health care))~~ healthcare provider participating with the MCO. Any covered services ordered and/or prescribed by the women's ~~((health care))~~ healthcare provider must meet the MCO's service authorization requirements for the specific service.

(g) For enrollees temporarily outside their MCO~~((s))~~ services area, the MCO is required to cover enrollees for up to ninety days for emergency care and medically necessary covered benefits that cannot wait until the enrollees return to their MCO services area.

(4) Unless the MCO chooses to cover these services, or an appeal, independent review, or a hearing decision reverses an MCO or department denial, the following services are not covered:

(a) For all managed care enrollees:

(i) Services that are not medically necessary~~((;))~~.

(ii) Services not included in the categorically needy scope of services~~((; and))~~.

(iii) Services, other than a screening exam as described in WAC 388-538-100(3), received in a hospital emergency department for nonemergency medical conditions.

(b) For MCO enrollees:

(i) Services received from a participating specialist that require prior authorization from the MCO, but were not authorized by the MCO~~((; and))~~.

(ii) Services received from a nonparticipating provider that require prior authorization from the MCO that were not authorized by the MCO. All nonemergency services covered under the MCO contract and received from nonparticipating providers require prior authorization from the MCO.

(c) For PCCM enrollees, services that require a referral from the PCCM provider as described in the PCCM contract, but were not referred by the PCCM provider.

(5) A provider may bill an enrollee for noncovered services as described in subsection (4) of this section, if the requirements of WAC 388-502-0160 are met. ~~((The provider must give the original agreement to the enrollee and file a copy in the enrollee's record.~~

~~((a) The agreement must state all of the following:~~

~~((i) The specific service to be provided;~~

~~((ii) That the service is not covered by either the department or the MCO;~~

~~((iii) An explanation of why the service is not covered by the MCO or the department, such as:~~

~~((A) The service is not medically necessary; or~~

~~((B) The service is covered only when provided by a participating provider.~~

~~((iv) The enrollee chooses to receive and pay for the service; and~~

~~((v) Why the enrollee is choosing to pay for the service, such as:~~

~~((A) The enrollee understands that the service is available at no cost from a provider participating with the MCO, but the enrollee chooses to pay for the service from a provider not participating with the MCO;~~

~~(B) The MCO has not authorized emergency department services for nonemergency medical conditions and the enrollee chooses to pay for the emergency department's services rather than wait to receive services at no cost in a participating provider's office; or~~

~~(C) The MCO or PCCM has determined that the service is not medically necessary and the enrollee chooses to pay for the service.~~

~~(b) For enrollees with limited English proficiency, the agreement must be translated or interpreted into the enrollee's primary language to be valid and enforceable.~~

~~(c) The agreement is void and unenforceable, and the enrollee is under no obligation to pay the provider, if the service is covered by the department or the MCO as described in subsection (1) of this section, even if the provider is not paid for the covered service because the provider did not satisfy the payor's billing requirements.)~~

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

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-100 Managed care emergency services. (1) A managed care enrollee may obtain emergency services, for emergency medical conditions from any qualified Medicaid provider. ("Emergency services" and "emergency medical condition" are ~~((as))~~ defined in ~~((this chapter))~~ WAC 388-538-050.)

(a) The managed care organization (MCO) covers emergency services for MCO enrollees.

(b) The department covers emergency services for primary care case management (PCCM) enrollees.

(2) Emergency services for emergency medical conditions do not require prior authorization by the MCO, primary care provider (PCP), PCCM provider, or the department.

(3) MCOs must cover all emergency services provided to an enrollee by a provider who is qualified to furnish Medicaid services, without regard to whether the provider is a participating or nonparticipating provider.

(4) An enrollee who requests emergency services is entitled to receive an exam to determine if the enrollee has an emergency medical condition. What constitutes an emergency medical condition may not be limited on the basis of diagnosis or symptoms.

(5) The MCO must cover emergency services provided to an enrollee when:

(a) The enrollee had an emergency medical condition, including cases in which the absence of immediate medical attention would not have had the outcomes specified in the definition of an emergency medical condition; and

(b) The plan provider or other MCO representative instructs the enrollee to seek emergency services.

(6) In any disagreement between a hospital and the MCO about whether the enrollee is stable enough for discharge or transfer, or whether the medical benefits of an unstabilized transfer outweigh the risks, the judgment of the attending physician(s) actually caring for the enrollee at the treating facility prevails.

(7) Under 42 C.F.R. 438.114, the enrollee's MCO must cover and pay for:

(a) Emergency services provided to enrollees by an emergency room provider, hospital or fiscal agent outside the managed care system; and

(b) Any screening and treatment the enrollee requires subsequent to the provision of the emergency services.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-110 The grievance system for managed care organizations (MCO). (1) This section contains information about the grievance system for managed care organization (MCO) enrollees, which includes grievances and appeals. See WAC 388-538-111 for information about the grievance system for PCCM enrollees, which includes grievances and appeals.

(2) An MCO enrollee may voice a grievance or appeal an action by an MCO to the MCO either orally or in writing.

(3) MCOs must maintain records of grievances and appeals and must review the information as part of the MCO's quality strategy.

(4) MCOs must provide information describing the MCO's grievance system to all providers and subcontractors.

(5) Each MCO must have a grievance system in place for enrollees. The system must comply with the requirements of this section and the regulations of the state office of the insurance commissioner (OIC). If a conflict exists between the requirements of this chapter and OIC regulations, the requirements of this chapter take precedence. The MCO grievance system must include all of the following:

(a) A grievance process for complaints about any matter other than an action, as defined in WAC 388-538-050. See subsection (6) of this section for this process;

(b) An appeal process for an action, as defined in WAC 388-538-050. See subsection (7) of this section for the standard appeal process and subsection (8) of this section for the expedited appeal process;

(c) Access to the department's hearing process for actions as defined in WAC 388-538-050. The department's hearing process described in chapter 388-02 WAC applies to this chapter. Where conflicts exist, the requirements in this chapter take precedence. See WAC 388-538-112 for the department's hearing process for MCO enrollees;

(d) Access to an independent review (IR) as described in RCW 48.43.535, for actions as defined in WAC 388-538-050 (see WAC 388-538-112 for additional information about the IR); and

(e) Access to the board of appeals (BOA) for actions as defined in WAC 388-538-050 (also see chapter 388-02 WAC and WAC 388-538-112).

(6) The MCO grievance process:

(a) Only an enrollee may file a grievance with an MCO; a provider may not file a grievance on behalf of an enrollee.

(b) To ensure the rights of MCO enrollees are protected, each MCO's grievance process must be approved by the department.

(c) MCOs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the

MCO's grievance process, including how to use the department's hearing process. The MCOs must have department approval for all written information the MCO sends to enrollees.

(d) The MCO must give enrollees any assistance necessary in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers).

(e) The MCO must acknowledge receipt of each grievance either orally or in writing, and each appeal in writing, within five working days.

(f) The MCO must ensure that the individuals who make decisions on grievances are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are ~~((health care))~~ healthcare professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) A grievance regarding denial of an expedited resolution of an appeal; or

(B) A grievance involving clinical issues.

(g) The MCO must complete the disposition of a grievance and notice to the affected parties within ninety days of receiving the grievance.

(7) The MCO appeal process:

(a) An MCO enrollee, or the enrollee's representative with the enrollee's written consent, may appeal an MCO action.

(b) To ensure the rights of MCO enrollees are protected, each MCO's appeal process must be approved by the department.

(c) MCOs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MCO's appeal process and the department's hearing process. The MCOs must have department approval for all written information the MCO sends to enrollees.

(d) For standard service authorization decisions, an enrollee must file an appeal, either orally or in writing, within ninety calendar days of the date on the MCO's notice of action. This also applies to an enrollee's request for an expedited appeal.

(e) For appeals for termination, suspension, or reduction of previously authorized services, if the enrollee is requesting continuation of services, the enrollee must file an appeal within ten calendar days of the date of the MCO mailing the notice of action. Otherwise, the time frames in subsection (7)(d) of this section apply.

(f) The MCO's notice of action must:

(i) Be in writing;

(ii) Be in the enrollee's primary language and be easily understood as required in 42 C.F.R. 438.10 (c) and (d);

(iii) Explain the action the MCO or its contractor has taken or intends to take;

(iv) Explain the reasons for the action;

(v) Explain the enrollee's or the enrollee's representative's right to file an MCO appeal;

(vi) Explain the procedures for exercising the enrollee's rights;

(vii) Explain the circumstances under which expedited resolution is available and how to request it (also see subsection (8) of this section);

(viii) Explain the enrollee's right to have benefits continue pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services (also see subsection (9) of this section); and

(ix) Be mailed as expeditiously as the enrollee's health condition requires, and as follows:

(A) For denial of payment, at the time of any action affecting the claim. This applies only when the client can be held liable for the costs associated with the action.

(B) For standard service authorization decisions that deny or limit services, not to exceed fourteen calendar days following receipt of the request for service, with a possible extension of up to fourteen additional calendar days if the enrollee or provider requests extension. If the request for extension is granted, the MCO must:

(I) Give the enrollee written notice of the reason for the decision for the extension and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(II) Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(C) For termination, suspension, or reduction of previously authorized services, ten days prior to such termination, suspension, or reduction, except if the criteria stated in 42 C.F.R. 431.213 and 431.214 are met. The notice must be mailed by a method which certifies receipt and assures delivery within three calendar days.

(D) For expedited authorization decisions, in cases where the provider indicates or the MCO determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, no later than three calendar days after receipt of the request for service.

(g) The MCO must give enrollees any assistance necessary in taking procedural steps for an appeal (e.g., interpreter services and toll-free numbers).

(h) The MCO must acknowledge receipt of each appeal.

(i) The MCO must ensure that the individuals who make decisions on appeals are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are ~~((health care))~~ healthcare professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) An appeal of a denial that is based on lack of medical necessity; or

(B) An appeal that involves clinical issues.

(j) The process for appeals must:

(i) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal), and must be confirmed in writing, unless the enrollee or provider requests an expedited resolution. Also see subsection (8) for information on expedited resolutions;

(ii) Provide the enrollee a reasonable opportunity to present evidence, and allegations of fact or law, in person as well as in writing. The MCO must inform the enrollee of the

limited time available for this in the case of expedited resolution;

(iii) Provide the enrollee and the enrollee's representative opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, and any other documents and records considered during the appeal process; and

(iv) Include as parties to the appeal, the enrollee and the enrollee's representative, or the legal representative of the deceased enrollee's estate.

(k) MCOs must resolve each appeal and provide notice, as expeditiously as the enrollee's health condition requires, within the following time frames:

(i) For standard resolution of appeals and notice to the affected parties, no longer than forty-five calendar days from the day the MCO receives the appeal. This time frame may not be extended.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than three calendar days after the MCO receives the appeal.

(iii) For appeals for termination, suspension, or reduction of previously authorized services, no longer than forty-five calendar days from the day the MCO receives the appeal.

(l) The notice of the resolution of the appeal must:

(i) Be in writing. For notice of an expedited resolution, the MCO must also make reasonable efforts to provide oral notice (also see subsection (8) of this section).

(ii) Include the results of the resolution process and the date it was completed.

(iii) For appeals not resolved wholly in favor of the enrollee:

(A) Include information on the enrollee's right to request a department hearing and how to do so (also see WAC 388-538-112);

(B) Include information on the enrollee's right to receive services while the hearing is pending and how to make the request (also see subsection (9) of this section); and

(C) Inform the enrollee that the enrollee may be held liable for the cost of services received while the hearing is pending, if the hearing decision upholds the MCO's action (also see subsection (10) of this section).

(m) If an MCO enrollee does not agree with the MCO's resolution of the appeal, the enrollee may file a request for a department hearing within the following time frames (see WAC 388-538-112 for the department's hearing process for MCO enrollees):

(i) For hearing requests regarding a standard service, within ninety days of the date of the MCO's notice of the resolution of the appeal.

(ii) For hearing requests regarding termination, suspension, or reduction of a previously authorized service, within ten days of the date on the MCO's notice of the resolution of the appeal.

(n) The MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing(+) with the department.

(8) The MCO expedited appeal process:

(a) Each MCO must establish and maintain an expedited appeal review process for appeals when the MCO determines (for a request from the enrollee) or the provider indicates (in

making the request on the enrollee's behalf or supporting the enrollee's request), that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function.

(b) When approving an expedited appeal, the MCO will issue a decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the appeal.

(c) The MCO must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

(d) If the MCO denies a request for expedited resolution of an appeal, it must:

(i) Transfer the appeal to the time frame for standard resolution; and

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two calendar days with a written notice.

(9) Continuation of previously authorized services:

(a) The MCO must continue the enrollee's services if all of the following apply:

(i) The enrollee or the provider files the appeal on or before the later of the following:

(A) Unless the criteria in 42 C.F.R. 431.213 and 431.214 are met, within ten calendar days of the MCO mailing the notice of action, which for actions involving services previously authorized, must be delivered by a method which certifies receipt and assures delivery within three calendar days; or

(B) The intended effective date of the MCO's proposed action.

(ii) The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(iii) The services were ordered by an authorized provider;

(iv) The original period covered by the original authorization has not expired; and

(v) The enrollee requests an extension of services.

(b) If, at the enrollee's request, the MCO continues or reinstates the enrollee's services while the appeal is pending, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the appeal;

(ii) Ten calendar days pass after the MCO mails the notice of the resolution of the appeal and the enrollee has not requested a department hearing (with continuation of services until the department hearing decision is reached) within the ten days;

(iii) Ten calendar days pass after the state office of administrative hearings (OAH) issues a hearing decision adverse to the enrollee and the enrollee has not requested an independent review (IR) within the ten days (see WAC 388-538-112);

(iv) Ten calendar days pass after the IR mails a decision adverse to the enrollee and the enrollee has not requested a review with the board of appeals within the ten days (see WAC 388-538-112);

(v) The board of appeals issues a decision adverse to the enrollee (see WAC 388-538-112); or

(vi) The time period or service limits of a previously authorized service has been met.

(c) If the final resolution of the appeal upholds the MCO's action, the MCO may recover the amount paid for the services provided to the enrollee while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services.

(10) Effect of reversed resolutions of appeals:

(a) If the MCO or OAH reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the MCO must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.

(b) If the MCO or OAH reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the MCO must pay for those services.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-111 Primary care case management (PCCM) grievances and appeals. (1) This section contains information about the grievance system for primary care case management (PCCM) enrollees, which includes grievances and appeals. See WAC 388-538-110 for information about the grievance system for managed care organization (MCO) enrollees.

(2) A PCCM enrollee may voice a grievance or file an appeal, either orally or in writing. PCCM enrollees use the department's grievance and appeal processes.

(3) The grievance process for PCCM enrollees;

(a) A PCCM enrollee may file a grievance with the department. A provider may not file a grievance on behalf of a PCCM enrollee.

(b) The department provides PCCM enrollees with information equivalent to that described in WAC 388-538-110 (7)(c).

(c) When a PCCM enrollee files a grievance with the department, the enrollee is entitled to:

(i) Any reasonable assistance in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers);

(ii) Acknowledgment of the department's receipt of the grievance;

(iii) A review of the grievance. The review must be conducted by a department representative who was not involved in the grievance issue; and

(iv) Disposition of a grievance and notice to the affected parties within ninety days of the department receiving the grievance.

(4) The appeal process for PCCM enrollees:

(a) A PCCM enrollee may file an appeal of a department action with the department. A provider may not file an appeal on behalf of a PCCM enrollee.

(b) The department provides PCCM enrollees with information equivalent to that described in WAC 388-538-110 (8)(c).

(c) The appeal process for PCCM enrollees follows that described in chapter 388-02 WAC. Where a conflict exists, the requirements in this chapter take precedence.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-112 The department of social and health services' (DSHS) hearing process for enrollee appeals of managed care organization (MCO) actions. (1) The hearing process described in chapter 388-02 WAC applies to the hearing process described in this chapter. Where a conflict exists, the requirements in this chapter take precedence.

(2) ~~((A#))~~ A managed care organization (MCO) enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing with the department. See WAC 388-538-110 for the MCO grievance system.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may file a request for a department hearing within the following time frames:

(a) For hearing requests regarding a standard service, within ninety calendar days of the date of the MCO's notice of the resolution of the appeal.

(b) For hearing requests regarding termination, suspension, or reduction of a previously authorized service, and the enrollee is requesting continuation of services, within ten calendar days of the date on the MCO's notice of the resolution of the appeal.

(4) The entire appeal and hearing process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a department hearing.

(5) Expedited hearing process:

(a) The office of administrative hearings (OAH) must establish and maintain an expedited hearing process when the enrollee or the enrollee's representative requests an expedited hearing and OAH indicates that the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function.

(b) When approving an expedited hearing, OAH must issue a hearing decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the case file and information from the MCO regarding the action and MCO appeal.

(c) When denying an expedited hearing, OAH gives prompt oral notice to the enrollee followed by written notice within two calendar days of request and transfer the hearing to the time frame for a standard service.

(6) Parties to the hearing include the department, the MCO, the enrollee, and the enrollee's representative or the representative of a deceased enrollee's estate.

(7) If an enrollee disagrees with the hearing decision, then the enrollee may request an independent review (IR) in accordance with RCW 48.43.535.

(8) If there is disagreement with the IR decision, any party may request a review by the department's board of appeals (BOA) within twenty-one days of the IR decision. The department's BOA issues the final administrative decision.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-120 Enrollee request for a second medical opinion. (1) A ~~((managed care))~~ managed care enrollee has the right to a timely referral for a second opinion upon request when:

(a) The enrollee needs more information about treatment recommended by the provider or managed care organization (MCO); or

(b) The enrollee believes the MCO is not authorizing medically necessary care.

(2) A managed care enrollee has a right to a second opinion from a participating provider. At the MCO's discretion, a clinically appropriate nonparticipating provider who is agreed upon by the MCO and the enrollee may provide the second opinion.

(3) Primary care case management (PCCM) enrollees have a right to a timely referral for a second opinion by another provider who has a core provider agreement with the department.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-130 Exemptions and ending enrollment in managed care. (1) The department exempts a client from mandatory enrollment in managed care or ends an enrollee's enrollment in managed care ~~((also referred to as disenrollment))~~ as specified in this section.

(2) A client or enrollee, or the client's or enrollee's representative as defined in RCW 7.70.065, may request the department to exempt or end enrollment in managed care as described in this section.

(a) If a client requests exemption prior to the enrollment effective date, the client is not enrolled until the department approves or denies the request.

(b) If an enrollee requests to end enrollment, the enrollee remains enrolled pending the department's final decision, unless staying in managed care would adversely affect the enrollee's health status.

(c) The client or enrollee receives timely notice by telephone or in writing when the department approves or denies the client's or enrollee's request. The department follows a telephone denial by written notification. The written notice contains all of the following:

- (i) The action the department intends to take;
- (ii) The reason(s) for the intended action;
- (iii) The specific rule or regulation supporting the action;
- (iv) The client's or enrollee's right to request a hearing;

and

(v) A translation into the client's or enrollee's primary language when the client or enrollee has limited English proficiency.

(3) A managed care organization (MCO) or primary care case management (PCCM) provider may request the department to end enrollment. The request must be in writing and be sufficient to satisfy the department that the enrollee's behavior is inconsistent with the MCO's or PCCM provider's rules and regulations (e.g., intentional misconduct). The department does not approve a request to remove an enrollee from managed care when the request is solely due to an adverse change in the enrollee's health or the cost of meeting the enrollee's ~~((health care))~~ healthcare needs. The MCO or PCCM provider's request must include documentation that:

(a) The provider furnished clinically appropriate evaluation(s) to determine whether there is a treatable problem contributing to the enrollee's behavior;

(b) Such evaluation either finds no treatable condition to be contributing, or after evaluation and treatment, the enrollee's behavior continues to prevent the provider from safely or prudently providing medical care to the enrollee; and

(c) The enrollee received written notice of the provider's intent to request the enrollee's removal, unless the department has waived the requirement for provider notice because the enrollee's conduct presents the threat of imminent harm to others. The provider's notice must include:

(i) The enrollee's right to use the provider's grievance system as described in WAC 388-538-110 and 388-538-111; and

(ii) The enrollee's right to use the department's hearing process, after the enrollee has exhausted all grievance and appeals available through the provider's grievance system (see WAC 388-538-110 and 388-538-111 for provider grievance systems, and WAC 388-538-112 for the hearing process for enrollees).

(4) When the department receives a request from an MCO or PCCM provider to remove an enrollee from enrollment in managed care, the department attempts to contact the enrollee for the enrollee's perspective. If the department approves the request, the department sends a notice at least ten days in advance of the effective date that enrollment will end. The notice includes:

(a) The reason the department approved ending enrollment; and

(b) Information about the enrollee's hearing rights.

(5) The department will exempt a client from mandatory enrollment or end an enrollee's enrollment in managed care when any of the following apply:

(a) The client or enrollee is receiving foster care placement services from the division of children and family services (DCFS);

(b) The client has or the enrollee becomes eligible for Medicare, basic health (BH), CHAMPUS/TRICARE, or any other third-party ~~((health care))~~ healthcare coverage comparable to the department's managed care coverage that would require exemption or involuntarily ending enrollment from:

(i) An MCO, in accordance with the department's managed care contract; or

(ii) A primary care case management (PCCM) provider, according to the department's PCCM contract.

(c) The enrollee is no longer eligible for managed care.

(6) The department will grant a client's request for exemption or an enrollee's request to end enrollment when:

(a) The client or enrollee is American Indian/Alaska native (AI/AN) as specified in WAC 388-538-060(2);

(b) The client or enrollee has been identified by the department as a child who meets the definition of "children with special ((health-care)) healthcare needs";

(c) The client or enrollee is homeless or is expected to live in temporary housing for less than one hundred twenty days from the date of the request; or

(d) The client or enrollee speaks limited English or is hearing impaired and the client or enrollee can communicate with a provider who communicates in the client's or enrollee's language or in American sign language and is not available through the MCO and the MCO does not have a provider available who can communicate in the client's language and an interpreter is not available.

(7) On a case-by-case basis, the department may grant a client's request for exemption or an enrollee's request to end enrollment when, in the department's judgment, the client or enrollee has a documented and verifiable medical condition, and enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(8) Upon request, the department may exempt the client or end enrollment for the period of time the circumstances or conditions that lead to exemption or ending enrollment are expected to exist. The department may periodically review those circumstances or conditions to determine if they continue to exist. If the department approves the request for a limited time, the client or enrollee is notified in writing or by telephone of the time limitation, the process for renewing the exemption or the ending of enrollment.

~~((9) An MCO may refer enrollees to the department's patients requiring regulation (PRR) program according to WAC 388-501-0135.))~~

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

WAC 388-538-140 Quality of care. (1) To assure that managed care enrollees receive quality ((health-care)) health-care services, the department requires managed care organizations (MCOs) to comply with quality improvement standards detailed in the department's managed care contract. MCO's must:

(a) Have a clearly defined quality organizational structure and operation, including a fully operational quality assessment, measurement, and improvement program;

(b) Have effective means to detect over and under utilization of services;

(c) Maintain a system for provider and practitioner credentialing and recredentialing;

(d) Ensure that MCO subcontracts and the delegation of MCO responsibilities are in accordance with the department standards and regulations;

(e) Ensure MCO oversight of delegated entities responsible for any delegated activity to include:

(i) A delegation agreement with each entity describing the responsibilities of the MCO and the entity;

(ii) Evaluation of the entity prior to delegation;

(iii) An annual evaluation of the entity; and

(iv) Evaluation or regular reports and follow-up on issues out of compliance with the delegation agreement or the department's managed care contract specifications.

(f) Cooperate with a department-contracted, qualified independent external review organization (EQRO) conducting review activities as described in 42 C.F.R. 438.358;

(g) Have an effective mechanism to assess the quality and appropriateness of care furnished to enrollees with special ((health-care)) healthcare needs;

(h) Assess and develop individualized treatment plans for enrollees with special ((health-care)) healthcare needs which ensure integration of clinical and nonclinical disciplines and services in the overall plan of care;

(i) Submit annual reports to the department on performance measures as specified by the department;

(j) Maintain a health information system that:

(i) Collects, analyzes, integrates, and reports data as requested by the department;

(ii) Provides information on utilization, grievances and appeals, enrollees ending enrollment for reasons other than the loss of Medicaid eligibility, and other areas as defined by the department;

(iii) Collects data on enrollees, providers, and services provided to enrollees through an encounter data system, in a standardized format as specified by the department; and

(iv) Ensures data received from providers is adequate and complete by verifying the accuracy and timeliness of reported data and screening the data for completeness, logic, and consistency.

(k) Conduct performance improvement projects designed to achieve significant improvement, sustained over time, in clinical care outcomes and services, and that involve the following:

(i) Measuring performance using objective quality indicators;

(ii) Implementing system changes to achieve improvement in service quality;

(iii) Evaluating the effectiveness of system changes;

(iv) Planning and initiating activities for increasing or sustaining performance improvement;

(v) Reporting each project status and the results as requested by the department; and

(vi) Completing each performance improvement project timely so as to generally allow aggregate information to produce new quality of care information every year.

(1) Ensure enrollee access to ((health-care)) healthcare services;

(m) Ensure continuity and coordination of enrollee care; and

(n) Maintain and monitor availability of ((health-care)) healthcare services for enrollees.

(2) The department may:

(i) Impose intermediate sanctions in accordance with 42 C.F.R. 438.700 and corrective action for substandard rates of clinical performance measures and for deficiencies found in audits and on-site visits;

- (ii) Require corrective action for findings for noncompliance with any contractual state or federal requirements; and
- (iii) Impose sanctions for noncompliance with any contractual, state, or federal requirements not corrected.

WSR 08-16-002
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 23, 2008, 3:50 p.m., effective August 23, 2008]

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

Purpose: The language revises the approval standards for providers of continuing education. The providers must address the following: How the continuing education activities relate to specific state initiatives/priorities such as opportunities for participants to collect/analyze evidence of student learning; professional certificate standards; and participant relevance and quality. Summary evaluation results for each continuing education activity will be posted [on] the provider's web site.

Citation of Existing Rules Affected by this Order: Amending WAC 181-85-200.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 08-12-062 on June 2, 2008.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us

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

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

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

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

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

Date Adopted: June [July] 17, 2008.

Nasue Nishida
Policy and Research Analyst

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

WAC 181-85-200 In-service education approval standards. In-service education programs provided by approved in-service education agencies shall meet the following program standards:

(1) The objectives of the in-service program—i.e., intended outcomes—shall be written for each in-service education program.

(2) The content of the in-service education program shall be set forth in a program agenda which shall specify the topics to be covered, the days and times of each presentation, and the names and short description of qualifications of each instructor—e.g., degrees and current professional position.

(3) All in-service education instructors shall have academic and/or professional experience which specifically qualifies them to conduct the in-service education program—e.g., a person with expertise in a particular subject, field, or occupation.

(4) Program materials, including the program agenda, prepared, designed, or selected for the in-service education program shall be available to all attendees.

(5) Activities must relate to opportunities for participants to collect and analyze evidence related to student learning; professional certificate standards; school and district improvement efforts; K-12 frameworks and curriculum alignment; research-based instructional strategies and assessment practices; content of current or anticipated assignment; advocacy for students and leadership, supervision, mentoring/coaching; and/or building a collaborative learning community.

(6) The in-service education program shall be evaluated by the participants to determine ~~((the success of the program, including the following))~~:

(a) The extent to which the written objectives ~~((—i.e., subsection (1) of this section—))~~ have been met;

(b) ~~((The quality of the physical facilities in which the program was offered;~~

~~(c) The quality of the oral presentation by each instructor;~~

~~(d) The quality of the written program materials provided by each instructor; and~~

~~(e)) Participant perception of relevance and quality of the offering;~~

(c) The extent to which activities identified in subsection (5) of this section, addressed by the in-service program, have been met; and

(d) Suggestions for improving the in-service education program if repeated.

~~((6)) (7) The in-service education agency shall compile the evaluations required in subsection ~~((5))~~ (6) of this section in summary form. Summary evaluation results for each in-service education agency offering shall be posted on the in-service education agency web site accessible to prospective participants and to office of superintendent of public instruction staff for review. Provided, That if the in-service education agency does not host a web site, summary evaluation results shall be included as part of the approval renewal process.~~

~~((7)) (8) The designated administrator of each in-service education program shall assess the value and success of such program and periodically report his or her findings to the governing or advisory board which authorized the in-service program.~~

~~((8)) (9) The standards for recordkeeping as provided in WAC 181-85-205 shall apply.~~

~~((9))~~ (10) The in-service education agency must permit a designated representative of the superintendent of public instruction to attend the in-service education program at no charge and permit such representative to receive a copy of the program materials required by subsection (4) of this section also at no charge.

~~((10))~~ (11) The in-service education agency must provide each registrant with appropriate forms for claiming continuing education credit hours.

~~((11))~~ (12) Note: The provisions of this section do not apply to credit hours awarded by a college or university or course work continuing education hours awarded by a vocational-technical college.

WSR 08-16-003
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 23, 2008, 3:51 p.m., effective August 23, 2008]

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

Purpose: The language outlines a timeline by which the professional educator standards board will transition and implement the professional certificate assessment requirement. Candidates will have two options to attain the professional certificate until January 1, 2010. After this date they must meet the passing standards of the portfolio of evidence assessment.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-206.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 08-12-060 on June 2, 2008.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

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

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

Date Adopted: June [July] 17, 2008.

Nasue Nishida
Policy and Research Analyst

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

WAC 181-79A-206 Academic and experience requirements for certification—Teachers. Candidates for teachers' certificates shall complete the following requirements in addition to those set forth in WAC 181-79A-150.

(1) Initial/residency.

Candidates for the initial or residency certificate shall hold an approved baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5).

(2) Continuing.

(a) Candidates who apply for a continuing certificate shall have at least forty-five quarter hours (thirty semester hours) of upper division and/or graduate work completed from a regionally accredited institution of higher education subsequent to the conferral of the baccalaureate degree: Provided, That if the individual is pursuing study in a new subject matter area or specialization, lower division (freshmen or sophomore level) credit hours in that subject area or specialization shall be accepted toward continuing certification upon completion of the requirements for an endorsement in that subject area or specialization.

(b) Candidates applying for a continuing certificate prior to September 1, 2000, shall have been granted at least two subject area endorsements.

(c) Candidates who apply for a continuing certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates for continuing teachers' certificates shall provide documentation of one hundred eighty days or full-time equivalent or more satisfactory teaching experience with an authorized employer—i.e., school district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) Professional.

(a) Candidates for the professional certificate shall have successfully completed a professional educator standards board-approved, professional certificate program, pursuant to WAC 181-78A-500 through 181-78A-540: Provided, That an individual who holds a teaching certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NBPTS certification is issued only to individuals who have demonstrated highly advanced skills as a teacher.

(b) Candidates who apply for a professional certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(c) Prior to January 1, 2010, candidates pursuing the professional certificate will submit a portfolio to the professional educator standards board approved professional certificate program.

(d) Between January 1, 2010, and September 1, 2011, candidates pursuing the professional certificate will have two options:

(i) Submit a portfolio for evaluation to the college or university professional certificate program. The college or university has until December 31, 2011, to verify completion.

(ii) Submit a portfolio for evaluation to the uniform and external portfolio of evidence assessment as administered by the professional educator standards board.

(e) After September 1, 2011, candidates pursuing the professional certificate must submit a portfolio for evaluation to the uniform and external portfolio of evidence assessment as administered by the professional educator standards board.

WSR 08-16-004
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 23, 2008, 3:54 p.m., effective August 23, 2008]

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

Purpose: The language does the following: Changes name of "work-based" to "worksite," changes name of "diversified occupations" to "career choices," combines the business endorsement and marketing endorsement into one, adds mathematics applied and science applied as new categories for CTE certificates, and specifies the assignment of teachers with math applied and science applied categories for teaching general math and science classes.

Citation of Existing Rules Affected by this Order: Amending WAC 181-77-005, 181-77-014, 181-77-025, 181-77-031, 181-77-041, and 181-77-068.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 08-12-058 on June 2, 2008.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 6, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June [July] 17, 2008.

Nasue Nishida
Policy and Research Analyst

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

WAC 181-77-005 Types of career and technical education certificates. The following types of certificates shall be issued:

(1) Teacher. The teacher certificate authorizes service as a teacher in the school district(s) or skills center(s) and shall be issued in one of the following categories and/or in a specific subcategory of the major category as approved by the professional educator standards board and/or its designee:

- (a) Agriculture education;
- (b) Business and marketing education;
- (c) ~~((Marketing education;~~
- ~~((d))~~) Family and consumer sciences education;
- ~~((e))~~) (d) Technology education;
- ~~((f))~~) (e) Trade and industrial;
- ~~((g))~~) (f) Health occupations;
- ~~((h) Diversified occupations;))~~ (g) Career choices;
- ~~((i))~~) (h) Coordinator for ~~((work-based))~~ worksite learning; or

~~((j))~~) (i) New and emerging fields;

(j) Categories which may be added to a continuing career and technical education certificate are:

(i) Mathematics applied. To add this category, the candidate shall:

(A) Have completed a state approved career and technical education preparation program based on business and industry under chapter 181-77A WAC;

(B) Hold an approved baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) Hold a continuing career and technical education certificate with a technology education or trade and industrial category under this section: Provided, That trade and industrial candidates hold a math-related degree in mathematics or engineering;

(D) Be fully contracted as a teacher or long-term substitute teacher by a Washington public school;

(E) Pass the mathematics subject knowledge test approved by the professional educator standards board; and

(F) Document a minimum of one year teaching experience in technology education or trade and industrial courses.

(ii) Science applied. To add this category, the candidate shall:

(A) Have completed a state approved career and technical education teacher preparation program based on business and industry under chapter 181-77A WAC;

(B) Hold an approved baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) Hold a continuing career and technical education certificate with an agriculture education, health occupations, or trade and industrial category under this section: Provided, That trade and industrial candidates hold a science-related degree in science, engineering, or a medical practice field;

(D) Be fully contracted as a teacher or long-term substitute by a Washington public school;

(E) Pass the science subject knowledge test approved by the professional educator standards board; and

(F) Document a minimum of one year teaching experience in agriculture education, health occupations, or trade and industrial courses.

(iii) CTE teachers who have earned a mathematics applied or science applied category are eligible for teaching assignments in general education mathematics or science courses, dependent upon the category on the continuing career and technical education certificate, under WAC 181-77-025.

(2) Director. The director certificate authorizes service as a career and technical education director, as an assistant director, or as a career and technical education supervisor in the school district(s) or skills center(s);

(3) Counselor. The career and technical education counselor certificate authorizes service in the role of career and technical education guidance and counseling;

(4) Occupational information specialist. The occupational information specialist certificate authorizes service in the role as an occupational information specialist.

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

WAC 181-77-025 Personnel assignment. Career and technical education teachers teaching other secondary school subjects and career and technical education counselors serving in addition as general counselors need to hold a valid certificate as provided for in chapter 181-79A WAC(~~(, Standards for teacher, administrator, and educational staff associate certification)~~). Career and technical education teachers who hold a mathematics applied category are eligible to teach general education mathematics, and career and technical education teachers who hold a science applied category are eligible to teach general education science under WAC 181-77-005.

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

WAC 181-77-014 Requirements for limited certification. (1) Probationary certificate. The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial career and technical education certificate.

The candidate for a probationary certificate must have substantially completed requirements for the initial career and technical education certificate as set forth in WAC 181-77-031 or 181-77-041.

(a) Such a certificate may be issued upon recommendation by the employing school district.

(b) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by the local school district career and technical education program advisory committee, to which the candidate is assigned. The plan shall provide for orientation, prior to the commencement of the teaching assignment, in the following:

(i) Issues related to legal liability;

(ii) The responsibilities of professional career and technical education educators; and

(iii) The lines of authority in the employing school district and/or building.

Within the first sixty working days, the plan shall establish procedures for the career and technical education instructor to develop competencies in the following:

(iv) Career and technical education methods; and

(v) General and specific safety.

If the candidate does not have access to the required course work within the first ninety working days, the local school district career and technical education advisory committee responsible may authorize the completion of the course work at a later date. The required course work shall be completed prior to the second year of employment.

(vi) The plan shall develop procedures and timelines for the career and technical education instructor to meet the requirements for the initial career and technical education certificate.

(vii) Provided, That candidates for probationary certificates as a coordinator of (~~(work-based))~~ worksite learning shall successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program and hold a valid probationary career and technical education teacher certificate.

(2) Conditional career and technical education certificate. Notwithstanding other requirements prescribed in this chapter for eligibility for career and technical education certification in the state of Washington, the one-year conditional career and technical education certificate may be issued under specific circumstances set forth below for limited service:

(a) The issuance of the conditional career and technical education certificate may be issued only under unique and special circumstances where no regularly certificated career and technical education instructor is available and is limited to:

(i) Persons highly qualified and experienced in the knowledge and occupational skills of the career and technical education program to be certified; or

(ii) Persons who meet the occupational experience requirements for career and technical education certification; or

(iii) Persons who will be employed in new and emerging occupations as identified by the professional educator standards board and/or its designee.

(b) The certificate is issued to individuals who are screened by the local career and technical education administrator and school district superintendent or designee. The local career and technical education administrator or superintendent will verify that the following criteria have been met when requesting the conditional career and technical education certificate:

(i) No person with career and technical education certification in the field is available as verified by the local career and technical education administrator or superintendent;

(ii) The individual is being certified for a limited assignment and responsibility in a specified career and technical education program area;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment and will be apprised of any legal liability, the lines of authority and the duration of the assignment;

(iv) The career and technical education administrator and local program advisory committee will indicate the basis on which he/she has determined that the individual is competent for the assignment;

(v) A written work and/or educational experience training plan as specified in WAC 181-77-014 (1)(b) is on file with the employing district.

(c) The certificate is valid for one year and only for the teaching area specified on the certificate. The certificate may be reissued on application and evidence that requirements continue to be met.

(3) Substitute career and technical education certificates. Substitute career and technical education certificates may be issued to candidates who meet the requirements in WAC 181-79A-231 (2) or (4).

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

WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved college/university programs in a career and technical education endorsement area. Candidates shall complete the following requirements in addition to those set forth in WAC 181-79A-150, 181-79A-155, 181-82-322, and chapter 181-78A WAC.

(1) Initial.

(a) Candidates for the initial certificate shall hold a baccalaureate degree from a regionally accredited college or university which includes a minimum of forty-five quarter hours of study in the specific career and technical education subject area for which certification is sought.

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the specific endorsement areas of WAC 181-82-322.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher training program through a regionally accredited college or university which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of one year of paid occupational experience (two thousand hours) in the specific career and technical education field for which certification is sought. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience.

(e) In addition, candidates for initial certification in ~~((diversified occupations))~~ **career choices** or coordinator of ~~((work-based))~~ **worksite** learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator

training in the subject area certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer—i.e., school district(s) or skills center(s).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

AMENDATORY SECTION (Amending WSR 07-12-001, filed 5/23/07, effective 6/23/07)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates for certification who have not completed approved programs set forth in WAC 181-82-322 shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

(i) General and specific safety;

(ii) Career and technical education teaching methods;

(iii) Occupational analysis;

- (iv) Course organization and curriculum design;
- (v) Philosophy of vocational education;
- (vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

- (i) School law;
 - (ii) Issues related to abuse as specified in WAC 181-77A-165(7).
- (d) In addition, candidates for initial certification in (~~diversified occupations~~) **career choices** or coordinator of (~~work-based~~) **worksite** learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer—i.e., school district(s) or skills center(s).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

- (i) Six quarter hours or sixty clock hours of career and technical education educator training;
- (ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;
- (iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

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

WAC 181-77-068 Requirements for coordinator of (~~work-based~~) worksite learning initial or continuing certificates. To obtain a coordinator of (~~work-based~~) worksite learning certificate, a candidate must:

- (1) Possess a valid initial or continuing career and technical education teaching certificate; and
- (2) Successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

WSR 08-16-005
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 23, 2008, 3:58 p.m., effective August 23, 2008]

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

Purpose: The language changes the composition of a site visit team, and takes in account flexibility for additional team members when site reviews are conducted at large institutions.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-100.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 08-12-059 on June 2, 2008.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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Date Adopted: June [July] 17, 2008.

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-24-082, filed 12/5/06, effective 1/5/07)

WAC 181-78A-100 Existing approved programs. Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to colleges and universities in the revision of their existing programs.

(1) All professional education programs shall be reviewed for approval under the 1997 program approval standards of chapter 181-78A WAC by August 31, 2000. Colleges and universities may permit individuals accepted into teacher preparation programs on or before August 31, 2000, to obtain certification by meeting requirements of programs approved under approval standards described in chapter 181-78 WAC if the individuals complete the program on or before August 31, 2003, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2003: Provided, That the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

(2) All principal/program administrator programs shall be reviewed for approval under the 2002 program approval standards of chapter 181-78A WAC by August 31, 2004. Colleges and universities may permit individuals accepted into principal/program administrator programs on or before August 31, 2004, to obtain a residency certificate by meeting requirements of programs approved under 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2006, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2006. Provided, That the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

(3) All school counselor, school psychologist, or school social worker programs shall be approved under the 2004 program approval standards of chapter 181-78A WAC by August 31, 2005. Colleges and universities may permit individuals accepted into the school counselor, school psychologist, or school social worker programs on or before August 31, 2005, to obtain a residency certificate by meeting requirements of programs approved under the 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2007, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2007. Provided that the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

(4) Individuals who completed a principal/program administrator program on or before August 31, 2004, shall be granted an initial certificate if the preparing college or university verifies completion by December 31, 2004. Individuals who complete an educational staff associate program on or before August 31, 2005, shall be granted an initial certificate if the preparing college or university verifies completion by December 31, 2005.

(5) Institutions shall be given at least one year notification prior to a professional educator standards board review for compliance with these standards: Provided, That if an institution requests a visit with less than a year's notice, the professional educator standards board shall consider that request.

(6) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under the 1997 program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and the National Council for the Accreditation of Teacher Education (NCATE) as such agreement relates to the NCATE accreditation cycle and allow NCATE accredited colleges/universities to follow the NCATE schedule for their state site visit. Non-NCATE accredited colleges/universities shall have a state approval site visit every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2).

(7) Each institution shall submit its program for review when requested by the professional educator standards board

to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards to the professional educator standards board for the year prior to the site visit.

(a) Thirty days prior to the visit, institutions will submit a previsit report that shall:

(i) Describe how the program approval standards are met for each educator preparation program scheduled for review (NCATE reports may fulfill this requirement);

(ii) Describe how "unmet" standards or program weaknesses, identified during the previous site visit, have been corrected;

(iii) Describe major program(s) changes implemented since the last site visit;

(iv) Summarize all WEST-E data since the last site visit;

(v) Summarize all program completer survey data compiled since the last site visit;

(vi) Include all professional education advisory board reports submitted since the last site visit;

(vii) Summarize complaints related to the program(s) and actions taken to remedy the complaints; and

(viii) Describe the criteria used by the program(s) to assess, in multiple ways over time, its candidates' knowledge and skills, including evidence of positive impact on student learning.

(b) The site visit shall be conducted by a team whose membership is composed of:

(i) One member of the professional educator standards board(;;);

(ii) One peer institution representative(;;);

(iii) One individual with assessment expertise(;;);

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review(;;the office of the superintendent of public instruction liaison,); and

(v) The ((director of)) professional education and certification(;;and the professional certificate program specialist if a professional certificate program will be reviewed)) division leader, who shall serve as team leader. ((Substitutes)) Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals ((in specific role assignments)) are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The office of superintendent of public instruction liaison for that institution and the professional certificate program specialist, if a professional certificate program will be reviewed, may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

(c) The site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board.

(d) The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

(e) Institutions may submit a rejoinder to the report within two weeks following the public posting of the report.

(f) In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100(6).

(g) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's

decision. The hearing will be conducted by an appeal team whose members shall include three individuals selected from a cadre of trained site visit team members, including at least one higher education representative and one K-12 practitioner.

(8) Institutions seeking National Council for the Accreditation of Teacher Education, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

WSR 08-16-008
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed July 24, 2008, 9:56 a.m., effective July 25, 2008]

Effective Date of Rule: July 25, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.380 (3)(c) allows for an earlier adoption if there is imminent peril to public health or safety. These rules are necessary in order to continue the current level of credentialing and disciplinary activities for health care professionals. If these activities are impaired, it could put patients at risk and create a barrier to obtaining healthcare.

RCW 34.05.380 (3)(a) allows for an earlier adoption date if action is required by statute. The legislature approved an increase in fees through the 2008 budget bill (ESHB 2687, chapter 329, Laws of 2008). The rules are adopted and effective immediately upon filing.

Purpose: The rules increase the listed fees (see below) by no more than the legislature authorized (ESHB 2687, chapter 329, Laws of 2008). The rules also add a fee up to \$25 for some professions for online access to the University of Washington Library (ESSB 5930, chapter 259, Laws of 2007). Some professions phase in some fees over three years. These increases are necessary for programs to remain in operation and ensure patient safety.

Citation of Existing Rules Affected by this Order: See below.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250 and ESHB 2687 (chapter 329, Laws of 2008).

Other Authority: RCW 43.70.110 and 43.70.250.

Adopted under notice filed as WSR 08-10-088 and 08-10-089 on May 6, 2008.

Changes Other than Editing from Proposed to Adopted Version: The following professions were included in the proposed rules, but are being filed separately from the fees filed and adopted July 7, 2007. The department considered comments received during the public comment period and adjusted some fees. The fee increases are effective September 1, 2008: WAC 246-809-990 Marriage and family therapist, mental health counselor, social worker, 246-810-990 Registered counselor, 246-817-990 Dentist, 246-928-990

Respiratory therapy, 246-926-990 Radiologic technologist, X-ray technician, and 246-927-990 Recreational therapy.

The following professions were filed and adopted July 7, 2008, without any changes from the proposed rules and the fee increases were effective August 1, 2008: WAC 246-802-990 Acupuncture, 246-808-990 Chiropractor and chiropractic X-ray technician, 246-811-990 Chemical dependency counselor, 246-812-990 Denturist, 246-815-990 Dental hygiene, 246-826-990 Health care assistant, 246-828-990 Hearing instrument fitter/dispenser, audiologist, and speech language pathologist, 246-830-990 Massage practitioner, 246-836-990 Naturopathic physician, 246-840-990 RN, LPN, and ARNP, 246-841-990 Nursing assistant, 246-843-990 Nursing home administrator, 246-847-990 Occupational therapy, 246-851-990 Optometry, 246-853-990 Osteopathic physician and osteopathic physician assistant, 246-907-030 Pharmaceutical licensing periods and fees, 246-915-990 Physical therapy, 246-918-990 Physician assistant, 246-919-990 Physician and surgeon, 246-922-990 Podiatry, 246-924-990 Psychology, and 246-930-990 Sex offender treatment provider and affiliate.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: July 18, 2008.

B. White
for Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-809-990 Licensed mental health counselors, marriage and family therapists, and social workers—Fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

Title	Fee
(2) The following nonrefundable fees will be charged for licensed marriage and family therapist:	
Application	\$ ((50.00)) <u>150.00</u>
Initial license	((25.00)) <u>75.00</u>
Renewal	((83.00)) <u>140.00</u>
Late renewal penalty	((50.00)) <u>70.00</u>
Expired license reissuance	((50.00)) <u>85.00</u>
Duplicate license	10.00
Certification of license	10.00
(3) The following nonrefundable fees will be charged for licensed mental health counselor:	
Application	((25.00)) <u>125.00</u>
Initial license	((25.00)) <u>125.00</u>
Renewal	((29.00)) <u>75.00</u>
Late renewal penalty	((29.00)) <u>50.00</u>
Expired license reissuance	((29.00)) <u>65.00</u>
Duplicate license	10.00
Certification of license	10.00
<u>UW library access fee</u>	<u>25.00</u>
(4) The following nonrefundable fees will be charged for licensed advanced social worker and licensed independent clinical social worker:	
Application	((25.00)) <u>125.00</u>
Initial license	((25.00)) <u>125.00</u>
Renewal	((42.00)) <u>105.00</u>
Late renewal penalty	((42.00)) <u>52.50</u>
Expired license reissuance	((42.00)) <u>72.50</u>
Duplicate license	10.00
Certification of license	10.00
<u>UW library access fee</u>	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 06-08-106, filed 4/5/06, effective 5/6/06)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, Part 2, a counselor

must renew his or her registration every year on the practitioner's birthday. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

Title	Fee
(2) The following nonrefundable fees will be charged for registered counselor:	
Application and registration	\$ ((40.00)) <u>130.00</u>
Renewal	((37.00)) <u>117.00</u>
Late renewal penalty	((37.00)) <u>58.50</u>
Expired registration reissuance	((37.00)) <u>65.00</u>
Duplicate registration	15.00
Certification of registration	15.00
(3) The following nonrefundable fees will be charged for registered hypnotherapist:	
Application and registration	95.00
Renewal	130.00
Late renewal penalty	65.00
Expired registration reissuance	65.00
Duplicate registration	15.00
Certification of registration	15.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-817-990 Dentist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of

administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application by examination*	
Initial application	\$(325.00) <u>700.00</u>
Original application - Without examination	
Initial application	((350.00)) <u>700.00</u>
Initial license	((350.00)) <u>700.00</u>
Faculty license application	((325.00)) <u>560.00</u>
Resident license application	((60.00)) <u>115.00</u>
License renewal:	
Renewal	((205.00)) <u>375.00</u>
Surcharge - impaired dentist	25.00
Late renewal penalty	((402.50)) <u>200.00</u>
Expired license reissuance	((402.50)) <u>300.00</u>
Duplicate license	15.00
Certification of license	25.00
Anesthesia permit	
Initial application	((50.00)) <u>150.00</u>
Renewal - (three-year renewal cycle)	((50.00)) <u>150.00</u>
Late renewal penalty	((50.00)) <u>75.00</u>
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

WAC 246-926-990 ((Radiological)) Radiologic technologists, X-ray technicians—Certification and registration fees and renewal cycle. (1) Certificates and registrations must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The

secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

~~((2) The practitioner must pay the following nonrefundable fees:))~~

Title of Fee	Fee
<u>(2) The following nonrefundable fees will be charged for certified radiologic technologists:</u>	
Application((—certification))	\$(45.00) <u>150.00</u>
((Exam fee—certification	30.00
Application—registration	<u>35.00</u>
Certification)) <u>Renewal</u>	((45.00)) <u>70.00</u>
((Registration renewal	35.00)) <u>35.00</u>
Late renewal penalty((—certification	45.00)) <u>50.00</u>
((Late renewal penalty—registration	35.00)) <u>35.00</u>
Expired certificate reissuance	((45.00)) <u>80.00</u>
((Expired registration reissuance	35.00)) <u>35.00</u>
Certification of registration or certificate	<u>15.00</u>
Duplicate registration or certificate	<u>15.00</u>
<u>(3) The following nonrefundable fees will be charged for registered X-ray technicians:</u>	
<u>Application</u>	<u>75.00</u>
<u>Renewal</u>	<u>75.00</u>
<u>Late renewal penalty</u>	<u>50.00</u>
<u>Expired reissuance</u>	<u>50.00</u>
<u>Certification of registration or certificate</u>	<u>15.00</u>
<u>Duplicate registration or certificate</u>	<u>15.00</u>

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-927-990 ((How often do I need to renew and what are the costs for registration?)) Recreation therapy fees and renewal cycle. (1) Registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in

place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for registered recreational therapists:

Title of Fee	Fee
Application	\$ ((110.00)) <u>205.00</u>
Renewal	((85.00)) <u>155.00</u>
Late renewal penalty	((50.00)) <u>77.50</u>
Expired registration reissuance	((50.00)) <u>90.00</u>
Duplicate registration	15.00
Certification of certificate	25.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-928-990 Respiratory care fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$ ((70.00)) <u>150.00</u>
Temporary practice permit	((35.00)) <u>50.00</u>
Duplicate license	15.00
Verification of licensure	15.00
Renewal	((50.00)) <u>110.00</u>
Late renewal penalty	((50.00)) <u>55.00</u>
Expired license reissuance	((50.00)) <u>65.00</u>

WSR 08-16-009

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed July 24, 2008, 4:18 p.m., effective August 24, 2008]

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

Purpose: This amendment updates and clarifies that the department pays enhanced fees only to access to baby and child dentistry (ABCD)-certified dentists and other department-approved certified providers for furnishing ABCD program services; removes language that an oral health education visit must have a duration of at least twenty minutes; clarifies that an oral health education visit is limited to one visit per day per family, up to two visits per child in a twelve-month period; removes language that an oral health education visit must include topical application of gel or varnish; and clarifies what ABCD program services include.

Citation of Existing Rules Affected by this Order: Amending WAC 388-535-1245.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Adopted under notice filed as WSR 08-12-074 on June 3, 2008.

A final cost-benefit analysis is available by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

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

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

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

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

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

Date Adopted: July 16, 2008.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1245 Access to baby and child dentistry (ABCD) program. The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services for Medicaid-eligible clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.

(b) Clients eligible under one of the following medical assistance programs are eligible for the ABCD program:

- (i) Categorically needy program (CNP);
- (ii) Limited casualty program-medically needy program (LCP-MNP);
- (iii) Children's health program; or
- (iv) State children's health insurance program (SCHIP).

(c) ABCD program services for eligible clients enrolled in a managed care organization (MCO) plan are paid through the fee-for-service payment system.

(2) Health care providers and community service programs identify and refer eligible clients to the ABCD program. If enrolled, the client and an adult family member may receive:

- (a) Oral health education;
- (b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and
- (c) Assistance with transportation, interpreter services, and other issues related to dental services.

(3) ~~(Dentists must be certified through the continuing education program in the University of Washington School of Pediatric Dentistry to furnish ABCD program services.~~

~~(4))~~ The department pays enhanced fees only to ABCD-certified ~~((participating))~~ dentists and other department-approved certified providers for furnishing ABCD program services. ABCD program services include, when appropriate:

(a) Family oral health education. An oral health education visit:

~~(i) ((Must have a duration of at least twenty minutes for each visit;~~

~~((ii)))~~ Is limited to one visit per day per family, up to two visits per ~~((calendar year))~~ child in a twelve-month period, per provider or clinic; and

~~((iii)))~~ (ii) Must include all of the following:

- (A) "Lift the lip" training;
- (B) Oral hygiene training;
- (C) Risk assessment for early childhood caries;
- (D) Dietary counseling;
- (E) ~~((Topical application of gel or varnish;~~
- ~~((F)))~~ Discussion of fluoride supplements; and
- ~~((G)))~~ (F) Documentation in the client's file or the client's designated adult member's (family member or other responsible adult) file to record the activities provided and duration of the oral education visit.

~~((Comprehensive and))~~ Periodic oral evaluation, up to two visits per client, per calendar year, per provider or clinic;

(b) ~~((Comprehensive and))~~ Periodic oral evaluation, up to two visits per client, per calendar year, per provider or clinic;

(c) Topical application of fluoride varnish;

(d) ~~((and)),~~ resin, and glass ionomer restorations on primary teeth, as specified in current department-published documents;

~~((e)))~~ (e) Therapeutic pulpotomy;

~~((f)))~~ (f) Prefabricated stainless steel crowns on primary teeth, as specified in current department-published documents;

~~((g)))~~ (g) Resin-based composite crowns on anterior primary teeth; and

~~((h)))~~ (h) Other dental-related services, as specified in current department-published documents.

~~((i)))~~ (4) The client's file must show documentation of the ABCD program services provided.

WSR 08-16-014

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 25, 2008, 7:08 a.m., effective August 25, 2008]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The amendment to the marketing order (chapter 16-529 WAC) was approved in a referendum of affected alfalfa seed producers pursuant to RCW 15.65.170.

Purpose: The Washington alfalfa seed commission petitioned the director to amend its marketing order. Revisions to the nomination/election process reflect the change in grower demographics and provide flexibility in the timing of elections. A change from required annual audits to a rate prescribed by the state auditor's office provides consistency between RCW 15.65.490 and the alfalfa seed marketing order. Also corrects a typographical error and technical correction to a RCW reference.

Citation of Existing Rules Affected by this Order: Amending WAC 16-529-030, 16-529-060, 16-529-070, and 16-529-110.

Statutory Authority for Adoption: Chapters 15.65 and 34.05 RCW.

Adopted under notice filed as WSR 08-05-040 on February 13, 2008.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: July 25, 2008.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending WSR 05-08-010, filed 3/25/05, effective 4/25/05)

WAC 16-529-030 Board membership. (1) The board shall consist of eight members. Six members shall be affected

producers appointed or elected as provided in WAC 16-529-020 through 16-529-120. One member shall be an affected handler appointed as provided in WAC 16-529-020 through 16-529-120. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member.

(a) Director-appointed positions on the board shall be designated as position 2, position 4, position 6, and position 7. The affected handler member of the board shall be position 7.

(b) Elected affected producer positions on the board shall be designated as position 1, position 3, and position 5.

(c) The position representing the director who is neither an affected producer nor an affected handler shall be designated as position 8.

(2) For the purpose of nomination, appointment, and election of affected producer members of the board, the affected area of the state of Washington shall be divided into three representative districts as follows:

(a) District I shall have two board members, being Positions 1 and 2, and shall include the counties of Adams, Chelan, Douglas, Ferry, Franklin, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens.

(b) District II shall have one board member, being Position 3, and shall include the counties of Benton, Kittitas, Klickitat, and Yakima.

(c) District III shall have three board members, being Positions 4, 5, and 6, and shall include the counties of Asotin, Columbia, Garfield, Walla Walla, and Whitman.

(d) If no nominations are received or there are fewer than three affected producers within a district, the position(s) shall be deemed "at large" and shall be filled by a producer from any district in the state. Nominations may be made by producers from any district in the state pursuant to the provisions of WAC 16-529-060.

AMENDATORY SECTION (Amending WSR 05-08-010, filed 3/25/05, effective 4/25/05)

WAC 16-529-060 Nomination of elected or director-appointed board members. (1) For the purpose of nominating candidates for appointment or election to board membership, the director shall call a separate nomination meeting of affected producers and affected handlers.

(2) Each year the director shall call a nomination meeting for both elected and director-appointed affected producer and affected handler board members in those districts whose board members' terms are about to expire. The meeting(s) shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(a) Notice of a nomination meeting shall be published in newspapers of general circulation within the affected district not less than ten days in advance of the date of such meeting and, in addition, written notice of every such meeting shall be given to all affected producers within such affected district, and to all handlers, according to the list maintained by the board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer or affected handler may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the nomination meeting by written petition filed with the director, signed by not less than ~~((five))~~ three affected producers or affected handlers.

(d) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

AMENDATORY SECTION (Amending WSR 05-08-010, filed 3/25/05, effective 4/25/05)

WAC 16-529-070 Election or advisory vote of board members. (1) An election or advisory vote shall be conducted by secret ballot under the supervision of the director ~~((within the month of June))~~. Each affected producer and affected handler shall be entitled to one vote.

(2) Elected affected producer members of the board shall be elected by a majority of the votes cast by the affected producers within the affected district or, in the case of an election for an "at large" position, by a majority of the votes cast by affected producers from any district.

If a nominee does not receive a majority of the votes on the first ballot, a runoff election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(3) An advisory vote shall be conducted for affected producer or affected handler board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the election or advisory vote. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer and affected handler entitled to vote whose name appears upon the list of such affected producers and affected handlers as maintained by the board pursuant to RCW 15.65.295. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(5) Nonreceipt of a ballot by an affected producer or affected handler shall not invalidate the election or advisory vote of any board member.

AMENDATORY SECTION (Amending WSR 05-08-010, filed 3/25/05, effective 4/25/05)

WAC 16-529-110 Powers and duties of the board. The board shall have the following powers and duties:

(1) To administer, enforce, and control the provisions of this chapter as the designee of the director.

(2) To elect a chairman and such other officers as the board deems advisable.

(3) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of this chapter and effectuate the declared policies of the act.

(4) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of this chapter. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(5) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating this chapter.

(6) To establish an "alfalfa seed revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the days as advisable.

(7) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to this (~~chapter~~) order. Such records, books, and accounts shall be audited (~~at least annually~~) subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day(~~s~~) of each fiscal year of the commission. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.

(8) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(9) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year. The board, at least sixty days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(10) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(11) To adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter (~~34.04~~) 34.05 RCW (Administrative Procedure Act).

(12) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the

provisions of this chapter and the act, along with the necessary authority and procedure for obtaining such information.

(13) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or this chapter.

(14) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.

(15) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(16) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(17) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(18) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of alfalfa seed.

(19) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(20) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(21) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of alfalfa seed including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(22) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(23) To maintain a list of the names and addresses of persons who handle alfalfa seed within the affected area and data on the amount and value of the alfalfa seed handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(24) To maintain a list of names and addresses of all affected persons who produce alfalfa seed and the amount, by unit, of alfalfa seed produced during the past three years pursuant to RCW 15.65.295.

(25) To maintain a list of all persons who handle alfalfa seed and the amount of alfalfa seed handled by each person during the past three years pursuant to RCW 15.65.295.

(26) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(27) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

WSR 08-16-017
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed July 25, 2008, 11:43 a.m., effective August 25, 2008]

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

Purpose: Establishes eligibility requirements, training requirements, license restrictions, and definitions for commercial driver's licensing purposes.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.060, and 46.25.140.

Adopted under notice filed as WSR 08-11-053 on May 16, 2008.

Changes Other than Editing from Proposed to Adopted Version: Narrowed definition of "agribusiness" in WAC 308-100-005 (1)(c).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New [5], Amended 5 [0], Repealed 0.

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

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

Date Adopted: July 25, 2008.

Becky Loomis
Assistant Director

NEW SECTION

WAC 308-100-005 Definitions. The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Agribusiness" means a private carrier who in the normal course of business primarily transports:

(a) Farm machinery, farm equipment, implements of husbandry, farm supplies and materials used in farming;

(b) Agricultural inputs, such as seed, feed, fertilizer and crop protection products;

(c) Unprocessed agricultural commodities as defined in RCW 17.21.020, where such commodities are produced by farmers, ranchers, vineyardists, or orchardists; or

(d) Any combination of (a) through (c).

(2) "Classroom instruction" means training provided through lectures, demonstrations, audiovisual presentations, computer-based instruction, driving simulation devices, or similar means. Instruction occurring outside a classroom is

included if it does not involve actual operation of a commercial motor vehicle and its components by the student.

(3) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer.

(4) "Employer" means a person or entity that hires one or more individuals to operate a commercial motor vehicle on a regular basis during their normal course of employment and whose primary purpose is not to train operators of commercial motor vehicles.

(5) "Hour," as used in connection with training requirements, means no less than fifty minutes of training or instruction.

(6) "Lab" means a teaching environment involving a non-moving vehicle for hands on instruction supported by classroom material.

(7) "Observation" means the careful watching, as a passenger in a commercial motor vehicle, of street driving during the hours of course instruction, recording lessons learned and applying classroom material.

(8) "Proficiency development" means driving exercises that will allow more time to develop the skills needed to demonstrate proficiency, competence, and confidence in the street driving and backing maneuvers portions of a course.

(9) "Range" means an area closed from the public where driving activities are practiced.

(10) "Street driving" means driving a commercial motor vehicle on a public road, where the traffic laws are enforced, consisting of city street, country road, and freeway driving.

(11) "Training institute" means:

(a) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(b) A licensed private vocational school as that term is defined by RCW 28C.10.020(7); or

(c) An entity in another state that the department has determined provides training or instruction equivalent to that required under WAC 308-100-033.

NEW SECTION

WAC 308-100-031 Skill and training requirements for commercial driver's license. On or after January 2, 2009, an applicant for a commercial driver's license must complete the minimum training requirements specified under WAC 308-100-033, unless waived under RCW 46.25.060(3). The department also may issue a commercial driver's license to an applicant certified by an employer under WAC 308-100-035 as having the skills and training necessary to operate a commercial motor vehicle safely. Until January 2, 2010, the department may issue a commercial driver's license that is restricted to the operation of a commercial motor vehicle for agribusiness purposes under WAC 308-100-038 to an applicant who does not otherwise meet the requirements of this section.

NEW SECTION**WAC 308-100-033 Minimum training requirements.**

(1) To ensure the quality of the training given, a training course acceptable to the director must:

(a) Be provided by, and under the direct supervision of, a training institute; and

(b) Be not less than:

(i) One hundred sixty hours if the applicant is applying for a class A commercial driver's license, including not less than:

- (A) Forty hours of classroom instruction;
- (B) Eighteen hours of street driving training;
- (C) Sixteen hours of training in backing maneuvers;
- (D) Sixteen hours of proficiency development; and
- (E) Seventy hours of combined lab training, range training, and observation;

(ii) Forty-eight hours if the applicant is applying for a class B commercial driver's license, including not less than:

- (A) Twenty hours of classroom instruction;
- (B) Fourteen hours of street driving training;
- (C) Four hours of training in backing maneuvers;
- (D) Four hours of proficiency development; and
- (E) Six hours of combined lab training, range training, and observation;

(iii) Thirty-six hours if the applicant is applying for a class C commercial driver's license, including not less than:

- (A) Twenty hours of classroom instruction;
- (B) Eight hours of street driving training;
- (C) Two hours of training in backing maneuvers;
- (D) Two hours of proficiency development; and
- (E) Four hours of combined lab training, range training, and observation.

(2) A licensed private vocational school must maintain individual student records. Student records shall document for each student:

- (a) Course attendance, starting, and ending dates;
- (b) The dates and times for each session;
- (c) The number of hours spent on each category of instruction covered; and
- (d) The name and signature of the instructor who provided each session of instruction or training.

(3) Student records must be maintained by a licensed private vocational school for the past five years from the date instruction or training has ended and must be made available for inspection at the request of the department.

(4) A licensed private vocational school may issue a certificate of completion on a form provided by the department to a student who has received the training required under subsection (1) of this section. An accredited institution of higher learning may issue a certificate of completion to a student who has received appropriate training. A certificate issued under this subsection must be used by a student to demonstrate to the department that he or she has met the minimum requirements required under this section.

NEW SECTION

WAC 308-100-035 Employer certification. An employer may certify an applicant for a commercial driver's license as having the skills and training necessary to operate

a commercial motor vehicle safely on a form provided by the department. The certification must include the classification or endorsements of commercial motor vehicle that the employee or prospective employee is competent to operate.

NEW SECTION

WAC 308-100-038 Commercial driver's license—Additional restrictions. In addition to the endorsements and restrictions that may be placed on a commercial driver's license under RCW 46.25.080 (2)(b), the department may place a "Z" restriction on a driver's license to indicate that there is a specific restriction on file with the department. Specific restrictions for commercial driver's licenses that may be kept on file include:

(1) "Agribusiness" restricts the driver to commercial motor vehicles being operated for agribusiness purposes.

WSR 08-16-023**PERMANENT RULES****DEPARTMENT OF****FINANCIAL INSTITUTIONS**

[Filed July 28, 2008, 9:27 a.m., effective August 28, 2008]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: No rule may be made unless the director of the department of financial institutions finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of chapter 21.20 RCW. The director hereby makes such a finding with respect to this proposal.

Purpose: The securities prosecution fund was created by RCW 43.320.115. Fines collected by the Washington securities division are placed in a fund known as the securities prosecution fund. Funds may be made available for payment of costs, expenses and charges incurred in the prosecution of criminal charges arising under the Securities Act, the Commodities Transactions Act, the Franchise Investment Protection Act, and the Business Opportunity Fraud Act. The proposed rule making will codify the procedures to be followed by prosecuting attorneys who seek fund expenditures.

Statutory Authority for Adoption: RCW 43.320.115.

Adopted under notice filed as WSR 08-12-101 on June 4, 2008.

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

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

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

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

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

Date Adopted: July 24, 2008.

Scott Jarvis
Director

Chapter 208-705 WAC

PROCESSING APPLICATIONS FOR GRANTS FROM THE SECURITIES PROSECUTION FUND

NEW SECTION

WAC 208-705-010 Securities prosecution fund. (1) Pursuant to RCW 43.320.115, the department of financial institutions maintains a securities prosecution fund. Moneys from the securities prosecution fund may be available for payment of costs, expenses and charges incurred in the preparation, initiation and prosecution of criminal charges arising under the Securities Act, the Commodities Transaction Act, the Franchise Investment Protection Act, and the Business Opportunity Fraud Act. The attorney general or prosecuting attorney may apply to the director of the department of financial institutions for expenditures from the securities prosecution fund.

(2) Application process.

(a) An applicant shall complete an application form provided by the securities division of the department of financial institutions.

(b) If the director or his or her designee approves the application, the applicant may be required to complete and submit additional forms and information. If an application is denied, an applicant may submit a request for reconsideration, but the director or his or her designee's subsequent decision is final.

(c) The attorney general or prosecuting attorney requesting fund expenditures related to a criminal investigation or prosecution must maintain books, records, documents, and other evidence that sufficiently and accurately reflect those expenditures.

(d) At the closing of each case for which fund expenditures have been approved, the attorney general or prosecuting attorney must submit a closing report to the department of financial institutions. The closing report shall provide an accounting for fund expenditures, summarize the outcome of the case, and certify that all funds have been used for the purpose requested. The closing report shall be submitted within one hundred twenty days of the applicant's fiscal year end. If a closing report is not filed, or if the closing report indicates that funds were not used for the purpose requested, the attorney general or prosecuting attorney is required to repay the funds received from the securities prosecution fund.

WSR 08-16-030

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed July 29, 2008, 8:07 a.m., effective August 29, 2008]

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

Purpose: Rewrite rule in plain talk and to keep WAC into compliance with chapter 42.56 RCW. New sections were created to explain office procedures and policy on public records.

Citation of Existing Rules Affected by this Order: Amending chapter 468-06 WAC.

Statutory Authority for Adoption: Chapter 42.17, 42.56 RCW.

Adopted under notice filed as WSR 08-12-028 on May 29, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 15, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 15, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 28, 2008.

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-010 ((Purpose.)) What is the purpose of this chapter? The purpose of this chapter ((shall be)) is to ((ensure compliance by the Washington state department of transportation with the provisions of chapter 1, Laws of 1973 (Initiative 276), and in particular with sections 25 through 32 of that act, dealing with public records));

(1) Publish department of transportation organizational information.

(2) Establish the procedures we will follow to provide access to public records prepared, owned, used, or held by the department.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-020 ((Definitions.)) What definitions apply to public records? ((1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristic.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(3) "Department" means the Washington state department of transportation. Definitions used in the Public Records Act, chapter 42.56 RCW, apply to these rules.

AMENDATORY SECTION (Amending Order 163, filed 7/24/96, effective 8/24/96)

WAC 468-06-030 ((Exempted records.)) What public records are exempt from public inspection and copying? ((The following records shall be exempt from public inspection and copying. For further exemptions, chapter 42.17 RCW and in particular RCW 42.17.310 should be consulted.

(1) Personal information in files maintained for employees, appointees or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(2) Specific intelligence information and specific investigative files compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(3) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(4) Test questions, scoring keys, and other examination data used to administer a license, employment or academic examination.

(5) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired, or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(6) Valuable formulae, designs, drawings and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(7) Preliminary drafts, notes, recommendations, and intraagency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(8) Records which are relevant to a controversy to which an agency is a party but which records would not be available

to another party under the rules of pretrial discovery for causes pending in the superior courts.

(9) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(10) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(11) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(12) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(13) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(14) Information that identifies a person who, while an agency employee:

(a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and

(b) Requests his or her identity or any identifying information not be disclosed.

(15) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interest, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.)) (1) The exemptions that will apply are those set out in chapter 42.56 RCW and any other applicable law.

(2) The department does not disclose lists of individuals requested for commercial purposes.

AMENDATORY SECTION (Amending WSR 03-09-103, filed 4/22/03, effective 5/23/03)

WAC 468-06-040 ((Description of central and field organization of)) How is the ((Washington state)) department of transportation((:)) organized? ((+)) The department of transportation is a statutorily created agency of the state of Washington. ((The central office of the department of transportation is located in the Transportation Building, Olympia, WA 98504.

(2) The department of transportation is headed by a secretary who is the executive head of the department and is

appointed by the Washington state transportation commission.

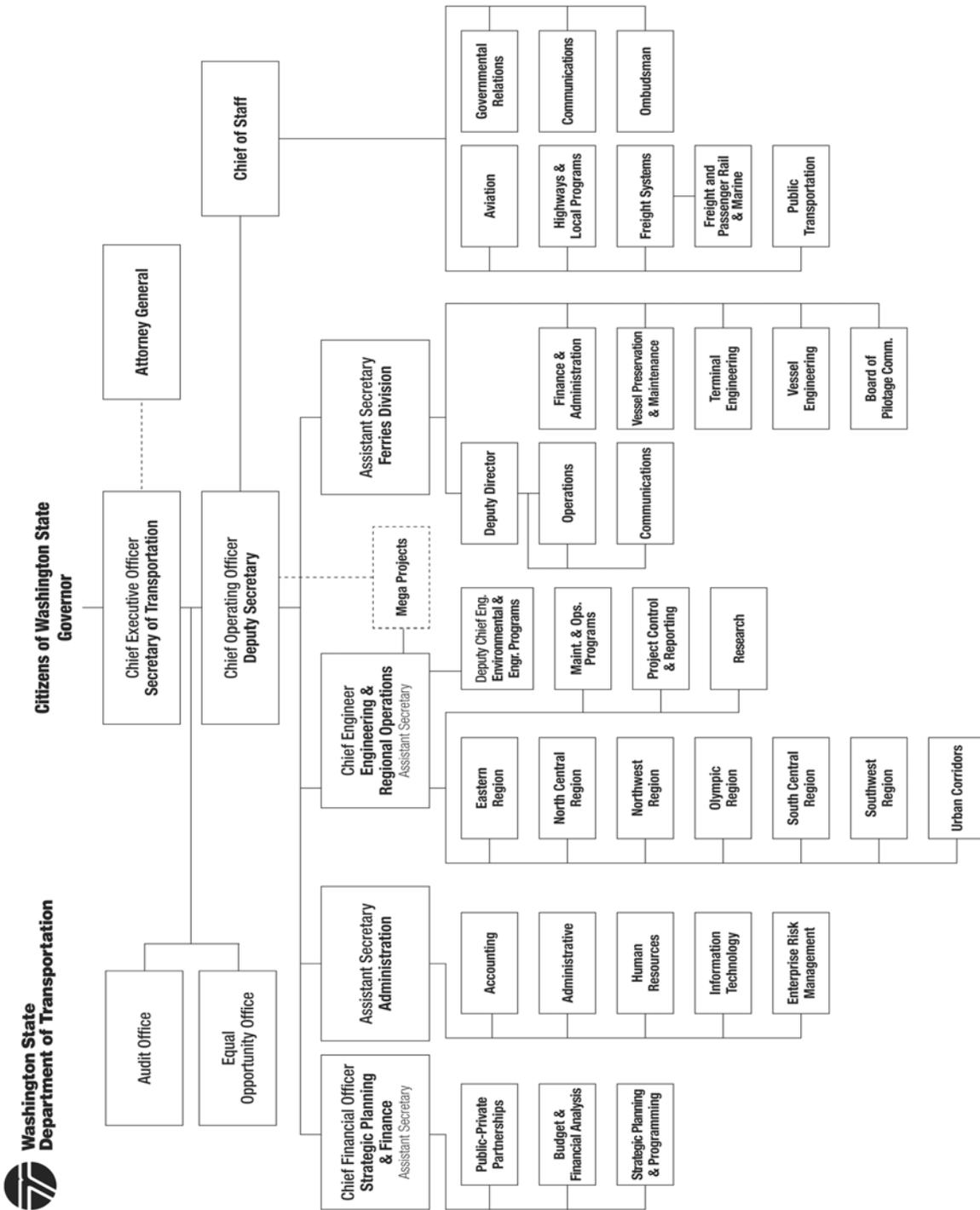
(a) Serving directly under the secretary are the chief of staff, audit office, equal opportunity office, engineering and regional operations division, Washington state ferries division and the finance and administration division. There are also assistant attorney generals assigned to the department who provide legal services in department matters.

(b) Reporting directly to the chief of staff are the following offices: Communications, governmental liaison office, ombudsman, freight strategy and policy, highways and local programs, public transportation and rail, aviation and transportation economic partnerships.

(c) The following programs report to the assistant secretary for engineering and regional operations, depending upon their needs. Environmental and engineering programs, urban corridors and northwest coordination, maintenance and operations programs and planning and capital program management.

(d) The department field functions are carried out by six regions which are each headed by a region administrator. The central regional office locations are: Seattle, Wenatchee, Tumwater, Vancouver, Yakima, and Spokane. The regions have various project and maintenance area offices which are headed by a supervisor. Region administrators report directly to the assistant secretary for the engineering and regional operations division.) We have headquarters, division, and regional offices.

The department of transportation organization chart:



AMENDATORY SECTION (Amending Order 120, filed 8/14/89, effective 9/14/89)

WAC 468-06-050 Who is the department's public records officer((s))? ((The department's public records shall be in the charge of the manager, administrative services, who shall be the public records officer for the department. In the absence of the manager, administrative services, the records manager shall serve as the public records officer. The persons so designated shall be located in the transportation building, Olympia, Washington. The public records officer shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973-)) (1) The director of administrative services is the department's public records officer. The director is responsible for:

(a) Ensuring employees comply with department processes and procedures and state laws about public disclosure;

(b) Managing headquarters, regional, and division public disclosure coordinators and delegating responsibilities to them;

(c) Approving and signing public record exemption letters; and

(d) Contacting the attorney general's office for legal opinions on public record exemptions, subpoenas, and other legal matters.

(2) You may contact the headquarters public records officer at:

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300

Telephone: 360-705-7000
TTY: 1-800-833-6388

www.wsdot.wa.gov

(3) In the absence of the public records officer, the records manager performs the duties of the public records officer.

(4) A public disclosure coordinator is available in each region or division. Region and division contact information is available at www.wsdot.wa.gov.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-060 How do I request a copy of a public record((s available))? ((All public records of the department, as defined in WAC 468-06-020, are deemed to be available for public inspection and copying pursuant to these rules, except as provided in WAC 468-06-030-)) (1) You may obtain a copy of a public record by submitting a written request to the department's public disclosure coordinator. See WAC 468-06-050. Coordinators will accept a letter, e-mail, fax, or department's request for public records form (722-023 EF).

You may obtain a copy of the form by calling or contacting a public disclosure coordinator or at www.wsdot.wa.gov.

(2) If you do not use the department's form, requests should:

(a) Provide the name, address, telephone number, and e-mail address of the person requesting the record.

(b) Provide the date and time of the request.

(c) Provide a clear description of the record. You should be as specific as possible. Public disclosure coordinators may ask you to explain or clarify your request because it is not specific enough.

(d) Indicate in the request that this is a "request for public records."

AMENDATORY SECTION (Amending Order 163, filed 7/24/96, effective 8/24/96)

WAC 468-06-070 ~~((Requests for))~~ When are public records((s)) available for inspection and copying? ((Subject to the provisions of subsection (3) of this section, and in accordance with the requirements of chapter 1, Laws of 1973, 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 are only obtainable by members of the public when those members of the public comply with the following procedures:

(1)(a) A public record may ordinarily be disclosed upon an oral or written request. Requests will be referred to the public records officer or public disclosure coordinator. All requests shall contain the following information:

(i) The name of the requester.

(ii) The date the request was made.

(iii) Public records or information requested.

(iv) Requester's signature (if written request).

(b) The person handling the oral request shall require the requester to submit a written request in the following instances:

(i) Whenever the record requested clearly falls within the statutory exemptions of WAC 468-06-030 or when the exempt status of the record is unclear.

(ii) Whenever an entire file is requested or all records of a general category are requested unless the number of documents involved is less than ten.

(iii) Records pertaining to condemnation actions or other pending litigation to which the department is a party or pertaining to any controversy to which the department is party.

(iv) When the document requested has a notation "legal work product" or "privileged attorney-client communication" or similar notice of privileged material.

(v) Where the oral request is too complicated or too extensive and inconvenient to the department to handle the matter on an oral basis.

(2) Responses to requests for public records shall be made promptly. Within five business days of receiving a public record request, the department will respond by either:

(a) Providing the record;

(b) Acknowledging that the department has received the request and providing a reasonable estimate of the time the department will require to respond to the request; or

(c) Denying the public record request.

Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or offices affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the department may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the department need not respond to it.

(3) The public records officer or person handling the request shall inform the member of the public making the request whether or not the requested record is available for inspection or copying at a region office or at the transportation building in Olympia, Washington.

(4) The records requested are not to be used to compile a commercial sales list.

(5) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the department is also a party (or when such a request is made by or on behalf of an attorney for such a party) the request shall be referred to the assistant attorney general assigned to the department for appropriate response.) (1) Nonexempt public records are generally available for inspection and copying during normal business hours. Normal business hours are Monday through Friday from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., excluding legal holidays.

(2) You must make an appointment with the appropriate office before inspecting the records. Appointments are limited to two hours.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-080 ((Availability for public inspection and copying of)) ~~How will the department respond to my public records((—Office hours—)) request?~~ ((Public records shall be available for inspection and copying during the customary office hours of the department of transportation. For the purposes of this chapter, the customary office hours shall be from 8 a.m. to noon and from 1 p.m. to 5 p.m., Monday through Friday, excluding legal holidays.)) (1) A public disclosure coordinator will provide you with a written response within five business days of receiving your request for public records. An initial written response may:

(a) Acknowledge we have received the request and provide a reasonable estimate of the time it will take to respond and briefly explain the time estimate.

(i) Time estimates are based on many issues including the complexity of the request, clarity of the request, number of documents, location of documents, redaction, legal issues, court decision, third-party involvement, or determining if records are exempt. In any case, coordinators will provide you a brief written explanation for the time necessary to respond to your request.

(ii) We may extend reasonable estimates when warranted. A public disclosure coordinator will contact you if this happens.

(b) Provide the requestor the records.

(c) Ask for a better description of an unclear request.

(d) Provide part of the records and deny another part.

(e) Deny the request.

(2) We will take timely action on requests and make the records "promptly available."

AMENDATORY SECTION (Amending Order 163, filed 7/24/96, effective 8/24/96)

WAC 468-06-090 ((Inspection and copying cost.)) ~~What is the fee for obtaining a copy of a public record?~~ (1) ((No fee shall be charged for inspection of public records.

(2) The department of transportation shall impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy records; such charges shall not exceed the amount necessary to reimburse the department for its actual costs incident to such copying.)) The department will not charge you for any standard request of less than twenty-five copies. A standard request is a black and white copy on 8 1/2" x 11" plain white paper.

(2) You will be charged fifteen cents per page for all standard requests of twenty-five copies or more and the actual cost of all nonstandard requests. You may obtain a list of nonstandard costs from a public disclosure coordinator.

(3) A public disclosure coordinator will notify you by mail if there is a copying charge.

(4) The department will require full payment for all copying requests before providing the records.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-100 ((Protection of)) ~~What are the rules for inspecting nonexempt public records((-))?~~ ((In order to implement the provisions of section 29, chapter 1, Laws of 1973, requiring agencies to enact reasonable rules to protect public records from damage or disorganization, the following rules have been adopted:

(1) Copying of public documents shall be done by department personnel and under the supervision of said personnel, upon the request of members of the public under the procedures set down in WAC 468-06-070.

(2) No document shall be physically removed by a member of the public from the area designated by the department for the public inspection of documents for any reason whatever.

(3) When a member of the public requests to examine an entire file or group of documents, as distinguished from a request to examine certain individual documents which can be identified and supplied by themselves, the department shall be allowed a reasonable time to inspect the file to determine whether information protected from disclosure by section 31, chapter 1, Laws of 1973, is contained therein, and the department shall not be deemed in violation of its obligation to reply promptly to requests for public documents by reason of causing such an inspection to be performed.)) (1) You should give a reasonable notice of your public records request to the public disclosure coordinator where the records are stored. Coordinators will assist you in the timeliest man-

ner possible but are not required to excessively interfere with other essential functions.

(2) Coordinators will:

(a) Notify you in writing when public records are ready for inspection.

(b) Schedule an appointment for you to inspect the requested public records.

(i) Coordinators may ask you to complete the department's request for public records form before making an appointment.

(ii) A staff person will remain with all public records you are inspecting. Reviewing time is limited to two hours.

(iii) Coordinators will provide a space to inspect public records. You may not remove any public record from the viewing area or disassemble or alter any document.

(iv) If you fail to inspect the public records as scheduled or make a required payment we may close the request.

(c) Notify you in writing when the inspection is complete or your request has been withdrawn or abandoned. Coordinators may provide large volumes of public records in installments.

(3) The headquarters public disclosure coordinator, or delegee, will notify you in writing if the records you requested are exempt from public disclosure.

(4) Coordinators will provide you copies of any public documents after your inspection is complete. The department may charge you for copies but there is no charge for inspection of public records. See WAC 468-06-090.

AMENDATORY SECTION (Amending Order 97, filed 11/18/85)

WAC 468-06-110 ((Denial of request.)) What happens if the department decides that all or part of a requested public record is exempt from disclosure?

((Each denial of a request for a public record shall be accompanied by a written statement to the requestor clearly specifying the reasons 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 record withheld. Such statement shall be sufficiently clear and complete to permit the secretary of transportation or designee to review the denial in accordance with WAC 468-06-120.)) (1) When we determine that an entire record is exempt from disclosure, the headquarters public disclosure coordinator, or delegee, will notify you in writing. The notification will list each exempt record, the law that allows the exemption, and a brief explanation for the exemption.

(2) If your request requires a partial exemption, the headquarters public disclosure coordinator, or delegee, will notify you in writing. The notification will list each exempt record, the law allowing the exemption, and a brief explanation of the exemption. Coordinators will redact or blackout the exempt information and provide you the nonexempt portion of the records.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-120 ((Review of denials of)) How do I request that the department reconsider its decision to

deny my request for public records ((requests.))? (1) ((Any person who objects to the denial of a request for a public record may petition the public records officer 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) After receiving a written request for review of a decision denying a public record, if the public records officer determines to affirm the denial, then the written request shall immediately be referred to the assistant attorney general assigned to the department. The assistant attorney general shall promptly consider the matter and either affirm or reverse such denial. In any case, 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 public records officer has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever first occurs.)) If you object to the complete or partial denial of a public records request you may make a written petition for review. Your petition should identify the written statement denying your request. Send your written petition to the public disclosure coordinator. Coordinators will promptly forward the petition to the headquarters public disclosure coordinator for review.

(2) The department's headquarters public disclosure coordinator will promptly:

(a) Review the petition.

(b) Consult with the office denying the record.

(c) Contact the attorney general's office for advice as appropriate.

(3) We will provide you a written decision within ten business days following the department's receipt of the petition. If the requestor and department agree, a longer period of review may be allowed.

(4) If you do not agree with the department's review, you may request a review of the department's claim of exemption by the attorney general's office. You can initiate this type of review by sending a written request for review to:

Public Records Review

Office of the Attorney General

P.O. Box 40100

Olympia, WA 98504-0100

publicrecords@atg.wa.gov

NEW SECTION

WAC 468-06-125 Will the department notify a person or business when a public records request may affect their rights and be potentially exempt? Public disclosure coordinators may provide written notification to a department employee, person or business named in a requested record or to whom a record specifically pertains and whose rights may be affected by the release of the record. The coordinator's written notification will:

(1) Include the name and location of the requestor and the record(s) requested.

(2) Advise the employee, person or business that they may seek a court injunction in superior court within ten days to prevent release of the record in accordance with RCW 42.56.540.

(3) Inform the employee, person or business that the department will disclose the record to the requestor unless the employee, person or business provides the coordinator with a court order enjoining such disclosure.

AMENDATORY SECTION (Amending Order 62, filed 5/19/81)

WAC 468-06-130 ((Records index)) How do I request an electronic public record? (1) ~~((The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of records as specified in RCW 42.17.260(3) because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, reports, surveys, staff studies and other materials.~~

~~(2) The department will make available for public disclosure all indices which may at a future time be developed for agency use-)) You request an electronic record the same way as a paper record. You should advise the coordinator in writing that you are seeking the record in an electronic form.~~

An electronic record is any record generated, communicated, received, or stored by electronic means for use in an informational system or for transmission from one information system to another.

(2) Your request for an electronic record must include an identifiable record. An identifiable record is one that a coordinator or another staff person can reasonably locate.

A reasonably locatable electronic record is a record that can be located with typical search features and organizing methods contained in the department's current software.

(3) The department may charge actual costs of providing electronic records in advance.

NEW SECTION

WAC 468-06-135 Will the department provide an electronic copy of a printed public record? (1) You request an electronic copy of a public record the same way as a paper copy. You should advise the coordinator in writing of this specific request.

(2) If a public record (kept on paper) is reasonably translatable into an agency used electronic format, coordinators will provide you an electronic copy of that record.

A reasonably translatable record is one we can easily copy from paper to an electronic format.

(3) The department may charge actual costs of providing electronic records in advance.

AMENDATORY SECTION (Amending WSR 90-23-007, filed 11/9/90, effective 12/10/90)

WAC 468-06-140 ((Indexes)) Does the department maintain a public records index? (1) ~~((A system of indexing for identification and location of the following records is hereby established by the department. Such records shall include the following:~~

~~(a) Final orders entered after June 30, 1990, issued in adjudicative proceedings as defined in RCW 34.05.010(1) that contain an analysis or decision of substantial importance to the agency in carrying out its duties.~~

~~(b) Declaratory orders entered after June 30, 1990, that contain an analysis or decision of substantial importance to the agency in carrying out its duties.~~

~~(c) Interpretive statements as defined in RCW 34.05.010 (8).~~

~~(d) Policy statements entered after June 30, 1990, as defined in RCW 34.05.010(14).~~

~~(2) A system of indexing shall be as follows:~~

~~(a) The indexing system will be administered by the department's rules coordinator and located in the transportation building in Olympia, Washington.~~

~~(b) Copies of all indexes shall be available for public inspection and copying in the manner provided for the inspection and copying of public records.~~

~~(c) The rules coordinator shall establish and maintain a separate index for each item contained in subsections (1)(a) through (d) of this section as follows:~~

~~(i) The index shall list all final orders and declaratory orders selected by the department that contain decisions of substantial importance to the agency which orders shall be listed alphabetically by the titles of the hearing or controversy and shall contain a phrase describing the issue or issues and relevant citations of law.~~

~~(ii) Interpretative statements and policy statements shall be indexed by the applicable program administered by the department.~~

~~(d) The rules coordinator shall update all indexes at least once a year and shall revise such indexes when deemed necessary by the department.)) The department's records indexes are located in the records and information services office, transportation building, Olympia, Washington.~~

(2) The records officer is responsible for:

(a) Managing the index system.

(b) Coordinating all aspects of the index.

(c) Revising indexes when necessary.

NEW SECTION

WAC 468-06-150 How long does the department keep requests for public records? The department keeps all documents according to the state general retention schedule. We keep a request for public records for six years from the date of disclosure, final response, or denied appeal (whichever is later).

WSR 08-16-041

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 29, 2008, 2:45 p.m., effective August 29, 2008]

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

Purpose: WAC 458-20-177 (Rule 177) explains the tax consequences and tax exemption requirements for sales of motor vehicles, campers, and trailers to nonresidents. This rule has been revised to reflect provisions of SHB 2158

(chapter 135, Laws of 2007). This legislation identifies in statute the type of documentation a seller of motor vehicles, trailers, or campers needs to retain from a nonresident buyer, the consequences for noncompliance by a seller, and when the department may contact a buyer when the sale was made on or after July 22, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers.

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

Other Authority: RCW 82.08.0264.

Adopted under notice filed as WSR 08-06-092 on March 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: In subsection (3)(c)(ii) examples of acceptable documents, as proof of nonresidency, have been added. Language has been added to subsection (6)(b) to clarify that if the department finds upon contacting a buyer claiming to be a nonresident that the buyer is not eligible for sales tax exemption, the department pursue collection of tax from the buyer. A new subsection (subsection (11)) has been added that includes language from RCW 82.08.0264(4), which explains buyers' obligations when claiming an exemption.

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

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

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

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

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

Date Adopted: July 29, 2008.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-14-086, filed 6/30/05, effective 7/31/05)

WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers. (1) **Introduction.** This ~~(rule)~~ section applies to any sale of a vehicle to a consumer who is not a resident of the state, including nonresident military personnel temporarily stationed in Washington. The ~~(rule)~~ section describes the different business and occupation (B&O) and retail sales tax consequences that result from vehicle sales to nonresidents, particularly the sales tax exemption provided by RCW 82.08.0264. It also describes the documentation a seller must retain to demonstrate that a sale is exempt.

For information on use tax liability associated with vehicles, see WAC 458-20-178, Use tax.

For sales of vehicles to Indians or Indian tribes and required documentation, see WAC 458-20-192, Indians—Indian country.

Questions regarding vehicle licensing or registration requirements should be directed to the department of licensing.

(2) **What is a "vehicle"?** For the purposes of this ~~(rule)~~ section, a "vehicle" is any vehicle of a type that may be lawfully licensed under chapter 46.16 RCW for operation on a public highway in this state, except that the term does not include any machinery and implements for use in conducting a farming activity subject to RCW 82.08.0268. The term "vehicle" includes, but is not limited to, a car, truck, camper, trailer, bus, motorhome, and motorcycles equipped for road use. It does not include farm tractors, bicycles, mopeds, motorized scooters, snowmobiles, or vehicles that are manufactured for exclusively off-road use.

(3) **What are the tax consequences when a vehicle sold to a nonresident is delivered in-state?** A sale of a vehicle to a nonresident where the vehicle is delivered in-state is exempt from retail sales tax if the sale meets the requirements of RCW 82.08.0264. In all other cases where the vehicle is delivered to the buyer in this state, the retail sales tax applies and must be collected at the time of sale, unless otherwise exempt by law. The mere fact that the buyer may be or claims to be a nonresident or that the buyer intends to, and actually does, use the vehicle in some other state does not, by itself, entitle the buyer to the exemption. In any case where the seller licenses or registers the vehicle in Washington on the buyer's behalf, the retail sales tax applies.

In computing the B&O tax liability of persons engaged in the business of selling vehicles, no deduction is allowed for a sale made to a nonresident for use outside this state if the nonresident buyer takes delivery in Washington. This is true even if the buyer is entitled to an exemption from the retail sales tax.

(a) **Exemption requirements.** If a vehicle is delivered within this state to a nonresident buyer, retail sales tax does not apply if the vehicle is purchased for use outside this state and, immediately upon delivery, the vehicle:

(i) Is removed from the state under the authority of a trip permit issued by the department of licensing pursuant to RCW 46.16.160 or any agency of another state that has authority to issue similar permits; or

(ii) Is registered and licensed in the state of the buyer's residence, will not be used in this state more than three months, and will not be legally required to be registered and licensed in this state.

If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivering the vehicle and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation.** For sales completed before July 22, 2007, the seller must properly document the following facts:

(i) The buyer is a nonresident of Washington;

(ii) The vehicle is for use outside this state;

(iii) The vehicle is to be removed from the seller's premises under the authority of either:

(A) A trip permit; or

(B) Valid license plates issued for that vehicle by the state of the buyer's residence, with the plates actually affixed to the vehicle upon final delivery; and

(iv) If the vehicle bears Washington state license plates, the seller has removed the Washington plates before delivery.

(c) Seller obligations effective July 22, 2007. For sales completed on or after July 22, 2007, the seller must retain the following documents, which must be made available upon request by the department of revenue (department):

(i) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;

(ii) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:

- A current residential rental agreement;
- A property tax statement from the current or previous year;

- A utility bill, dated within the previous two months;

- A state income tax return from the previous year;

- A voter registration card;

- A current credit report; or

• Any other document determined by the department to be acceptable, with buyer's street address, such as:

(A) A bank statement issued within the previous two months;

(B) A government check issued within the previous two months;

(C) A pay check issued within the previous two months;

(D) Mortgage documents of current residence;

(E) Current vehicle insurance card;

(F) Letter or other documentation issued by the postmaster within the previous two months;

(G) Other government document issued within the previous two months;

(iii) A witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section (buyer's affidavit); and

(iv) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required by RCW 82.08.0264.

To comply with these requirements, the seller must retain a properly completed buyer's affidavit and seller's certificate (in-state delivery) (~~in substantially the form prescribed in subsection (5) of this rule~~). The seller must also retain documentation of the buyer's nonresidence, as required in ~~subsection (6) of this rule~~). If the nonresident buyer is a corporation, the seller must also retain the number of the corporate nonresident permit.

(d) What are the consequences for noncompliance?

(i) Any seller that makes sales without collecting the tax to a person who does not provide the documents required under (c) of this subsection, and any seller who fails to retain the documents required under (c) of this subsection for the period prescribed by RCW 82.32.070 is personally liable for the amount of tax due.

(ii) Any seller that makes sales without collecting the retail sales tax under RCW 82.08.0264 and who has actual knowledge that the buyer's documentation required by (c) of

this subsection is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

(4) What are the tax consequences when a vehicle sold to a nonresident is delivered out-of-state? A sale of a vehicle to a nonresident where the seller delivers the vehicle out-of-state is exempt from retail sales tax. If the vehicle is delivered to the buyer outside the state, the seller may also deduct the sale amount from the gross proceeds of sales for B&O tax purposes. The deductible amount must be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. The deduction must be identified on the deduction detail page of the return as an "interstate and foreign sales" deduction.

(a) Requirements. If a vehicle is delivered outside the state to a nonresident buyer, retail sales tax does not apply if:

(i) The seller, as required by the contract of sale, delivers possession of the vehicle to the buyer at a point outside Washington; and

(ii) The vehicle is not licensed or registered in this state. If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivery and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) Seller obligations; documentation. The seller must properly document the following facts:

(i) The buyer's out-of-state address;

(ii) The vehicle is not licensed or registered in this state or the Washington state license plates have been removed from the vehicle before delivery;

(iii) Under the terms of the sales agreement, the seller is required to deliver the vehicle to the buyer at a point outside this state; and

(iv) The out-of-state delivery was actually made by the seller or by a common carrier acting as the seller's agent.

To comply with these requirements, the seller must retain a properly completed buyer's certificate and seller's certificate (out-of-state delivery) (~~in substantially the form prescribed in subsection (5) of this rule~~). The seller's certificate must be signed by the person who actually delivers the vehicle to the buyer at the out-of-state location and may be completed only after delivery occurs.

(c) Documentation when delivery is made by common carrier. When a vehicle is delivered outside the state by common carrier acting as the seller's agent, no buyer's certificate or seller's certificate is required. Instead, the seller must retain:

(i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and

(ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state.

(5) What forms should be used to document an exempt sale? The (~~following~~) documents: "Buyer's Affidavit," "Seller's Certificate In-State Delivery," "Buyer's Cer-

tificate Out-of-State Delivery," and "Seller's Certificate Out-of-State Delivery" are necessary to substantiate exempt sales to nonresidents. Do not send the documents ((described in this subsection)) to the department ((of revenue)), but keep them as part of the seller's permanent records for five years. Without this documentation, claims that a transaction was exempt from tax will be disallowed.

Copies of the forms can be obtained:

- From the department's internet web site at http://dor.wa.gov
- By facsimile by calling fast fax at 360-705-6705 or 800-647-7706 (using menu options)
- By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, Washington 98504-7478

Documents in substantially the same form as the department's forms will be accepted in lieu of the department's documents.

(a) **In-state delivery.** A sale with in-state delivery requires a completed buyer's affidavit and seller's certificate-in-state delivery.

((The buyer's affidavit must be substantially in the following form:

Buyer's Affidavit

To Be Completed by the Buyer When the Vehicle Is Delivered to the Buyer in Washington

I, (Name of buyer), swear that:

I am a resident of the State of I am not a resident of the state of Washington and do not claim to be a resident of Washington for any purpose. My home address is (Street and number or rural route), (City, town or post office), (State), (Zip Code). On (Date), I purchased from (Name of seller) the following vehicle:

Make Model
Year Serial No. (VIN)

I am purchasing this vehicle for use outside Washington state. The vehicle will be removed from Washington state by the following means: **(Select and complete one)**

- A. The vehicle will be driven from the seller's premises under the authority of a trip permit numbered. which has been issued to me by the Washington state department of licensing.
- B. The vehicle will not be used in the state of Washington for more than three months and has been licensed in the state of That state has issued to me license plates numbered. Those license plates are valid until (Expiration date of license). The plates have been affixed to the vehicle before it has left the seller's premises.

I, the undersigned buyer, understand that by completing and signing this affidavit I am swearing that I qualify for the tax-

exempt purchase of the vehicle described above. In addition, I understand that false or erroneous use of this affidavit will result in liability for unpaid tax with interest and may result in additional penalties.

Dated at

.....
(Buyer's signature)

.....
Service No. if member of armed services
Subscribed and sworn to before me at, Wash- ington, this day of, 20....

My appointment expires:

The seller's certificate must be substantially in the following form and be attached to the buyer's affidavit:

Seller's Certificate In-State Delivery

I certify that before final delivery of the vehicle described in the buyer's affidavit: (a) I examined trip permit No. which authorizes the vehicle's transit; or (b) license plates numbered., issued for the vehicle by the state of. ... and expiring., were affixed to the vehicle.

I further certify that I have examined and retained a copy of the following item(s) of documentary evidence showing the buyer's residency in the state of.:

SELECT AT LEAST ONE

- Driver's license #
- Other picture identification #
- Other (specify) #

(If the vehicle sold was previously licensed with Washington plates) I further certify that the Washington state license plates were removed by., agent of the seller.

.....
(Signature of seller or representative)
.....
(Title officer or agent)))

(b) **Delivery out-of-state by seller.** A sale with out-of-state delivery by a seller requires a completed buyer's certificate and seller's certificate-out-of-state.

((The buyer's certificate must be substantially in the following form:

**Buyer's Certificate
Out of State Delivery**

(Title Officer or Agent)

**To Be Completed by Buyer at Time of Delivery Outside
Washington State**

(Name of buyer)
(Street and number or rural route)
(City, town or post office)
(State), (Zip Code)
On _____, I purchased from (Name of seller) the follow-
ing vehicle:

Make _____ Model _____
Year _____ Serial No. (VIN) _____

Under the terms of the sales agreement the seller was
required to, and did on this day, deliver this vehicle to me at
(Place of delivery) in (State):

Dated at _____, this _____ day of _____, 20____

(Signature)

Service No. if Member of Armed Services

**THE FOLLOWING STATEMENTS MUST BE INITIALED BY THE
BUYER:**

..... I certify under penalty of perjury under the laws of
the State of Washington that all of the information on this
certificate is true. I further understand that I may be subject to
criminal prosecution or other legal penalties for providing
false information on this certificate.

..... I have completed and signed this certificate *after*
the vehicle was delivered to me at the place and time
described above.

The seller's certificate must be substantially in the fol-
lowing form and be attached to the buyer's certificate:

**Seller's Certificate
Out of State Delivery**

**To Be Completed at Time of Delivery by the Person Who
Delivers the Vehicle to the Buyer**

I certify that today I delivered the vehicle described in the
buyer's certificate to (Name of buyer), at (Place of delivery).
(If the vehicle sold was previously licensed with Washington
plates) I further certify that the Washington state license-
plates were removed by _____, agent of the seller.

Dated _____

(Signature of the person who
delivered the vehicle to the
buyer)

**The Following Statements Must Be Initialed by the Per-
son Who Delivered the Vehicle to the Buyer:**

..... I certify under penalty of perjury under the laws of
the State of Washington that all of the information on this
certificate is true. I further understand that I may be subject to
criminal prosecution or other legal penalties for providing
false information on this certificate.

..... I have completed and signed this certificate *after*
the vehicle was delivered to the buyer as described above.)

**(6) What are a seller's obligations to verify a buyer's
statements on nonresidency?**

(a) Prior to July 22, 2007, completion of a buyer's affida-
vit documents the exempt nature of a sale under RCW
82.08.0264 unless there are facts that negate the presumption
that the seller relied on the buyer's affidavit in good faith. The
seller, however, must exercise a reasonable degree of care in
accepting statements regarding a buyer's nonresidence. If
delivery occurs in-state, the seller must examine and retain a
copy of at least one form of documentary evidence showing
the buyer's out-of-state residence. Lack of good faith on the
part of the seller or lack of the exercise of the degree of care
required is indicated, for example, in the following circum-
stances:

((a)) (i) If the seller knows that the buyer is living in
Washington;

((b)) (ii) If the buyer gives a Washington address for
the purpose of financing the purchase of the vehicle;

((c)) (iii) If, at the time of sale, arrangements are made
for future servicing of the vehicle in the seller's shop and a
Washington address or telephone number is shown for the
shop customer; or

((d)) (iv) If the seller has ready access to any other
information that discloses that the buyer may be a resident of
Washington.

**(b) What if the department questions the authenticity
of the information provided by the buyer?** For sales com-
pleted on or after July 22, 2007, if the department has infor-
mation indicating the buyer is a Washington resident, or if the
addresses for the buyer shown on the documentation pro-
vided under subsection (3)(c) of this section are not the same,
the department may contact the buyer to verify the buyer's
eligibility for the exemption provided by RCW 82.08.0264.
If the department subsequently determines the buyer was not
eligible for an exemption, the department will pursue collec-
tion of the retail sales tax from the buyer. The seller will not
be liable for the retail sales tax except as provided in subsec-
tion (3)(d)(ii) of this section.

**(7) Do military personnel qualify for the nonresident
exemptions?** A member of the armed services who is tempo-
rarily stationed in Washington is presumed to be a nonresi-
dent, unless that person was a resident of this state when
inducted. This presumption does not apply to a civilian
employee of the armed services. Nonetheless, a sale to a non-
resident member of the armed forces must meet all of the stat-
utory requirements for a retail sales tax exemption or B&O

tax deduction. If a vehicle sold to a member of the armed forces will remain in Washington for more than three months, retail sales tax is due on the sale, even if the vehicle is registered in the home state of the armed forces member.

(a) **Military temporary license.** In addition to the exemptions provided under RCW 82.08.0264, a member of the armed forces may alternatively qualify for the retail sales tax and use tax exemptions provided by RCW 46.16.480 if the member obtains a forty-five day nonresident military temporary license from the department of licensing under RCW 46.16.460 and satisfies the requirements of RCW 46.16.480.

(b) **Additional documentation required.** In addition to the documentation otherwise required by this ~~((rule))~~ section, for a sale to a member of the armed forces a seller must retain a copy of military orders showing that the buyer:

(i) Is temporarily stationed in Washington and will leave within three months of the date of purchase; or

(ii) Is permanently reassigned to a new duty station outside Washington and will leave within three months of the date of purchase.

(c) **Military personnel of NATO-member nations.** Pursuant to treaty, a member of the armed forces of any NATO-member nation who is stationed in Washington is considered to be a nonresident for purposes of the RCW 82.08.0264 retail sales tax exemption. The buyer must meet all otherwise applicable requirements for exemption. In addition, the seller must retain proof of the buyer's military assignment in Washington as a member of a NATO-member nation's armed forces.

(8) **Are sales to residents of noncontiguous states exempt from Washington retail sales tax?** RCW 82.08.-0269 exempts purchases of tangible personal property from the retail sales tax if the property is purchased for use in states, territories, and possessions of the United States that are not contiguous with any other state. However, the exemption only applies if, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or the purchaser's designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in a noncontiguous state, territory, or possession.

RCW 82.08.0269 applies to the sale of motor vehicles when the requirements stated above are met. Therefore, in addition to being exempt from retail sales tax under RCW 82.08.0264 (discussed above), a sale of a motor vehicle to a resident of a noncontiguous state, territory, or possession may qualify for exemption under RCW 82.08.0269. If so, the sale is exempt from retail sales tax but does not qualify for a B&O tax deduction. For more information on the requirements of the RCW 82.08.0269 exemption, including the documentation requirements, see WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(9) **Are sales to residents of states with no sales tax exempt from Washington retail sales tax?** RCW 82.08.-0273 exempts purchases of tangible personal property from the retail sales tax if the purchaser is a resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more.

That statute does not apply to purchases of vehicles. Because RCW 82.08.0264 more specifically applies to the sale of vehicles, it takes precedence over RCW 82.08.0273. A resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more may purchase and take delivery of a vehicle in Washington free of retail sales tax only if the person meets the requirements of RCW 82.08.0264 or 82.08.-0269.

(10) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(a) Buyer purchases a vehicle from Dealer. Buyer provides identification indicating that Buyer is a resident of California and provides California license plates for the vehicle. However, Buyer also states that he intends to use the vehicle in the state of Washington for four months before returning to California. Buyer does not qualify for a sales tax exemption because Buyer will use the vehicle for more than three months in the state.

(b) Buyer provides proof of residency in Idaho; there are no contrary facts regarding Buyer's residency. Buyer completes the buyer's affidavit, stating that the vehicle is for use out-of-state. Buyer obtains and uses a trip permit issued under authority of RCW 46.16.160 to remove the vehicle from Washington. The Dealer completes a seller's certificate and certifies that the Dealer removed the Washington license plates before delivering the vehicle to Buyer. This sale qualifies for the retail sales tax exemption but not the B&O tax deduction.

(c) Buyer is a Washington resident, employed by out-of-state Corporation X. On behalf of Corporation X, Buyer purchases and accepts in-state delivery of a vehicle from Dealer. The vehicle will be used as a company car out-of-state and will not be used or garaged in Washington. Payment is made by corporate check. Buyer provides a trip permit for transport of the vehicle out of Washington. This sale qualifies for the retail sales tax exemption (but not for the B&O tax deduction) notwithstanding the Washington residency of its employee. The Dealer must record in its records the number of the corporate nonresident permit.

(d) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. The sales contract requires Dealer to deliver the vehicle to Buyer ~~((at))~~ in Anchorage, Alaska. Before shipping the vehicle, Dealer removes the vehicle's Washington state license plates and retains a photocopy of the plates as evidence of the removal. Seller ships the vehicle to Alaska by common carrier. Seller retains a signed copy of the bill of lading, indicating the Seller as consignor and the Buyer as consignee. This sale qualifies for the retail sales tax exemption and a B&O tax deduction.

(e) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. Dealer delivers the vehicle to the Buyer at dockside in Seattle to be shipped to Anchorage, Alaska by common carrier. Dealer retains the exemption certificate and dock receipt required by WAC 458-20-193. This sale qualifies for the retail sales tax exemption provided by RCW 82.08.0269 but not for a B&O tax deduction.

(f) Buyer is a member of the armed forces and provides a copy of her orders showing that she is temporarily stationed in Washington. Before entering military service, buyer resided in another state. Buyer purchases a vehicle from Dealer and licenses it in her home state, but intends to keep the vehicle in this state for over three months. This sale does not qualify for any exemption or deduction. If the vehicle were to be removed from the state within three months, the sale would qualify for the RCW 82.08.0264 retail sales tax exemption but not for a B&O tax deduction.

(g) Buyer owns homes in Washington and Arizona, spending summers in Washington and winters in Arizona. In October, Buyer purchases a vehicle from Dealer, asserting that he will immediately drive the vehicle to Arizona and license it in that state. Buyer presents an Arizona driver's license for identification and provides a trip permit to remove the vehicle from Washington. Dealer is aware that Buyer lives in Washington for a significant portion of each year. In such a case, the sale would not qualify for the retail sales tax exemption. Under these facts, Buyer has dual residency in Washington and Arizona for tax purposes (~~and Dealer cannot, in good faith, rely upon a buyer's affidavit from Buyer~~).

~~(h) (Buyer provides an Oregon driver's license and states that the vehicle will be licensed in Oregon and used out-of-state. However, when Dealer runs a credit check on Buyer, the credit report contains several references to a Washington address for Buyer. In this situation, Dealer cannot rely in good faith on Buyer's single form of identification as proof of nonresidency. The dealer must obtain additional evidence of nonresidency to substantiate a claimed exemption before making a tax-exempt sale in this situation.~~

(+)) Buyer purchases a motorcycle from Dealer in Vancouver, Washington. The motorcycle is equipped for use on public highways. Buyer provides an Oregon driver's license and asserts that the motorcycle will be licensed in Oregon. Buyer also states that the motorcycle will only be used outside of Washington. Buyer places the motorcycle in the back of a truck for transport to Oregon. This sale does not qualify for any exemption or deduction. To qualify for the sales tax exemption, RCW 82.08.0264 requires the Buyer to obtain a trip permit or provide license plates from another state before removing the vehicle from Washington.

(11) Buyer obligations when claiming exemption. It is the buyer's responsibility to provide the seller with valid identification that entitles the buyer to purchase a motor vehicle, trailer, or camper exempt from retail sales tax as provided by RCW 82.08.0264.

(a) A buyer making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a seller, in order to purchase a motor vehicle, trailer, or camper without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any buyer making tax exempt purchases under RCW 82.08.0264 by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of RCW 82.08.0264 is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

**WSR 08-16-042
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD**

[Filed July 29, 2008, 2:53 p.m., effective August 29, 2008]

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

Purpose: Provides flexibility to the NWR in submitting project requests for RATA.

Citation of Existing Rules Affected by this Order: Amending WAC 136-161-080.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Adopted under notice filed as WSR 08-10-045 on May 1, 2008.

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

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

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

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

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

Date Adopted: July 24, 2008.

Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 07-17-020, filed 8/6/07, effective 9/6/07)

WAC 136-161-080 Limitations on allocations of RATA funds to counties. For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

(1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;

(2) NWR: ~~No maximum project RATA contribution ((is five hundred thousand dollars, except that on one project for each county there is a maximum RATA contribution of one million dollars))~~; twenty percent limit on percentage of the forecasted regional apportionment amount;

(3) NER: No maximum project RATA contribution; twelve and one-half percent limit on percentage of the forecasted regional apportionment amount;

(4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;

(5) SER: No maximum project RATA contribution; percentage varies by county as follows:

- | | |
|-------------------|------------------|
| (a) Asotin County | ten percent |
| (b) Benton County | fourteen percent |

(c) Columbia County	eleven percent
(d) Franklin County	thirteen percent
(e) Garfield County	ten percent
(f) Kittitas County	thirteen percent
(g) Klickitat County	fourteen percent
(h) Walla Walla County	fourteen percent
(i) Yakima County	twenty percent

WSR 08-16-043
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed July 29, 2008, 2:54 p.m., effective August 29, 2008]

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

Purpose: Provides flexibility to the NWR in submitting project requests for RATA.

Citation of Existing Rules Affected by this Order: Amending WAC 136-130-040.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Adopted under notice filed as WSR 08-10-046 on May 1, 2008.

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

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

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

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

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

Date Adopted: July 24, 2008.

Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 07-17-020, filed 8/6/07, effective 9/6/07)

WAC 136-130-040 Project prioritization in northwest region (NWR). Each county in the NWR may submit projects requesting RATA funds not to exceed ~~((five hundred thousand dollars per project, except that on one project for each county there is a maximum RATA contribution of one million dollars; and))~~ forty percent of the forecasted regional apportionment. No bridge replacement projects will be funded. Each project shall be rated in accordance with the NWR RAP reconstruction or 3R rating procedures. NWR RAP reconstruction rating points shall be assigned on the basis of forty points for structural condition, forty points for geometrics, ten points for traffic volume, ten points for traffic

accidents, five points for any project on a major collector (07), and ten points for any project on a rural principal arterial (02) or a rural minor arterial (06). Prioritization of NWR projects shall be on the basis of total NWR RAP rating points shown on the project worksheet and the prospectus form of the project application.

NWR RAP 3R rating points shall be assigned on the basis of thirty points for structural condition, twenty points for geometrics, ten points for traffic volume, ten points for traffic accidents, ten points for any project on a minor collector (08), and thirty points for 3R safety. Prioritization of NWR 3R projects shall be on the basis of total NWR 3R RAP rating points shown on the project worksheet and the prospectus form of the project application.

A total of twenty points representing local significance may be added to one project in each county's biennial submittal.

WSR 08-16-044
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed July 29, 2008, 2:55 p.m., effective August 29, 2008]

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

Purpose: To better define and create new rules for combining of CRAB/county contracts.

Citation of Existing Rules Affected by this Order: Amending chapter 136-170 WAC.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Adopted under notice filed as WSR 08-10-047 on May 1, 2008.

Changes Other than Editing from Proposed to Adopted Version: Under new section WAC 136-170-060(7) language was changed to clarify how a county must proceed to construction within two years of commencement of the first project.

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

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

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

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

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

Date Adopted: July 24, 2008.

Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-170-040 Combining of CRAB/county contracts. In those cases ((where)) when a county desires to combine two or more adjacent RATA funded projects into a single construction contract, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor, ((may)) must make a formal written request to the county road administration board to combine the projects into a single project, assuring that the original prospectus work will be accomplished as originally proposed or as previously revised by the county road administration board, regardless of the applicable maximum project RATA contribution.

Upon receipt of a letter of request to combine, and consideration and approval by the director of the county road administration board, a revised CRAB/county contract will be prepared and sent to the county for its execution and ((return)) returned in the same manner as for the original contract(s). Projects shall be considered adjacent if they have a common terminus.

NEW SECTION

WAC 136-170-050 Combining of RATA funded project with non-RATA funded project. In those cases when a county desires to combine a RATA funded project with one or more non-RATA funded projects, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor, shall notify the county road administration board in writing of its plans to combine the projects into a single construction project, assuring in writing that the work items assigned to the RATA funded section will remain distinct and separate through the bid documents and contract plans.

Upon verification that the request is submitted in a timely manner, that the combined project will meet the conditions of the CRAB/county contract and prospectus requirements, and that RATA funded items of work will be sufficiently separated from other work, the CRAB director will respond in writing, to grant the combination.

NEW SECTION

WAC 136-170-060 Splitting or phasing of CRAB/county contracts. (1) A county may split a single rural arterial trust account funded project into multiple adjacent phased construction projects only upon written request and approval by the county road administration board.

(2) The county must submit the request prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor.

(3) Upon receipt of the county's written request to split a RAP project, the CRAB director will consider and may approve the split.

(4) Upon such approval, a revised CRAB/county contract will be prepared, and sent to the county for its execution

and returned in the same manner as for the original contract. The final contract must be fully executed prior to advertisement for contract construction, or if done by day labor, prior to commencing construction.

(5) Funding for split projects will be assigned based upon the breakdown of costs specified in the county's request letter.

(6) Failure of a county to execute an amended CRAB/county contract within forty-five days of receipt shall nullify any split requests and any other county road administration board actions associated with the split request.

(7) Construction on at least one of the split projects must commence by the lapsing date of the original project and all remaining portions must proceed to construction within two years of commencement of the first project. In the event the county fails to meet either of these timelines, repayment of expended RATA funds for all portions or phases of the projects will be required unless waived by the county road administration board in keeping with provisions of WAC 136-167-030.

(8) Split projects will be considered ineligible for any increases in RATA funding or revisions in scope.

WSR 08-16-045

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 29, 2008, 3:04 p.m., effective August 29, 2008]

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

Purpose: WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel, provides tax reporting information to persons selling such fuels. The rule has been reorganized, and additions to the rule include: Subsection titles, information relating to legislation passed in 2007, and the department of revenue's internet site for locating forms.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel.

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

Other Authority: RCW 82.08.0255, 82.12.0256, 82.08.-865, and 82.12.865.

Adopted under notice filed as WSR 08-10-076 on May 6, 2008.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 29, 2008.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 91-15-022, filed 7/11/91, effective 8/11/91)

WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel. (1) ~~((Motor vehicle fuel and special fuels. "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.~~

(a) The retail sales tax does not apply to the following:

(i) Sales of motor vehicle fuel on which the tax of chapter 82.36 RCW is paid.

(ii) Sales of special fuel when sold for use as fuel in propelling motor vehicles upon the public highways in this state and on which the special fuel tax of chapter 82.38 RCW is paid. Payment of the annual fee in lieu of the special fuel tax on natural gas and propane, RCW 82.38.075, constitutes payment of the special fuel tax imposed by chapter 82.38 RCW.

(b) The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded.

(c) By reason of special exemptions contained in RCW 82.08.0255 the retail sales tax does not apply to sales of special fuel delivered in this state which is later transported and used outside this state by persons engaged in interstate commerce. This exemption also applies to persons hauling their own goods in interstate commerce.

Exemption certificate. Persons selling special fuel to interstate carriers which comes within the foregoing exemption may obtain an exemption certificate from the purchaser in substantially the following form in order to document the entitlement to the exemption:

Certificate of Special Fuel Sales
to Interstate Carriers

The undersigned hereby certifies that all the special fuel purchased from the listed dealer will be purchased for transportation and use outside of Washington by them as an interstate carrier and is entitled to the exemption of RCW 82.08.0255 or will be used on highways in Washington and the special fuel tax of chapter 82.38 RCW will be paid.

Dealer:
Carrier:
Authorized Carrier Signature:
Title or office:
Date:

The above certificate must be renewed at intervals not to exceed four years.

(d) Neither the retail sales tax nor use tax applies to sales or uses of motor vehicle fuel or special fuel purchased by private, nonprofit transportation providers certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(e) Persons selling special fuels on which the tax of chapter 82.38 RCW is not collected, except special fuel sold for use outside this state by persons engaged in interstate commerce, or fuel sold to exempt certified transportation providers, are required to collect the retail sales tax on retail sales thereof.

It is the intent of the law that all vehicle fuels, except special fuel purchased in this state for use outside this state by interstate commerce carriers, or fuels sold to exempt certified transportation providers will be subject to either the vehicle fuel taxes (chapter 82.36 or 82.38 RCW) or else the sales or use taxes of the Revenue Act (chapter 82.08 or 82.12 RCW). The fuel taxes apply to sales of fuel for on highway consumption. The sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery, construction equipment, etc.).

(f) When persons purchase motor vehicle fuel or special fuel upon which either the fuel taxes of chapter 82.36 or 82.38 RCW have been paid, but the fuel is consumed off the highways, such persons are entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, persons receiving refund of vehicle fuel taxes because of their off highway consumption of the fuel in this state are subject to payment of the use tax of chapter 82.12 RCW on the value of the fuel. The director of the department of licensing administers the fuel tax refund provisions and will deduct from the amount of any such refunds the amount of use tax due.

(2) ~~Nonpollutant fuel.~~ RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel (natural gas and liquified petroleum gas, commonly called propane) in lieu of motor vehicle fuel tax which would otherwise be due. This fee is paid at the time of original and annual renewals of vehicle license registrations. Sales or use tax applies to sales of nonpollutant fuel and any other motor fuel only if the taxes of chapter 82.36 or 82.38 RCW are not paid. The "in lieu of" tax is merely an alternative method of paying tax due under chapter 82.38 RCW. Thus, when it is paid by a user, the user has no liability for sales or use tax on purchases of nonpollutant fuel for use in the motor vehicle.

(a) Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for "on highway" use when the vehicle displays a currently valid decal or other identifying device issued by the department of licensing.

(b) Nonpollutant fuels purchased for "off highway" use, however, are not subject to the taxes of chapter 82.36 or 82.38 RCW and therefore the sales tax applies to dealer sales of fuel for "off highway" use. If the nonpollutant fuel is pumped into the vehicle fuel tank, then the special fuel tax applies. However, this tax should have already been paid by Washington state licensed vehicle owners directly under the "in lieu of" provisions of RCW 82.38.075.

(c) The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpollutant fuels to such bulk purchasers may obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The certificate will certify the amount of fuel which will be consumed by the buyer in propelling motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The certificate shall be in substantially the following form:

Certificate for Purchase of Nonpollutant Special Fuels

Seller:

Buyer:

Buyer's DOR reporting No.:

Buyer's Special Fuel User's License No.:

The undersigned hereby certifies that on this date he purchased (gallons/cubic feet) of nonpollutant fuel from the above named seller, and that delivery of the products so purchased was not made into the fuel tanks of a motor vehicle. The undersigned further certifies that of the purchase herein described:

- 1. (gallons/cubic feet) will be used to propel motor vehicles upon the highways of the state of Washington and that the "in lieu of" special fuel taxes of chapter 82.38 RCW have been paid.
- 2. (gallons/cubic feet) will be used in some other manner and that the retail sales tax is applicable to the purchaser of this quantity.

Date

.....
Name

.....
Office or Title

(d) Where it is not possible for a special fuel user licensee to determine at the time of purchase the exact proportion of the products purchased which will be consumed in propelling motor vehicles upon the highways of this state, the amount of such off-highway use special fuel may be estimated. In the event such an estimate is used, the purchaser must make an adjustment on a following excise tax return and pay use tax upon any portion of the fuel used for off-highway purposes upon which the retail sales tax was not paid.

(e) Certificates should be retained by the seller, as a part of his permanent records, and will be acceptable evidence of sales tax exemption upon sales of nonpollutant special fuel delivered in the manner described. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions whereby it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire

amount of the products so sold will be subject to the retail sales tax unless the seller has obtained the certificate.

(f) Owners of out-of-state licensed vehicles who purchase propane and other nonpollutant fuel normally will not have paid the motor vehicle fuel tax or the special fuel tax. Thus, where the taxes of chapters 82.36 and 82.38 RCW have not been paid they owe sales tax on their purchases of this fuel for both on-highway or off-highway use.

(g) Accordingly, the following guidelines will prevail:

(i) All sales of nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to sales tax which the seller must collect and remit unless a certificate as described above is obtained from the purchaser.

(ii) All sales of motor vehicle fuel, special fuel, or nonpollutant fuel of any kind for "on-highway" use are subject to the fuel taxes of chapter 82.36 or 82.38 RCW.

(iii) The tax due on nonpollutant fuel for "on-highway" use (including propane) under chapter 82.38 RCW will already have been paid by Washington licensed vehicle owners so the seller need not collect additional state tax of any kind.

(iv) Non-Washington licensed vehicle owners who have not paid tax under either chapter 82.36 or 82.38 RCW must pay sales tax on all purchases of nonpollutant fuel (including propane) whether for on-highway or off-highway use.)

Introduction. This section explains the retail sales and use taxes for motor vehicle fuel, special fuels, and fuels commonly referred to as natural gas and propane. This section also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) What are motor vehicle fuel and special fuels, and how are they taxed? "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section mean all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally the fuel taxes apply to sales of fuel for highway consumption and the sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) What motor vehicle fuel and special fuels exemptions are available?

(a) County owned ferries. RCW 82.08.0255 and 82.12.0256 provide exemptions from the retail sales tax and use tax for motor vehicle fuel or special fuels, purchased on or after April 27, 2007. This exemption applies only to county owned ferries or county ferry districts created under chapter 36.54 RCW for use in passenger only ferries.

(b) Nonprofit transportation providers. RCW 82.08.-0255 and 82.12.0256 provide retail sales tax and use tax exemptions for sales of or uses of motor vehicle fuel or special fuels purchased by private, nonprofit transportation pro-

viders certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) **Public transportation.** RCW 82.08.0255 and 82.12.0265 provide exemptions for the retail sales tax and use tax when motor vehicle fuel or special fuels are purchased or used for the purpose of public transportation, and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3).

(d) **Public transportation benefit areas (PTBA).** For purchases on or after April 27, 2007, RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel and special fuels purchased by a PTBA created under chapter 36.57A RCW.

(e) **Special fuels used in interstate commerce.** The retail sales tax does not apply to sales of special fuels delivered in this state which are later transported and used outside this state by persons engaged in interstate commerce. (RCW 82.08.0255(2).) This exemption also applies to persons hauling their own goods in interstate commerce.

Exemption certificate. Persons selling special fuels to interstate carriers must obtain a completed exemption certificate "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser in order to document the entitlement to the exemption. The exemption certificate can be obtained from the department of revenue (department) on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

The provisions of the exemption certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(f) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this section, a "farm fuel user" means either a farmer or a person who provides horticultural services for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) Effective March 6, 2006, RCW 82.08.865 and 82.12.-865 exempt farm fuel users from retail sales and use taxes for diesel and aircraft fuel purchased for nonhighway use.

(ii) Substitute Senate Bill (SSB) 5009, chapter 443, Laws of 2007, added biodiesel fuel as exempt from retail sales and use taxes when purchased or used by farm fuel users for non-highway use. This exemption, effective May 11, 2007, also applies to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which can be obtained

from the department on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) **Nonpollutant fuels.** Nonpollutant fuels are described as natural gas and liquefied petroleum gas, commonly called propane. Nonpollutant fuels can be purchased for either highway or "off-highway" use. Sales of nonpollutant fuels for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. Nonpollutant fuels purchased for "off-highway" use are subject to retail sales tax or use tax

(a) **Highway fuel used by Washington licensed vehicle owners.** RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the department of licensing as authority to purchase these non-pollutant fuels.

Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) **"Off-highway" fuel use.** Nonpollutant fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) **Bulk purchases of fuel.** The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpollutant fuels to such bulk purchasers must obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The "Certificate for Purchase of Nonpollutant Special Fuels" must certify the amount of fuel which will be consumed by the purchaser in using motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The "Certificate for Purchase of Nonpollutant Special Fuels" can be obtained from the department on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. In the event such an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) Nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of Nonpollutant Special Fuels" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of his permanent records. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions where it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) Vehicles licensed outside the state of Washington. Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075. In lieu of taxes of chapters 82.36 and 82.38 RCW, retail sales tax is due on their purchases of nonpollutant fuel, for either highway or off-highway use.

(5) Refunds are available for fuel taxes paid when fuel is consumed off the highway. If a person purchases motor vehicle fuel or special fuels and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.

WSR 08-16-054

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 30, 2008, 1:07 p.m., effective August 30, 2008]

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

Purpose: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program. The telecommunications relay services (TRS) and Washington telephone assistance program (WTAP) tax rates are determined by dividing the respective program budgets by the number of switched access lines reported to the depart-

ment in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

The department is amending WAC 458-20-270 to recognize the rates that apply effective July 1, 2008. This rule will upon its effective date supplant the emergency rule previously adopted (WSR 08-14-037) to provide these rates until an amended permanent rule could be adopted. The rates adopted in this amendment are the same as provided in the emergency rule.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-270 Telephone program excise tax rates.

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

Other Authority: RCW 43.20A.725 and 80.36.430.

Adopted under notice filed as WSR 08-10-077 on May 6, 2008.

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

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

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

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

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

Date Adopted: July 30, 2008.

Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-17-110, filed 8/17/07, effective 9/17/07)

WAC 458-20-270 Telephone program excise tax rates. RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

The monthly telephone program excise tax rates per switched access line are as follows:

Period	TRS Rate	WTAP Rate
7/1/2005 - 6/30/2006	10 cents	14 cents
7/1/2006 - 6/30/2007	9 cents	14 cents
7/1/2007 - 6/30/2008	12 cents	14 cents
7/1/2008 - 6/30/2009	<u>12 cents</u>	<u>13 cents</u>

WSR 08-16-055
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 30, 2008, 1:40 p.m., effective August 30, 2008]

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

Purpose: WAC 458-20-150 Optometrists, ophthalmologists, and opticians, explains the application of the business and occupation (B&O) tax, retail sales tax, and use tax to the business activities of optometrists and similar health care providers. It also explains the tax liability resulting from providing professional services and the sale of prescription lenses, frames, and other optical merchandise.

The department has amended WAC 458-20-150 to reflect provisions of SHB 1891 (chapter 447, Laws of 2007), which allows a deduction from the business and occupation (B&O) tax for certain prescription drugs administered by medical service providers.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-150 Optometrists, ophthalmologists, and opticians.

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

Adopted under notice filed as WSR 08-10-080 on May 6, 2008.

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

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

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

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

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

Date Adopted: July 30, 2008.

Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-17-023, filed 8/9/04, effective 9/9/04)

WAC 458-20-150 Optometrists, ophthalmologists, and opticians. (1) **Introduction.** This ~~((rule))~~ section explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to the business activities of optometrists, ophthalmologists, and opticians. It explains the tax liability resulting from the rendering of professional services and the sale of prescription lenses, frames, and other optical merchandise. It also discusses the retail sales tax exemption for the sale of prescription lenses and the B&O tax deduction for prescription drugs administered by a medical service provider. The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care.

Readers may want to refer to the following rules for additional information.

(a) WAC 458-20-151 (Dentists and other health care providers, dental laboratories, and dental technicians);

(b) WAC 458-20-168 (Hospitals, ~~((medical care facilities, and))~~ nursing homes, boarding homes, adult family homes and similar health care facilities);

(c) WAC 458-20-18801 (Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations).

(2) **Taxability of professional services.** Optometrists and ophthalmologists are subject to the service and other activities B&O tax on their gross income from providing professional services. For the purposes of this ~~((rule))~~ section, "professional services" ~~((means))~~ include the examination of the human eye, the examination ~~((and))~~ identification, and treatment of any defects of the human vision system, and the analysis of the process of vision. It includes the use of any diagnostic instruments or devices for the measurement of the powers or range of vision, or the determination of the refractive powers of the eye or its functions. It does not include the preparation or dispensing of lenses or eyeglasses.

(3) **Purchases and sales of optical merchandise by optometrists, ophthalmologists, and opticians.** ~~((Sales of optical merchandise to consumers are subject to retailing B&O tax. In addition, the seller must collect retail sales tax unless the sale is specifically exempt by law. For the purposes of this rule, "optical merchandise" includes prescription lenses, frames, springs, bows, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses. For purposes of this rule, "prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints. It also includes repair parts and replacement parts.))~~ Purchases of optical merchandise by optometrists, ophthalmologists, and opticians for resale without intervening use as a consumer are not subject to the retail sales tax. Thus, optometrists, ophthalmologists, and opticians are not required to pay retail sales or use tax on items which will be given to customers as part of a sale of eyeglasses or contact lenses, such as cleaning supplies, carrying cases, and the like. The department considers these items to be sold along with the eyeglasses or contact lenses. An optometrist, ophthalmologist, or optician purchasing tangible personal property for resale must furnish a properly completed resale certificate to the seller to document the wholesale nature of the sale. Resale certificates can be obtained from the department's web site at <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).

Sales of optical merchandise to consumers are subject to retailing B&O tax. In addition, the seller must collect retail sales tax unless the sale is specifically exempt by law. For

the purposes of this section, "optical merchandise" includes prescription lenses, frames, springs, temples, cases, and other items or accessories to be worn or used with lenses. It also includes nonprescription lenses or eyeglasses.

For purposes of this section, "prescription lens" means any lens, including contact lens, with power or prism correction for human vision, which has been prescribed in writing by a physician or optometrist. The term "prescription lens" includes all ingredients and component parts of the lens itself, including color, scratch resistant or ultraviolet coating, and fashion tints.

(a) Are sales of prescription lenses and frames exempt from retail sales tax? As a result of legislation to implement the national Streamlined Sales and Use Tax Agreement, effective July 1, 2004, sales of prescription lenses and frames for prescription lenses are exempt from retail sales tax as ((a)) prosthetic devices under RCW 82.08.0283.

Before July 1, 2004, sales of prescription lenses were exempt from retail sales tax under RCW 82.08.0281((c)) if the lenses were dispensed by an optician licensed under chapter 18.34 RCW or by a physician or optometrist under a prescription written by a physician or optometrist. Sales of frames for prescription lenses did not qualify for a sales tax exemption. Thus, before July 1, 2004, when prescription lenses were sold with frames, only the prescription lenses were exempt from sales tax.

(b) Are repairs of prescription lenses and frames subject to retail sales tax? Beginning July 1, 2004, charges for the repair of prescription lenses or to prescription eyeglass frames, whether the frames are the original frames or replacement frames, are exempt from retail sales tax under RCW 82.08.0283. Before July 1, 2004, charges for the repair of prescription lenses were exempt from retail sales tax. Charges for the repair of frames, however, were subject to retail sales tax.

(c) Segregation of income from different sources. To claim a retail sales tax exemption under RCW 82.08.0281 or 82.08.0283, persons providing or selling any combination of professional services, prescription lenses, prescription eyeglass frames, or other optical merchandise must segregate and separately account for the income derived from each source.

(d) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. All sales of prescription lenses are made under written prescription. Income attributable to the eye examinations, the sale of prescription lenses, and the sale of other optical merchandise is segregated in Taxpayer's books of account.

The income derived from the eye examinations is subject to service and other activities B&O tax. The gross proceeds of sales of the prescription lenses and other optical merchandise are subject to retailing B&O tax. The sales of prescription lenses, including contact lenses, are exempt from retail sales tax. Beginning July 1, 2004, sales of eyeglass frames

with prescription lenses are exempt from retail sales tax. Taxpayer, however, must collect retail sales tax on sales of other optical merchandise, including eyeglass frames sold with prescription lenses before July 1, 2004, and remit the tax to the department.

(ii) Taxpayer is a retail drugstore that sells preassembled "off-the-shelf" reading glasses. These eyeglasses have lenses with power or prism correction and are sold without a prescription. In addition, Taxpayer sells magnifiers, binoculars, monoculars, and sunglasses. These items are also sold without a prescription.

The gross proceeds of sales of these items are subject to retailing B&O tax. In addition, Taxpayer must collect retail sales tax on sales of these items and remit the tax to the department. Because these items are not sold under a prescription, nor are they prescribed, fitted, or furnished for the buyer by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, they are not exempt from retail sales tax under either RCW 82.08.0281 or 82.08.-0283.

(4) Equipment and supplies used by optometrists, ophthalmologists, and opticians. Purchases of equipment and supplies used by optometrists, ophthalmologists, and opticians are purchases at retail and are subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the optometrist, ophthalmologist, or optician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(a) Prescription drugs. "Prescription drugs," as defined in RCW 82.08.0281, may be purchased without payment of retail sales or use tax by optometrists and ophthalmologists if all requirements for the exemption are met. For additional information regarding prescription drugs, refer to WAC 458-20-18801.

(b) Prescription drugs administered by the medical service provider. Effective October 1, 2007, RCW 82.04.620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purposes of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the Medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug charge. If the total amount received by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(c) Samples. Optometrists, ophthalmologists, and opticians are required to pay use tax on any samples, with the exception of prescription drug samples that they acquire unless retail sales or use tax has been previously paid on these samples.

((e)) (d) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) Taxpayer is an ophthalmologist who performs eye examinations, laser surgery, and cataract surgery. Taxpayer purchases equipment and supplies that are used in performing these services such as surgical instruments, eye shields, cotton swabs, sterile dressings, bandages, and gauze. Taxpayer also purchased a computer, technical publications, and magazines by mail order and over the internet.

Taxpayer is subject to retail sales tax on these purchases. If the seller does not collect sales tax, Taxpayer is liable for deferred sales tax or use tax and must remit the tax directly to the department.

(ii) Taxpayer is an optometrist who performs eye examinations and sells prescription eyeglasses, contact lenses, and other optical merchandise. Taxpayer purchases nonprescription saline and cleaning solutions for contact lenses and carrying cases for eyeglasses and contact lenses. The saline and cleaning solutions are consumed when Taxpayer performs eye examinations. The eyeglass and contact lens carrying cases are provided to customers at the time they purchase eyeglasses or contact lenses.

The purchases of the eyeglass and contact lens carrying cases are purchases for resale and are, therefore, not subject to sales tax if Taxpayer provides the seller with a properly completed resale certificate. The purchases of the saline and cleaning solutions are, however, subject to the retail sales tax. These solutions are consumed while providing professional services and cannot be considered to be purchased for resale. They also do not qualify for a sales tax exemption under RCW 82.08.0281 as prescription drugs. If retail sales tax was not paid on the saline and cleaning solutions at the time of purchase, Taxpayer must remit deferred sales tax or use tax directly to the department.

WSR 08-16-057
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 30, 2008, 2:26 p.m., effective August 30, 2008]

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

Purpose: WAC 458-20-168 provides B&O tax reporting instructions to persons operating hospitals, medical care facilities, nursing homes, and adult family homes. The rule explains when such persons are responsible for collecting retail sales tax. It also identifies certain retail sales and use tax exemptions that may apply to persons operating these facilities.

This rule has been amended to recognize the following legislative changes:

1. HB 2544, chapter 137, Laws of 2008, creates an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization;

2. SHB 1891, chapter 447, Laws of 2007 (RCW 82.04.620), provides a deduction from the service and other activities classification of the B&O tax for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians;

3. ESHB 1672, section 5, chapter 165, Laws of 2006 (RCW 82.04.4485), created the hospital safe patient handling B&O tax credit equal to 100% of the cost of mechanical lifting devices or other specified equipment; and

4. SB 6368, section 1, chapter 241, Laws of 2006, provided a repeal date for the quality maintenance fee imposed on nursing homes.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-168 Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities.

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

Adopted under notice filed as WSR 08-10-078 on May 6, 2008.

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

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

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

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

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

Date Adopted: July 30, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
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AMENDATORY SECTION (Amending WSR 05-14-090, filed 6/30/05, effective 7/31/05)

WAC 458-20-168 Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities. (1) **Introduction.** This ~~((rule))~~ section explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating hospitals as defined in RCW 70.41.020, nursing homes as defined in RCW 18.51-010, boarding homes as defined in RCW 18.20.020, adult family homes as defined in RCW 70.128.010, and similar health care facilities.

The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:

(a) WAC 458-20-150 Optometrists, ophthalmologists, and opticians;

(b) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians;

(c) WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen; and

(d) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities.** This subsection provides information about the application of B&O tax to the personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities. For information regarding B&O tax deductions and exemptions for persons operating health care facilities, readers should refer to subsection (3) of this ~~((rule))~~ section.

(a) **Public or nonprofit hospitals.** The gross income of public or nonprofit hospitals derived from providing personal or professional services to inpatients, is subject to B&O tax under the public or nonprofit hospitals classification. RCW 82.04.260. For the purpose of this ~~((rule))~~ section, "public or nonprofit hospitals" are hospitals, as defined in RCW 70.41.020, operated as nonprofit corporations, operated by political subdivisions of the state (e.g., a hospital district operated by a county government), or operated by but not owned by the state.

Gross income of public or nonprofit hospitals derived from providing personal or professional services for persons other than inpatients is generally subject to B&O tax under the service and other activities classification. RCW 82.04-290. Thus, for example, amounts received for services provided to outpatients, income received for providing nonmedical services, interest received on patient accounts receivable, and amounts received for providing transcribing services to physicians are subject to service and other activities B&O tax.

(i) **Clinics and departments operated by public or nonprofit hospitals.** Gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the public or nonprofit hospitals classification where the clinic or department is an integral,

interrelated, and essential part of the hospital. Otherwise, the gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the service and other activities classification.

Relevant factors for determining whether a medical clinic or department operated by a public or nonprofit hospital is an integral, interrelated, and essential part of the hospital include whether the clinic or department is located at the hospital facility and whether the clinic or department furnishes the type of services normally provided by hospitals, such as twenty-four hour intake and emergency services.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(A) Acme Hospital is a nonprofit hospital. Acme has a medical clinic that is separate but physically located within the hospital. However, the clinic is open only during regular business hours and provides no domiciliary care or overnight facilities to its patients. The clinic is staffed, equipped, administered, and provides the type of medical services that one would expect to receive in the average physician's office. Acme's medical clinic is not an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the medical clinic are subject to service and other activities B&O tax.

(B) Acme Hospital is a nonprofit hospital. Acme has a cancer treatment facility that is physically located within the hospital. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients. Acme's cancer treatment facility is an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the cancer treatment facility are subject to public or nonprofit hospitals B&O tax.

(ii) **Educational programs and services.** Amounts received by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if they are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services (i.e., services that will be, have been, or are currently being provided to the participants). Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts derived from educational programs and services are subject to service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(b) **Other hospitals, nursing homes, and similar health care facilities.** The gross income derived from personal and professional services of hospitals, clinics, nursing homes, and similar health care facilities, other than public or

nonprofit hospitals described above in (a) of this subsection ~~((2)(a))~~ and hospitals owned by the state, is subject to service and other activities B&O tax. The gross income received by the state of Washington from operating a hospital or other health care facility, whether or not the hospital or other facility is owned by the state, is not subject to B&O tax. Nursing homes should refer to subsection (6) of this ~~((rule))~~ section for information regarding the quality maintenance fee imposed under chapter 82.71 RCW.

The following definitions apply for purposes of this ~~((rule))~~ section:

(i) "Hospital" has the same meaning as in RCW 70.41.020; and

(ii) "Nursing home" has the same meaning as in RCW 18.51.010.

(c) **Boarding homes.** Effective July 1, 2004, persons operating boarding homes licensed under chapter 18.20 RCW are entitled to a preferential B&O tax rate. See RCW 82.04.2908. Persons operating licensed boarding homes should report their gross income derived from providing room and domiciliary care to residents under the licensed boarding homes B&O tax classification. For the purpose of this ~~((rule))~~ section, "boarding home" and "domiciliary care" have the same meaning as in RCW 18.20.020. Refer to subsection (3)(h) of the ~~((rule))~~ section for B&O tax deductions and exemptions available to boarding homes.

(d) **Nonprofit corporations and associations performing research and development.** There is a separate B&O tax rate that applies to nonprofit corporations and nonprofit associations for income received in performing research and development within this state, including medical research. See RCW 82.04.260.

(e) **Can a nursing home or boarding home claim a B&O tax exemption for the rental of real estate?** The primary purpose of a nursing home is to provide medical care to its residents. The primary purpose of boarding homes is to assume general responsibility for the safety and well-being of its residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Boarding homes may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the primary purpose of nursing homes and boarding homes is to provide services and not to lease or rent real property, no part of the gross income of a nursing home or boarding home may be exempted from B&O tax as the rental of real estate.

(f) **Adjustments to revenues.** Many hospitals will provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with Medicare, Medicaid, or private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current

gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(g) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income amounts paid to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount received from the hospital for providing these services for the hospital. If the service provider subcontracts with third parties, such as physicians or nurses, to help provide medical services as independent contractors, the service provider may not deduct from its gross income amounts paid to the subcontractors where the service provider is personally liable, either primarily or secondarily, for paying the subcontractors. If, however, the hospital is alone liable for paying the subcontractors, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income amounts paid to the subcontractors. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111 (Advances and reimbursements).

(3) **B&O tax deductions, credits, and exemptions.** This subsection provides information about several B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

(a) **Organ procurement organizations.** Amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax, are exempt from B&O tax. RCW 82.04.326. This exemption is effective March 22, 2002.

(b) **Contributions, donations, and endowment funds.** A B&O tax deduction is provided by RCW 82.04.4282 for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital is not allowed to take a B&O tax deduction on amounts received from a state university for work-study programs or training seminars for doctors, because the university receives business benefits in return, as students receive education and training while ~~((enrolling))~~ enrolled in the university's degree programs.

The deductible amounts should be included in the gross income reported on the excise tax return and then deducted

on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

(c) **Adult family homes.** The gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS, is exempt from B&O tax under RCW 82.04.327. The exemption under RCW 82.04.327 does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this ((rule)) section, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and certain nursing homes and homes for unwed mothers.** B&O tax does not apply to amounts received as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.4289. This exemption applies only if no part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nursing homes and homes for unwed mothers operated as religious or charitable organizations include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** A B&O tax deduction is provided by RCW 82.04.4297 to a health or social welfare organization, as defined in RCW 82.04.431, for amounts received directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services. A deduction is not allowed, however, for amounts that are received under an employee benefit plan. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the tax return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return. Readers should refer to WAC 458-20-169 (Nonprofit organizations) for additional information regarding this deduction.

For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501

(c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts received under a health service program subsidized by federal or state government.** A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of B&O tax amounts received as compensation for health care services covered under the federal Medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. RCW 82.04.4311. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, this deduction does not apply to amounts received from patient copayments or patient deductibles. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

(i) **Effective date of deduction.** The deduction for a public hospital owned by a municipal corporation or political subdivision and for a nonprofit hospital is effective April 2, 2002. Taxpayers who have paid B&O taxes between January 1, 1998, and April 2, 2002, on amounts that would qualify for this deduction are entitled to a refund. In addition, tax liability for accrued but unpaid taxes that would be deductible under this subsection (3)(f) are waived. For information regarding refunds, refer to WAC 458-20-229 (Refunds).

The deduction for a nonprofit community health center or a network of nonprofit community health centers is effective August 1, 2005.

(ii) **Example.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal Medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of Medicare, which is B&O tax deductible by Acme, and a Medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the Medicare plus plan pays \$380. Acme may only deduct the \$600 received from Medicare.

(g) **Blood and tissue banks.** Amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank are exempt from B&O tax to the extent the amounts are exempt from federal income tax.

RCW 82.04.324. For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 607 and Part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(h) **Boarding homes.** Effective July 1, 2004, licensed boarding home operators are entitled to a B&O tax deduction for amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are Medicaid recipients. RCW 82.04.4337. For the purpose of this ~~(rule)~~ section, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

Effective July 1, 2005, B&O tax does not apply to the amounts received by a nonprofit boarding home licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the boarding home. Chapter 514, Laws of 2005. For purposes of this ~~(rule)~~ section, "nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** Effective July 1, 2006, B&O tax does not apply to the amounts received by a comprehensive cancer center to the extent the amounts are exempt from federal income tax. Chapter 514, Laws of 2005. For purposes of this ~~(rule)~~ section, "comprehensive cancer center" means a cancer center that has written confirmation

that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) Hospital safe patient handling credit.

(i) RCW 82.04.4485 allows a hospital to take a credit against the B&O tax for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers. In order to qualify for credit, the purchases must be made as part of a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.

(ii) No application is necessary for the credit; however, a hospital taking a credit under this section must maintain records, as required by the department, necessary to verify eligibility for the credit under this subsection. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this subsection.

(iii) The maximum credit that may be earned under this section for each hospital is limited to one thousand dollars for each acute care available inpatient bed.

(iv) Credits are available on a first in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this subsection to exceed ten million dollars. If the ten million dollar limitation is reached, the department will notify hospitals that the annual statewide limit has been met. In addition, the department will provide written notice to any hospital that has claimed tax credits after the ten million dollar limitation in this subsection has been met. The notice will indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department will not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(v) Credit may not be claimed under this section for the acquisition of mechanical lifting devices and other equipment if the acquisition occurred before June 7, 2006.

(vi) Credit may not be claimed under this section for any acquisition of mechanical lifting devices and other equipment that occurs after December 30, 2010.

(vii) The department shall issue an annual report on the amount of credits claimed by hospitals under this section, with the first report due on July 1, 2008.

(viii) For the purposes of this subsection, "hospital" has the meaning provided in RCW 70.41.020.

(k) Prescription drugs administered by the medical service provider. Effective October 1, 2007, RCW 82.04.-620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the Medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug charge. If the total amount received by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting their taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (2)(f) of this section. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that is not in excess of the federal rate.

(l) Temporary medical housing provided by a health or social welfare organization. House Bill No. 2544, chapter 137, Laws of 2008, effective July 1, 2008, creates an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under RCW 67.40.090 and 67.40.130;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at

an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(4) Sales of tangible personal property. Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, boarding homes, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. In addition, retail sales tax must be collected from the buyer and remitted to the department unless the sale is specifically exempt by law.

(a) Tangible personal property used in providing medical services to patients. Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services and are subject to B&O tax under either the public or nonprofit hospital B&O tax classification or the service and other activities classification depending on the person making the charge. For example, charges for drugs physically administered by the seller are subject to B&O tax under either the public or nonprofit hospital classification or the service and other activities classification depending on the person making the charge. On the other hand, charges for drugs sold to patients or their caregivers, either for patient self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) Sales of meals. Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, boarding homes, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts received by hospitals, nursing homes, boarding homes, and similar health care facilities for furnishing meals to patients or residents as part of the services provided to those patients or residents are subject to B&O tax under the service and other activities, public or nonprofit hospital, or licensed boarding homes classifications, depending upon the person furnishing the meals.

Prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, boarding homes, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold for cash or credit to doctors, nurses, other employees, and visitors. Some of these facilities may provide meals to their employees at no charge. Under these circumstances, all sales of meals to such persons are subject to retailing B&O and retail sales taxes, including the value of meals provided at no charge to employees. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-119 (Sales of meals). Hospitals, nursing homes, boarding homes, and similar health care facilities that provide free meals to persons other than employees, such as visitors, should refer to WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses) for information about the taxability of meals given away free of charge.

(c) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** Effective July 1, 2006, sales of medical supplies, chemicals, or materials to a comprehensive cancer center are exempt from retail sales and use tax. Chapter 514, Laws of 2005. This exemption, however, does not apply to the sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(i) **Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(5) Equipment and supplies used by health care providers. Hospitals, nursing homes, adult family homes, boarding homes, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies unless

specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding exemptions that are available to these health care providers, as well as persons performing medical research and organ procurement organizations.

(a) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a properly completed resale certificate to the seller to document the wholesale nature of the sale. Resale certificates may be obtained from the department's web site at <http://dor.wa.gov>, or by calling the department's taxpayer information center at 1-800-647-7706. For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).

(b) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

(i) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a person who is not required to obtain a tax registration endorsement from the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(ii) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's web site at: <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706.

(6) **Quality maintenance fee imposed on nursing homes.** ~~((Beginning))~~ Effective July 1, 2007, the quality maintenance fee imposed on operators of nonexempt nursing facilities in Washington was repealed. Legislation passed in 2006 (section 1, chapter 241, Laws of 2006) repealed chapter 82.71 RCW, which imposed the fee. Originally effective on July 1, 2003, RCW 82.71.020 ((imposes)) imposed a quality maintenance fee on every nursing home in this state not exempt from the fee under RCW 74.46.091. ((Quality maintenance fee, however, is not imposed after July 1, 2011.)) The amount of the quality maintenance fee ~~((is))~~ was in addition to any other tax imposed upon nursing homes. Nursing homes ~~((must))~~ were required to report the number of patient days and remit the fee to the department on a monthly basis. Persons with questions about how the quality maintenance fee ~~((may affect))~~ affected individual nursing home operators or about the exemption provided by RCW 74.46.091 should contact the department of social and health services.

For purposes of this ~~((rule))~~ section, "patient day" means a calendar day of care provided to a nursing home resident, excluding a Medicare patient day. Patient days include the day of admission and exclude the day of discharge; except

that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. "Medicare patient day" means a patient day for Medicare beneficiaries on a Medicare Part A stay and a patient day for persons who have opted for managed care coverage using their Medicare benefit.

WSR 08-16-059
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 30, 2008, 2:50 p.m., effective August 30, 2008]

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

Purpose: WAC 458-07-035 explains when the assessor must begin the listing and valuation of property in the county, provides information relating to the listing and valuation of subdivisions of real property, and explains when a person will be allowed to pay property taxes on a partial interest in a parcel of real property. This rule has been amended to recognize chapter 17, Laws of 2008 (HB 1149), which eliminated the requirement for an advance property tax deposit when recording a binding site plan. This amendment removes a reference to "binding site plan" from WAC 458-07-035 (3)(a).

Citation of Existing Rules Affected by this Order: Amending WAC 458-07-035 Listing of property—Subdivisions and segregation of interests.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Adopted under notice filed as WSR 08-10-079 on May 6, 2008.

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

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

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

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

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

Date Adopted: July 30, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 03-22-025, filed 10/27/03, effective 11/27/03)

WAC 458-07-035 Listing of property—Subdivisions and segregation of interests. (1) **Introduction.** This rule

explains when the assessor must begin the listing and valuation of property in the county. It also provides information relating to the listing and valuation of subdivisions of real property. Finally, this rule explains when a person will be allowed to pay property taxes on their partial interest in a parcel of real property.

(2) **Listing of property.** The assessor must begin the listing and valuation of all property in the county, except new construction and mobile homes not previously assessed in this state, not later than December 1st of each year, and complete the listing and valuation not later than May 31st of the succeeding year. The listing and valuation of new construction and mobile homes not previously assessed in this state must be completed by August 31st of each year.

(3) **Valuation of subdivisions.** The assessor must list and value all subdivisions of real property at one hundred percent of true and fair value as follows:

(a) If an advance tax deposit was paid in accordance with RCW 58.08.040, each lot of a subdivision must be valued by October 30th of the year following the recording of the plat, replat, or altered plat (~~(, or binding site plan)~~). The value established will be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year; and

(b) If no advance tax deposit was paid, each lot of a subdivision must be valued by the end of the calendar year following the recording of the plat, map, subdivision, or replat. The value established must be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year.

(4) **Petition for payment of taxes on partial interest.** Any person desiring to pay taxes on only their interest in a parcel of real property, whether their interest is a divided interest or an undivided interest, may do so by applying to the assessor of the county where the property is located. The assessor must determine the value of the applicant's interest and certify that value to the county treasurer who will accept payment of taxes for the applicant's interest in the property. No segregation of the property can be made unless all current year and delinquent taxes and assessments on the entire parcel have been paid in full, except for the following situations, in which all current year and delinquent taxes and assessments on the entire parcel need not first be paid in full:

(a) When property is being acquired for public use; and
(b) When a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise.

WSR 08-16-062
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 30, 2008, 3:18 p.m., effective August 30, 2008]

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

Purpose: WAC 458-14-015 lists the appeals county boards of equalization may hear and explains the circumstances under which the boards may equalize property values on their own initiative. This rule has been amended to add, at subsection (1)(p), the jurisdiction of the boards of equalization to hear appeals from decisions of the assessor pursuant to RCW 84.37.040 regarding deferrals under chapter 84.37 RCW, Property tax limited income deferral program, as approved by the legislature in its November 2007 special session.

Citation of Existing Rules Affected by this Order: Amending WAC 458-14-015 Jurisdiction of county boards of equalization.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.48.200.

Adopted under notice filed as WSR 08-11-080 on May 19, 2008.

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

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

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

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

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

Date Adopted: July 30, 2008.

Janis P. Bianchi
 Assistant Director
 Interpretations and
 Technical Advice Division

AMENDATORY SECTION (Amending WSR 06-13-034, filed 6/14/06, effective 7/15/06)

WAC 458-14-015 Jurisdiction of county boards of equalization. (1) Boards have jurisdiction to hear all appeals as may be authorized by statute, including the following types of appeals:

(a) Appeals for a change in appraised value when the department establishes taxable rent under chapter 82.29A RCW (leasehold excise tax) based on an appraisal done by the county assessor at the request of the department.

(b) Appeals of assessor determinations related to cancellation of exemption pursuant to RCW 84.14.110 (multiple unit dwellings in urban centers).

(c) Appeals of decisions or disputes pursuant to RCW 84.26.130 (historic property).

(d) Forest land application denial under RCW 84.33.130, and forest land removal under RCW 84.33.140.

(e) Current use determinations pursuant to RCW 84.34.035, denial of application for farm and agricultural land, and RCW 84.34.108, removal from current use classification and appeal of new assessed valuation upon removal of current use classification.

(f) Determinations pursuant to RCW 84.36.660 (special property tax exemption for increase in value attributable to the installation of an automatic sprinkler system in a nightclub).

(g) Appeals pursuant to RCW 84.36.385 (senior citizen exemption denials).

(h) Appeals pursuant to RCW 84.36.812 (assessed value upon which additional tax is based, upon cessation of exempt use).

(i) Determinations pursuant to RCW 84.38.040 (property tax deferrals).

(j) Determinations pursuant to RCW 84.40.039 (valuation reduction after government restriction).

(k) Determinations pursuant to RCW 84.40.085 (omitted property or value).

(l) Valuation appeals of taxpayers pursuant to RCW 84.48.010.

(m) Appeal from a decision of the assessor relative to a claim for either real or personal property tax exemption, pursuant to RCW 84.48.010.

(n) Determinations pursuant to RCW 84.48.065 (cancellation or correction of manifest error) when the cancellation or correction results in a change on the assessment or tax roll.

(o) Destroyed property appeals pursuant to RCW 84.70.010.

(p) Appeals from decisions of the assessor pursuant to RCW 84.37.040 regarding deferrals under chapter 84.37 RCW (property tax limited income deferral program).

(2) Boards have jurisdiction to equalize property values on their own initiative pursuant to RCW 84.48.010, in accordance with WAC 458-14-046.

WSR 08-16-063
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 30, 2008, 3:47 p.m., effective August 30, 2008]

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

Purpose: WAC 458-16-115 explains the personal property tax exemption for household goods, furnishings, and personal effects and the exemption available to the head of a family for otherwise taxable personal property up to a value of fifteen thousand dollars. This rule has been amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008), which extended the rights and liabilities of spouses under RCW 84.36.110 and 84.36.120 to domestic partners.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16-115 Personal property exemptions for household goods, furnishings, and personal effects, and for the head of a family.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.36.865.

Adopted under notice filed as WSR 08-11-114 on May 21, 2008.

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

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

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

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

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

Date Adopted: July 30, 2008.

Janis P. Bianchi
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Interpretations and
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AMENDATORY SECTION (Amending WSR 07-11-124, filed 5/21/07, effective 6/21/07)

WAC 458-16-115 Personal property exemptions for household goods, furnishings, and personal effects, and for the head of a family. (1) **Introduction.** This section explains the personal property tax exemption for household goods, furnishings, and personal effects. It also explains the exemption available to the head of a family for otherwise taxable personal property up to a value of fifteen thousand dollars. These exemptions are provided by RCW 84.36.110. (For sections dealing with exemptions of intangible personal property under RCW 84.36.070, see WAC 458-50-150 through 458-50-190.)

(2) **Exemption for household goods, furnishings, and personal effects.** All household goods and furnishings actually being used to equip and outfit the owner's residence or place of abode and all personal effects held by any person for his or her exclusive use and benefit are exempt from property taxation. Any household goods and furnishings or personal effects held for sale or commercial use do not qualify for this exemption. RCW 84.36.110(1).

(a) **What are household goods and furnishings?** "Household goods and furnishings" are all items of tangible personal property normally located in or about a residence and used or held to enhance the value or enjoyment of the residence, including its premises. The phrase includes, but is not limited to, movable items of necessity, convenience, or decoration, such as furniture, appliances, food, pictures, and tools and equipment used to maintain the residence. Personal property qualifying for this exemption retains its exempt status while temporarily in storage or while being used temporarily at locations other than the owner's residence.

"Household goods and furnishings" do not include items of personal property constructed primarily for use independent of and separate from a residence such as boats, motor

vehicles, campers, and travel trailers. However, certain motor vehicles, campers, and travel trailers may be entitled to an exemption from property taxation under RCW 84.36.595. Also, some boats may be wholly or partially exempt from property taxation under RCW 84.36.080 and 84.36.090.

(b) **What are personal effects?** "Personal effects" are items of tangible property of a personal or intimate nature that usually and ordinarily accompany a person such as wearing apparel, jewelry, and articles of a similar nature. RCW 84.36.120.

(c) **When are household goods, furnishings, and personal effects not exempt?** Personal property held for sale or used for any business or commercial purpose does not qualify for the household goods exemption. Thus, property used to equip and outfit a motel, hotel, apartment, sorority, fraternity, boarding house, rented home, duplex, or any other premises not used by the owner for his or her own personal residence or place of abode does not qualify for this exemption. Likewise, a hairdresser who uses any portion of his or her home as a beauty salon cannot claim a household goods exemption for personal property held for sale or otherwise used in the business. Business inventories, however, are exempt from property taxation under RCW 84.36.477.

Following is a nonexclusive list of items that are exempt as household goods or furnishings if they are used in a residence or place of abode but are fully taxable if they are used for business or commercial purposes.

(i) Desks are exempt as household goods if they are used in a residence but are taxable if they are used in a business office, including an office located in the owner's residence.

(ii) Silverware and china are exempt if they are used in a residence but are taxable if they are used in a restaurant.

(iii) Art or other collections are exempt if they are located in a residence but are taxable if they are located in a public display or used for commercial purposes.

(iv) Power equipment such as lawnmowers used exclusively to enhance the value or enjoyment of a residence, including its premises, are exempt, but they are taxable when used to maintain a golf course or for any other business or commercial purpose.

(3) **Exemption for the head of a family.** Each head of a family is entitled to an exemption from his or her taxable personal property in an amount up to fifteen thousand dollars of actual value. RCW 84.36.110(2). For purposes of this exemption, "actual value" has the same meaning as "true and fair value" as defined in WAC 458-07-030. The taxpayer must qualify for the head of a family exemption on January 1st of the assessment year (the assessment date) or the exemption is lost for taxes payable the following year. As noted above, household goods, furnishings, and personal effects not used for business or commercial purposes are exempt from property taxation; therefore, the exemption for the head of a family does not apply to such property.

(a) **Who qualifies as the head of a family?** The exemption for the head of a family applies only to individuals (i.e., natural persons); it does not apply to artificial entities such as corporations, limited liability companies, or partnerships. The "head of a family" includes the following residents of the state of Washington:

(i) Any person receiving an old age pension under the laws of this state;

(ii) Any citizen of the United States, over the age of sixty-five years, who has resided in the state of Washington continuously for ten years;

(iii) The husband ~~((or))~~, wife, or domestic partner, when the claimant is a married person or has entered into a domestic partnership, or a surviving spouse ~~((not remarried))~~ or surviving domestic partner, who has neither remarried nor entered into a subsequent domestic partnership; and

(iv) Any person who resides with, and has under his or her care and maintenance, any of the following:

(A) His or her minor child or grandchild, or the minor child or grandchild of his or her deceased spouse or deceased domestic partner;

(B) His or her minor brother or sister or the minor child of a deceased brother or sister;

(C) His or her father, mother, grandmother, or grandfather, or the father, mother, grandmother, or grandfather of a deceased spouse or deceased domestic partner; or

(D) Any of the other relatives mentioned in this subsection who have attained the age of majority and are unable to take care of or support themselves.

(b) **What property is not exempt?** The personal property exemption for the head of a family does not apply to the following:

(i) Private motor vehicles. A "private motor vehicle" is any motor vehicle used for the convenience or pleasure of the owner, which carries a licensing classification other than motor vehicle for hire, auto stage, auto stage trailer, motor truck, motor truck trailer, or dealer's license. RCW 84.36.-120;

(ii) Mobile homes. A "mobile home" is a trailer designed for human habitation, which is capable of being moved upon the public streets and highways and is either more than thirty-five feet in length or more than eight feet in width. RCW 84.36.120;

(iii) Floating homes. A "floating home" is a building on a float, used in whole or in part for human habitation as a single-family dwelling and is on the property tax rolls of the county in which it is located. A floating home is not designed for self-propulsion by mechanical means or by means of wind. RCW 82.45.032; or

(iv) Houses, cabins, boathouses, boat docks, or other similar improvements that are located on publicly owned land.

(c) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) A husband and wife operate a catering business as a limited liability company (LLC). The wife also operates a consulting business as a sole proprietor out of the family home. Husband and wife are not entitled to the head of family exemption for property held by the LLC. However, the wife is entitled to the head of family exemption for the taxable personal property used in her consulting business.

(ii) Jane Doe is a citizen of the United States, over the age of sixty-five, and has resided in the state of Washington

continuously for over ten years. Jane owns a farm. She has transferred title to the farm property, both real and personal, into a trust. An attorney is the trustee, and Jane is the sole beneficiary. Since Jane Doe has beneficial ownership of the trust property and she qualifies as the head of a family, Jane may claim the head of a family exemption for the taxable personal property held in the trust.

(4) **How do the exemptions included in this section affect listing?** If the county assessor is satisfied that all of the personal property of any person is exempt from taxation, no listing is required by the owner or taxpayer. If the value of taxable personal property exceeds fifteen thousand dollars, then the taxpayer must make a complete listing, and the assessor will deduct fifteen thousand dollars from the total amount of the assessment and assess the remainder. RCW 84.36.110(2).

WSR 08-16-064

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 30, 2008, 4:05 p.m., effective August 30, 2008]

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

Purpose: WAC 458-16A-010 explains the exemptions allowed and the criteria that must be met in order to receive an exemption as a nonprofit home for the aging. WAC 458-16A-020 explains the application and renewal processes for obtaining the exemption. WAC 458-16A-010 and 458-16A-020 are being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.36.041 to domestic partners. Definitions of "domestic partner" and "domestic partnership" have been included (at subsection (2)(j) and (k) in WAC 458-16A-010 and subsection (2)(g) and (h) of WAC 458-16A-020), and language has been added to recognize domestic partners and domestic partnerships where required.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16A-010 Nonprofit homes for the aging and 458-16A-020 Nonprofit homes for the aging—Initial application and annual renewal.

Statutory Authority for Adoption: RCW 84.36.041 and 84.36.865.

Adopted under notice filed as WSR 08-11-081 on May 19, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 30, 2008.

Janis P. Bianchi
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Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 00-09-086, filed 4/18/00, effective 5/19/00)

WAC 458-16A-010 Nonprofit homes for the aging.

(1) **Introduction.** Under RCW 84.36.041, a nonprofit home for the aging may be totally or partially exempt from property tax. This section explains the exemptions allowed and the criteria that must be met in order to receive an exemption under this statute. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing, unless a particular type of home is separately identified.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Acquisition" means that an existing home for the aging (or home) currently in operation is acquired by a nonprofit organization and the ownership of the facility will change as a result of a purchase, gift, foreclosure, or other method.

(b) "Assistance with activities of daily living" means the home provides, brokers, or contracts for the provision of auxiliary services to residents, such as meal and housekeeping service, transportation, ambulatory service, and attendant care including, but not limited to, bathing and other acts related to personal hygiene, dressing, shopping, food preparation, monitoring of medication, and laundry services.

(c) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the person's spouse or domestic partner, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or the person's spouse, domestic partner or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year because of the death of the person's spouse or domestic partner, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse or domestic partner by twelve.

(d) "Complete and separate dwelling units" means that the individual units of a home contain complete facilities for living, sleeping, cooking, and sanitation.

(e) "Construction" means the actual construction or building of all or a portion of a home that did not exist prior to the construction.

(f) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(g) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(h) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(i) "Disposable income" means adjusted gross income as defined in the federal Internal Revenue Code, as amended prior to January 1, 1994, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than gain excluded from income under section 121 of the federal Internal Revenue Code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

(v) Military pay and benefits other than attendant-care and medical-aid payments;

(vi) Veterans benefits other than attendant-care and medical-aid payments;

(vii) Federal Social Security Act and railroad retirement benefits;

(viii) Dividend receipts; and

(ix) Interest received on state and municipal bonds.

(j) "Domestic partner" means a partner registered under chapter 26.60 RCW or a partner in a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(k) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(l) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an eligible resident is confined to a hospital or nursing home and the

dwelling unit is temporarily unoccupied or occupied by a spouse or domestic partner, a person financially dependent on the claimant for support, or both, the dwelling will still be considered occupied by the eligible resident;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. A surviving spouse or domestic partner of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by the federal Department of Housing and Urban Development (HUD) for the county in which the person resides and in effect as of January 1 of the year the application for exemption is submitted.

~~((+))~~ (m) "First assessment year the home becomes operational" or "the assessment year the home first becomes operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

~~((+))~~ (n) "Home for the aging" or "home" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

~~((+))~~ (o) "HUD" means the federal Department of Housing and Urban Development.

~~((+))~~ (p) "Local median income" means the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect on January 1st of the year the application for exemption is submitted.

~~((+))~~ (q) "Low income" means that the combined disposable income of a resident is eighty percent or less of the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect as of January 1st of the year the application for exemption is submitted.

~~((+))~~ (r) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year for which the application for exemption is made or on December 31st of the assessment year the home first becomes operational and for which application for exemption is made.

~~((+))~~ (s) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

(ii) The use of which is restricted to residents, guests, or employees of a home.

~~((+))~~ (t) "Refinancing" means the discharge of an existing debt with funds obtained through the creation of new debt. For purposes of this section, even if the application for tax exempt bond financing to refinance existing debt is treated by the financing agent as something other than refinancing, an application for a property tax exemption because of refinancing by tax exempt bonds will be treated as refinancing and the set-asides specific to refinancing will be applied. "Refinancing" shall include tax exempt bond financing in excess of the amount of existing debt that is obtained to modify, improve, restore, extend, or enlarge a facility currently being operated as a home.

~~((+))~~ (u) "Rehabilitation" means that an existing building or structure, not currently used as a home, will be modified, improved, restored, extended, or enlarged so that it can be used as a home for elderly and disabled individuals. A project will be considered a rehabilitation if the costs of rehabilitation exceed five thousand dollars. If a home has acquired tax exempt bond financing and does not meet the definition of "rehabilitation" contained in this subsection, the home may be eligible for a total exemption under the "refinancing" definition and if it meets the "refinancing" set-aside requirements. If such a home is not eligible for a total exemption, the department will determine the home's eligibility for a partial exemption in accordance with the pertinent parts of RCW 84.36.041 and this section.

~~((+))~~ (v) "Set-aside(s)" means the percentage of dwelling units reserved for low-income residents when the construction, rehabilitation, acquisition, or refinancing of a home is financed under a financing program using tax exempt bonds.

~~((+))~~ (w) "Shared dwelling units" or "shared units" means individual dwelling units of a home that do not contain complete facilities for living, eating, cooking, and sanitation.

~~((+))~~ (x) "Taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of property taxes due.

~~((+))~~ (y) "Total amount financed" means the total amount of financing required by the home to fund construction, acquisition, rehabilitation, or refinancing. Seventy-five percent of this amount must be supplied by tax exempt bonds to receive the total exemption from property tax available under the tax exempt bond financing provision of RCW 84.36.041.

(3) **General requirements.** To be exempt under this section, a home for the aging must be:

(a) Exclusively used for the purposes for which exemption is granted, except as provided in RCW 84.36.805;

(b) Operated by an organization that is exempt from income tax under section 501(c) of the federal Internal Revenue Code; and

(c) The benefit of the exemption must inure to the home.

(4) **Total exemption.** There are three ways in which a home may be totally exempt from property tax. All real and personal property used by a nonprofit home that is reasonably necessary for the purposes of the home is exempt if it meets

the general requirements listed in subsection (3) of this section and:

- (a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents;
- (b) The home is subsidized under a HUD program; or
- (c) The construction, rehabilitation, acquisition, or refinancing of a home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses tax exempt bonds and the financing program requires the home to reserve or set-aside a percentage of all dwelling units so financed for low-income residents. See subsections (5), (6), and (7) of this section for tax exempt bond requirements and the percentage of units that must be set-aside for low-income residents in order for the home to be totally exempt.

(5) Homes or CCRCs financed by tax exempt bonds—Generally. All real and personal property used by a nonprofit home or CCRC may be totally exempt from property tax if at least seventy-five percent of the total amount financed for construction, rehabilitation, acquisition, or refinancing uses tax exempt bonds and the financing program requires the home or CCRC to reserve or set-aside a percentage of all dwelling units so financed for low-income residents.

(a) The percentage of set-aside units required will vary depending on whether the home is a CCRC, the purpose for which the tax exempt bond financing was obtained, the type of dwelling unit, and the receipt of Medicaid funds. The set-aside requirements for homes are set forth in subsection (6) of this section and for CCRCs are set forth in subsection (7) of this section.

(b) The exemption will be granted in direct correlation to the total amount financed by tax exempt bonds and the portion of the home or CCRC that is constructed, acquired, rehabilitated, or refinanced by tax exempt bonds.

(c) If tax exempt bonds are used for refinancing, the set-aside requirements set forth in subsections (6) and (7) of this section will be applied to the actual area or portion of the home or CCRC to which the bonds correspond.

(i) Example 1. A CCRC (that accepts Medicaid funds) is composed of a multistory building, six duplexes, and two independent homes and the CCRC has secured tax exempt bonds to satisfy an existing mortgage on the multistory building. Only the multistory building will be considered eligible for a total exemption from property tax because of tax exempt bond financing. To receive the exemption, at least twenty percent of the dwelling units of the multistory building must be set-aside for residents at or below fifty percent of the local median income or at least forty percent of the dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(ii) Example 2. A home obtains tax exempt bonds to refinance a portion of the home and to fund construction. The department will separately consider the area of the home that corresponds to the purpose for which the tax exempt bonds were obtained. The set-aside requirements related to refinancing will be applied to the portion of the home that corresponds to the mortgage being refinanced and the set-aside requirements related to construction will be applied to the area of the home to be newly constructed. The department

will determine the eligibility for partial exemption of the remainder of the home that is not being refinanced or constructed.

(d) If a total exemption is granted under the tax exempt bond financing provision, the total exemption will remain in effect as long as:

- (i) The home or CCRC remains in compliance with the requirements under which it received the tax exempt bonds;
- (ii) The tax exempt bonds are outstanding; and
- (iii) The set-aside requirements are met.

(e) If a home or CCRC has obtained tax exempt bond financing to modify, improve, restore, extend, or enlarge its existing facility and the project does not meet the definition of rehabilitation contained in subsection (2) of this section, the project will not be considered a rehabilitation. In this situation, the set-aside requirements related to refinancing or acquisition will be applied in determining eligibility for a total exemption.

(f) When a home or CCRC no longer meets the criteria for exemption under the tax exempt bond financing portion of the statute, eligibility for exemption under RCW 84.34.041 will be determined by the other provisions of the statute. In other words, a home may receive a total or partial exemption depending on the number of residents who are deemed to be "eligible residents" or who require "assistance with activities of daily living." For example, if a home that previously received a total exemption due to the receipt of tax exempt bond financing has one hundred dwelling units and sixty of those dwelling units are occupied by eligible residents, the home may receive a total exemption.

(6) Set-aside requirements related to homes and tax exempt bond financing. A specified number of dwelling units within a home must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for homes will be determined according to the type of dwelling units contained in the home and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to CCRCs. The specific set-aside requirements for CCRCs are described in subsection (7) of this section.

A home must meet the following set-aside requirements to be totally exempt from property tax:

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income
Acquisition, New Construction, Refinancing, or Rehabilitation	Shared units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income

(7) **Set-aside requirements related to CCRCs and tax exempt bond financing.** A specified number of dwelling units of a CCRC must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for CCRCs will be determined by whether the CCRC does or does not have Medicaid contracts for continuing care contract residents and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to other homes. The specific set-aside requirements for other homes are described in subsection (6) of this section.

(a) The continuing care contract between the resident and the CCRC is a contract to provide shelter along with nursing, medical, health-related or personal care services to the resident for the duration of the resident's life or for a term in excess of one year. A resident's tenancy may not be terminated due to inability of the resident to fully pay the monthly service fee when the resident establishes facts to justify a waiver or reduction of these charges. This provision shall not apply if the resident, without the CCRC's consent, has impaired his and/or her ability to meet financial obligations

required by the continuing care contract due to a transfer of assets, after signing the continuing care contract, other than to meet ordinary and customary living expenses, or by incurring unusual or unnecessary new financial obligations.

(b) A CCRC without Medicaid contracts for continuing care contract residents may not receive Medicaid funds from Washington state or the federal government during the term that the bonds are outstanding, except during the initial transition period as allowed by state law or if the regulatory agreement with the tax exempt bond financier exempts the CCRC from compliance with this requirement.

(c) The following set-aside requirements must be met by CCRCs not receiving Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 15% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 15% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(d) The following set-aside requirements must be met by CCRCs receiving Medicaid funds to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(8) **Partial exemption.** If a home does not qualify for a total exemption from property tax, the home may receive a partial exemption for its real property on a unit by unit basis and a total exemption for its personal property.

(a) Real property exemption. If the real property of a home is used in the following ways, the portion of the real property so used will be exempt and the home may receive a partial exemption for:

- (i) Each dwelling unit occupied by a resident requiring significant assistance with activities of daily living;
- (ii) Each dwelling unit occupied by an eligible resident; and
- (iii) Common or shared areas of the home that are jointly used for two or more purposes that are exempt from property tax under chapter 84.36 RCW.

(b) Assistance with activities of daily living. A home may receive a partial exemption for each dwelling unit that is occupied by a resident who requires significant assistance with the activities of daily living and the home provides, brokers, facilitates, or contracts for the provision of this assistance. A resident requiring assistance with the activities of daily living must be a resident who requires significant assistance with at least three of the nonexclusive list of activities set forth below and who, unless the resident receives the assistance, would be at risk of being placed in a nursing home. Activities of daily living include, but are not limited to:

- (i) Shopping;
- (ii) Meal and/or food preparation;
- (iii) Housekeeping;
- (iv) Transportation;
- (v) Dressing;
- (vi) Bathing;
- (vii) General personal hygiene;
- (viii) Monitoring of medication;
- (ix) Ambulatory services;
- (x) Laundry services;
- (xi) Incontinence management; and
- (xii) Cuing for the cognitively impaired.

(c) Examples of assistance with the activities of daily living:

(i) If the resident of a home requires assistance with daily dressing, bathing, and personal hygiene, weekly housekeeping chores, and daily meal preparation, the person is a resident requiring significant assistance with activities of daily living and the home may receive a partial exemption for the dwelling unit in which the person resides.

(ii) If the resident of a CCRC only requires someone to clean the house weekly and to do the laundry weekly, the resident does not require significant assistance with activities of daily living and the CCRC may not receive a partial exemption for the dwelling unit.

(d) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a partial property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(e) Amount of partial exemption. The amount of partial exemption will be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, minus/less the assessed value of any common or shared areas, by a fraction. The numerator and denominator of the fraction will vary depending on the first assessment year the home became operational and occupied by eligible residents.

(i) Numerator. If the home becomes operational after the January 1st assessment date, the numerator is the number of dwelling units occupied by eligible residents and by residents requiring assistance with activities of daily living on December 31st. The December 31st date will be used only in the first year of operation. In any other assessment year, the numerator is the number of the dwelling units occupied on January 1st of the assessment year by eligible residents and by residents requiring assistance with activities of daily living.

(ii) Denominator. If the home becomes operational after the January 1st assessment date, the denominator is the number of dwelling units occupied on December 31st. The December 31st date will be used only in the first assessment year the home becomes operational. In any other assessment year, the denominator is the total number of occupied dwelling units as of January 1st of the assessment year.

(iii) Example:

Assessed value of home:	\$500,000
Less assessed value of common area:	<u>- 80,000</u>
Total	\$420,000

Number of units occupied on 1/1 by eligible residents and people requiring assistance with daily living activities = 6
 Total of occupied units on 1/1 40 or .15
 $\$420,000 \times .15 = \$63,000$ Amount of partial exemption
 $\$420,000 - \$63,000 = \$357,000$ Taxable value of home

(f) Valuation of the home. The assessor will value a home that receives a partial exemption by considering only the current use of the property during the period in which the partial exemption is received and will not consider any potential use of the property.

(9) Income verification required from some residents.

If a home seeks a total property tax exemption because at least fifty percent of the occupied dwelling units are occupied by eligible residents or seeks to receive a partial exemption based upon the number of units occupied by eligible residents, the residents must submit income verification forms. The department may request income verification forms from residents of homes receiving a total exemption because of tax exempt bond financing.

(a) The income verification forms must be submitted to the assessor of the county in which the home is located by July 1st of the assessment year in which the application for exemption is made. If the home becomes operational after the January 1st assessment date, these forms must be submitted to the assessor as soon as they are available but no later than December 31st of that assessment year.

(b) The income verification form will be prescribed and furnished by the department of revenue.

(c) If an eligible resident filed an income verification form for a previous year, the resident is not required to submit a new form unless there is a change in status affecting the resident's eligibility, such as a significant increase or decrease in disposable income, or the assessor or the department requests a new income verification form to be submitted.

(10) Additional requirements. Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-020 and 458-16-165. WAC 458-16A-020 contains information regarding the initial application and renewal procedures relating to the exemption discussed in this section. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

AMENDATORY SECTION (Amending WSR 00-09-086, filed 4/18/00, effective 5/19/00)

WAC 458-16A-020 Nonprofit homes for the aging—

Initial application and annual renewal. (1) **Introduction.** This section explains the initial application process that must be followed when a home for the aging wishes to obtain a property tax exemption under RCW 84.36.041. This section also describes the annual renewal requirements that a home must follow to retain its tax exempt status, as well as the role of the assessor's office and the department of revenue in administering this exemption. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living

facilities, continuing care retirement communities (CCRC), and independent housing.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Assessor" means the county assessor or any agency or person who is duly authorized to act on behalf of the assessor.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the ~~((persons's))~~ person's spouse or domestic partner, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form ~~((or))~~, the person's spouse or domestic partner, or any cotenant during the previous year for the treatment or care of ~~((either person))~~ any of them received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year by reason of the death of the person's spouse or domestic partner, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse or domestic partner by twelve.

(c) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(d) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(e) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(f) "Department" means the department of revenue.

(g) "Domestic partner" means a partner registered under chapter 26.60 RCW or a partner in a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(h) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(i) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse or domestic partner, a person financially dependent on the claimant for support, or both, the dwelling will still be considered occupied by the eligible resident;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. A surviving spouse or domestic partner of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by federal Department of Housing and Urban Development (HUD) for the county in which the person resides.

~~((H))~~ (j) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

~~((H))~~ (k) "Homes for the aging" or "home(s)" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

~~((H))~~ (l) "HUD" means the federal Department of Housing and Urban Development.

~~((H))~~ (m) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year in which the claim for exemption is filed or on December 31st of the first assessment year the home becomes operational and in which the claim for exemption is filed.

~~((H))~~ (n) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

(ii) The use of which is restricted to residents, guests, or employees of a home.

(3) **Application for exemption.** The tax exemption authorized by RCW 84.36.041 is claimed by and benefits a nonprofit home for the aging, not the residents of the home. Therefore, the claim for this exemption is submitted by a home to the department.

(a) If a claim for exemption is filed on behalf of a home under RCW 84.36.041 and the exemption is granted, no resident of that home may receive a personal exemption under RCW 84.36.381.

(b) A listing of the varying levels of care and supervision provided or coordinated by the home must accompany all initial applications submitted for exemption. Examples of the varying levels of care and supervision include, but are not limited to, the following:

(i) Conducting routine room checks;

(ii) Arranging for or providing transportation;

(iii) Arranging for or providing meals;

(iv) On-site medical personnel;

(v) Monitoring of medication; or

(vi) Housekeeping services.

(c) Homes having real property that is used for purposes other than as a home (for example, property used for a barber shop) must provide the department with a floor plan identifying the square footage devoted to each exempt and nonexempt use.

(d) At the time an application for exemption is submitted, the home must submit proof that it is recognized by the Internal Revenue Service as a 501(c) organization.

(e) Homes that apply for a total exemption because of tax exempt bond financing must submit a copy of the regulatory agreement between the home and the entity that issues the bonds. When only a portion of the home is financed by a program using tax exempt bonds, the home must submit a site plan of the home indicating the areas so financed.

(4) **Segregation.** A nonprofit organization that provides shelter and services to elderly and disabled individuals may use the facility for more than one purpose that is exempt from property tax under chapter 84.36 RCW. Property that is used for more than one exempt purpose and that qualifies for exemption under a statute other than RCW 84.36.041 will be segregated and exempted pursuant to the applicable statute.

(a) If a home includes a nursing home, the department will segregate the home and the part of the facility that is used as a nursing home. The department will separately determine the eligibility of the home under RCW 84.36.041 and the nursing home under RCW 84.36.040 for the property tax exemption available under each statute.

Exception: If the home does not receive Medicaid funds (including CCRCs that are permitted to receive Medicaid funds during an initial transition period only) and is seeking a total exemption because of tax exempt bond financing, the home and nursing home will be considered as a whole when the set-aside requirements are applied.

(b) Dwelling units that are occupied by residents who do not meet the age or disability requirements of RCW 84.36.-041 will be segregated and taxed.

(c) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and

laundry room are examples of the types of common or shared areas for which a property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(5) **Homes subsidized by HUD.** Homes subsidized by a HUD program must initially and each March 31st thereafter provide the department with a letter of certification from HUD of continued HUD subsidy and a list of the name, age, and/or disability of all residents. If the property is subsidized by more than one HUD contract and one of the contracts expires or is otherwise no longer in effect, the eligibility of the portion of the facility still subsidized by HUD will be conditioned on receipt of a letter of certification from HUD and a listing of all persons residing on the property. The eligibility of the remainder of the property will be determined by the number of dwelling units occupied by eligible residents on January 1st following the expiration or cancellation of the HUD subsidy.

(6) **Homes that are not subsidized by HUD.** If a home is not subsidized by HUD or does not meet the requirements to receive a total exemption because of tax exempt bond financing, it may receive a total or partial exemption from property tax. The extent of the exemption will be determined by the number of dwelling units occupied by eligible residents. If more than fifty percent of the dwelling units are occupied by eligible residents, the home may receive a total exemption. Alternatively, if less than fifty percent of the dwelling units are occupied by eligible residents, the home may receive partial exemption for its real property on a unit by unit basis and a total exemption for its personal property. An income verification form will be used to determine if a resident of a home meets the criteria of "eligible resident." During the initial application process, the residents of a home applying for exemption will be asked to submit an income verification form with the assessor of the county in which the home is located and the assessor and/or the department may request any relevant information deemed necessary to make a determination.

(a) The type of income verification form required and its due date depends upon the date the home first became operational and began to provide services to eligible residents:

(i) If the home was operating and providing services to eligible residents on the January 1st assessment date, the residents are to submit Form REV 64-0043 between January 1st and July 1st of the year preceding the year in which the tax is due; or

(ii) If the home started operating and providing services to eligible residents after the January 1st assessment date, the residents are to submit Form REV 64-0042 on or before December 31st of the year preceding the year in which the tax is due. In this situation, no income verification forms will be required during the following year if the same eligible resi-

dents occupy the same dwelling units on December 31st and January 1st of the subsequent year.

(b) If two or more residents occupy one unit, only one cotenant is required to file verification of combined disposable income, as defined in subsection (2) of this section, with the assessor.

(c) Form REV 64-0043 will not be accepted by the assessor if it is submitted or postmarked after July 1st unless the assessor and/or the department has agreed to waive this deadline. Form REV 64-0042 will not be accepted if it is submitted or postmarked after December 31st unless the assessor and/or department agrees to waive this deadline.

(d) After the application for exemption is approved, residents will not be required to file a new income verification form unless a change in their circumstances occurs or the assessor requests it. However, at any time after the initial application is approved, assessors and/or the department may:

- (i) Request residents to complete Form REV 64-0043;
- (ii) Conduct audits; and
- (iii) Request other relevant information to ensure continued eligibility.

(e) By March 31st each year, a home not subsidized by HUD that wishes to retain its exempt property tax status must file with the department a list of the total number of dwelling units in its complex, the number of occupied dwelling units in its complex as of January 1st, the number of previously qualified dwelling units in its complex that are no longer occupied by the same eligible residents, and a list of the name, age, and/or disability of all residents and the date upon which they moved into or occupied the home. If a home's eligibility was based upon the number of units occupied on December 31st, the home must only provide the department with an amended list of additions or deletions as of the subsequent January 1st assessment date.

(7) **Homes financed by tax exempt bonds.** Homes that receive a total property tax exemption because of tax exempt bond financing must initially and each March 31st thereafter provide the department with a letter of certification from the agency or organization monitoring compliance with the bond requirements. The letter of certification must verify that the home is in full compliance with all requirements and set-asides of the underlying regulatory agreement.

(a) If the set-aside requirements contained in the regulatory agreement differ from the set-aside requirements established by the department and set forth in WAC 458-16A-010, the department may require the residents of the home to submit income verification forms (Form REV 64-0042 or 64-0043) to the assessor of the county in which the home is located.

(b) A home for the aging that is receiving a property tax exemption must annually submit a list of the name, age, and/or disability of all residents in the home to the department.

(8) **Assessor's responsibilities.** Assessors will determine the age or disability and income eligibility of all residents who file Form REV 64-0042 or 64-0043, the income verification forms. By July 15th each year or by January 15th of the assessment year following the first assessment year a home becomes operational, the assessor will forward a copy

of Form REV 64-0042 or 64-0043 to the department for each resident who meets the eligibility requirements.

(9) **Appeals.** An applicant who is determined not to be an "eligible resident" by the assessor and a home that is denied a property tax exemption by the department each have the right to appeal. Appeals must be filed within thirty days of the date the notice of ineligibility or denial was mailed by the assessor or the department.

(a) If the assessor determines that an applicant does not meet the definition of an "eligible resident," the resident may appeal this decision to the board of equalization of the county in which the home is located.

(b) If the department denies, in whole or in part, an application for exemption, the home may appeal this denial to the state board of tax appeals.

(10) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-010 and 458-16-165. WAC 458-16A-010 contains information regarding the basic eligibility requirements to receive a total or partial exemption under RCW 84.36.041. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

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

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

Date Adopted: July 28, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-022, filed 10/26/07, effective 11/26/07)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Monthly SSP Rate
Individual (aged 65 and older)	\$46.00
Individual (blind as determined by SSA)	\$46.00
Individual with an ineligible spouse	\$46.00
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.
Medical institution	Monthly SSP Rate
Individual	\$((25.45)) <u>27.28</u>

WSR 08-16-067

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 31, 2008, 9:12 a.m., effective September 1, 2008]

Effective Date of Rule: September 1, 2008.

Purpose: The department is amending WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? This rule is being amended to update the state supplemental payment (SSP) standard for residents of medical institutions from the monthly rate of \$25.45 to \$27.28 in response to the state budget, ESHB 2687, section 207(8), chapter 329, Laws of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Other Authority: Section 207(8), chapter 329, Laws of 2008 (ESHB 2687).

Adopted under notice filed as WSR 08-13-047 on June 12, 2008.

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

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

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

WSR 08-16-072
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

(Securities Division)

[Filed July 31, 2008, 1:53 p.m., effective September 15, 2008]

Effective Date of Rule: September 15, 2008.

Purpose: The securities division is amending the rules set forth in WAC 460-44A-500 and 460-44A-502 through 460-44A-506 to permit the filing of the newly adopted Temporary Form D as well as copies of the Form D to be filed in paper or electronic format with the Securities and Exchange Commission (SEC). In addition, the securities division is amending its rules to adopt a new safe harbor from general solicitation, to adopt the filing extension set forth in 17 C.F.R. 230.503 (a)(1) (effective September 15, 2008), adopt the text of the amendments to the SEC rules setting forth the requirements for filing amendments to Form D and for making annual filings, and to provide for the future electronic filing of Form D through a designee of the administrator. The text of WAC 460-44A-500 and 460-44A-502 through 460-44A-506 as adopted accompanies this notice.

Citation of Existing Rules Affected by this Order: Amending WAC 460-44A-500 and 460-44A-502 through 460-44A-506.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320 (1), (9), (17).

Adopted under notice filed as WSR 08-06-049 on February 28, 2008.

Changes Other than Editing from Proposed to Adopted Version: In response to comments received from the Committee on State Regulation of Securities of the Section of Business Law of the American Bar Association, the text of the rules proposed was revised to clarify that the division will accept paper copies of new Form D filed either in electronic or paper format with the SEC and that amendments to notice filings made for offerings made in reliance on Regulation D are required to be filed with the securities division consistent with the amendment filing requirements adopted by the SEC. The division also clarified that the filing of a uniform consent to service of process will continue to be required for issuers that file a notice using Temporary Form D.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: July 31, 2008.

Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 00-04-094, filed 2/2/00, effective 3/4/00)

WAC 460-44A-500 Preliminary notes. (1) The rules of WAC 460-44A-501 through 460-44A-508 relate to transactions exempted from the registration requirements of the Federal Securities Act of 1933 that are also exempted or preempted from RCW 21.20.140. WAC 460-44A-504 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 504 or Rule 147. WAC 460-44A-505 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 505. WAC 460-44A-506 establishes certain conditions for offerings exempted under Securities and Exchange Commission Rule 506. Unless expressly provided otherwise, such transactions are not exempt from anti-fraud, civil liability, or other provisions of the federal and state securities laws. Issuers are reminded of their obligation to provide such further material information, if any, as may be necessary to make the information required under these rules, in light of the circumstances under which it is furnished, not misleading.

(2) Attempted compliance with the exemption of WAC 460-44A-504, 460-44A-505, or 460-44A-506 does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(3) These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(4) In any proceeding involving the rules in WAC 460-44A-501 through 460-44A-508, the burden of proving the exemption, an exception from a definition or condition, or preemption, is upon the person claiming it.

(5) For offerings commenced but not completed prior to the amendment of WAC 460-44A-501 through 460-44A-508, issuers may opt to follow the rules in effect at the date of filing notice of the offering.

(6) Securities offered and sold outside the United States in accordance with Securities and Exchange Commission Regulation S need not be registered under chapter 21.20 RCW. Regulation S may be relied upon for such offers and sales even if coincident offers and sales are made in accordance with Regulation D and WAC 460-44A-501 through 460-44A-508 inside the United States. Thus, for example, persons who are offered and sold securities in accordance with Regulation S would not be counted in the calculation of the number of purchasers under Regulation D and WAC 460-44A-501 through 460-44A-508. Similarly proceeds from such sales would not be included in the aggregate offering price. The provisions of this subsection, however, do not apply if the issuer elects to rely solely on Regulation D for offers or sales to persons made outside the United States.

(7) These rules have been amended in recognition of the amendment of Regulation D by the Securities and Exchange Commission (SEC) to authorize the filing of Form D in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) as described in Securities and Exchange Commission Securities Act Release No. 8891. WAC 460-44A-503 (1)(b) authorizes an issuer to file Temporary Form D (17 CFR 239.500T) together with an executed uniform consent to service of process on Form U-2 while Temporary Form D remains in effect or a copy of the notice of sales on Form D filed electronically or in paper format with the SEC (17 CFR 239.500) until an electronic filing system acceptable to the administrator of securities of the department of financial institutions is implemented that permits the electronic filing of Form D with the administrator or his or her designee.

AMENDATORY SECTION (Amending WSR 98-11-014, filed 5/12/98, effective 6/12/98)

WAC 460-44A-502 General conditions to be met. The following conditions shall be applicable to offers and sales made under WAC 460-44A-504 or 460-44A-505:

(1) "Integration." All sales that are part of the same offering under these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

Note: The term "offering" is not defined in the securities acts. If the issuer offers or sells securities for which the safe harbor rule in WAC 460-44A-502(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e. are considered "integrated") depends on the particular facts and circumstances. Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States in compliance with Securities and Exchange Commission Regulation S.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under these rules:

- (a) Whether the sales are part of a single plan of financing;
- (b) Whether the sales involve issuance of the same class of securities;
- (c) Whether the sales have been made at or about the same time;
- (d) Whether the same type of consideration is received; and
- (e) Whether the sales are made for the same general purpose.

See Securities and Exchange Commission Release No. 33-4552 (November 6, 1962).

- (2) Information requirements.
 - (a) When information must be furnished.

If the issuer sells securities under WAC 460-44A-505 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in WAC 460-44A-502 (2)(b) to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information when it sells securities under WAC 460-44A-504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to WAC 460-44A-502 (2)(a), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal and state securities laws.

(b) Type of information to be furnished.

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) Nonfinancial statement information. If the issuer is eligible to use Regulation A, the same kind of information as would be required in Part II of Form 1-A, 17 CFR Sec. 239.90. If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.

(B) Financial statement information.

(I) Offerings up to \$2,000,000. The information required in Item 310 of Regulation S-B, 17 CFR Sec. 228.310, except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(II) Offerings up to \$5,000,000. The financial statement information required in Form SB-2, 17 CFR Sec. 239.10. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(C) If the issuer is a foreign private issuer eligible to use Form 20-F, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by (2)(b)(i)(B)(I) or (II) of this subsection, as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information required by Securities and Exchange Commission Regulation D, Rule 502 (b)(2)(ii) as appropriate.

(iii) Exhibits required to be filed with the administrator of securities or the securities and exchange commission as part of a registration statement or report, other than an annual

report to shareholders or parts of that report incorporated by reference in a Form 10-K and Form 10-KSB report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under WAC 460-44A-505 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under WAC 460-44A-502 (2)(b)(i) or (ii).

(vi) For business combinations or exchange offers, in addition to information required by Form S-4, 17 CFR Sec. 239.25, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with (b)(i) of this subsection.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (4)(b) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(3) Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

Provided, however, that publication by an issuer of a notice in accordance with 17 CFR Sec. 230.135c or filing with the Securities and Exchange Commission by an issuer of a notice of sales on Form D (17 CFR 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form, shall not be deemed

to constitute general solicitation or general advertising for purposes of this section. Provided further, that, if the requirements of 17 CFR Sec. 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

(4) Limitations on resale. Securities acquired in a transaction under WAC 460-44A-501 through 460-44A-505 shall have the status of restricted securities acquired in a nonpublic offering transaction under section 4(2) of the Securities Act of 1933 and RCW 21.20.320(1) and cannot be resold without registration under the Securities Act of Washington or an exemption therefrom. The issuer shall exercise reasonable care to assure that the securities are restricted and that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Securities Act of 1933, which reasonable care may be demonstrated by the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act of 1933, and the Washington administrator of securities has not reviewed or recommended the offering or offering circular and the securities have not been registered under the Securities Act of Washington, chapter 21.20 RCW, and, therefore, cannot be resold unless they are registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW or unless an exemption from registration is available; and

(c) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW and setting forth or referring to the restrictions on transferability and sale of the securities.

(d) A written disclosure or legend will be deemed to comply with the provisions of WAC 460-44A-502 (4)(b) or (c) if it complies with the North American Securities Administrators Association Uniform Disclosure Guidelines on Legends, NASAA Reports CCH Para. 1352 (1989).

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, WAC 460-44A-502 (2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

AMENDATORY SECTION (Amending WSR 98-11-014, filed 5/12/98, effective 6/12/98)

WAC 460-44A-503 Filing of notice and payment of fee. (1) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of

financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506 and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D ~~((checking box))~~ marking Rule 506 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering in reliance on Securities and Exchange Commission Rule 505 and WAC 460-44A-505, the issuer shall file the initial notice on Securities and Exchange Commission Form D ~~((checking box))~~ marking Rule 505 ~~((and box ULOE))~~ and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of securities in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-505, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following;

(C) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D ~~((checking box))~~ marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

(D) For an offering in reliance on Securities and Exchange Commission Rule 147 and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) ~~((Unless previously filed, the issuer shall include with the initial notice an executed uniform consent to service of process on Form U-2.))~~ The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, ~~((“Form D” is defined as the document.))~~ the initial notice on Securities and Exchange Commission Form D shall consist of either the Temporary Form D (17 CFR 239.500T) as adopted by the Securities and Exchange Commission ((and)) together with an executed uniform consent to service of process on Form U-2 while Tem-

porary Form D remains in effect ((on)) from September ((4-1996)) 15, 2008 through March 15, 2009, ((entitled Form D; Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption, including Part E and the Appendix)) or the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.

(c) ~~((Section E of the initial notice))~~ If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

~~((2))~~ (d) By filing for the exemption of WAC 460-44A-504 or 460-44A-505, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504 or 460-44A-505.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors

or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

(x) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(5) Amendments to notices filed before September 15, 2008 and to notices filed on or after September 15, 2008 in paper format using Temporary Form D (17 CFR 239.500T) must use Temporary Form D but need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

AMENDATORY SECTION (Amending WSR 00-23-027, filed 11/7/00, effective 12/8/00)

WAC 460-44A-504 Exemption for limited offers and sales of securities not exceeding \$1,000,000 to not more than twenty purchasers. (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.504 and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, 33-6996, 33-7300, ~~((and))~~ 33-7644, and 33-8891, or in compliance with the Securities Act of 1933, Rule 230.147 as made effective in Release No. 33-5450, that satisfy the conditions in subsections (2) and (3) of this section shall be exempt under RCW 21.20.320(9).

(2) General conditions to be met. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503 and 460-44A-508.

(3) Specific conditions to be met.

(a) Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this section, as defined in WAC 460-44A-501(3), shall not exceed \$1,000,000, within or without this state, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this section in reliance on any exemption under RCW 21.20.320(9) or sections 3 (a)(11) or 3(b) of the Securities Act of 1933 or in violation of RCW 21.20.140 or section 5(a) of the Securities Act of 1933.

(b) No commissions. No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in the state of Washington.

(c) Limitation on number of purchasers. There are no more than or the issuer reasonably believes that there are no more than twenty purchasers of securities in this state from the issuer in any offering in reliance on this section.

(d) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after

making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(e) Disqualifications. No exemption under this section shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262 is disqualified for any of the reasons listed in WAC 460-44A-505 (2)(d) unless inapplicable or waived as set forth in WAC 460-44A-505 (2)(d)(vi) and (vii).

(f) Notice filing. The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(g) Advice about the limitations on resale.

The issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in WAC 460-44A-502 (4)(b).

(4) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.

(5) WAC 460-44A-504 is not the exclusive method by which issuers may make offerings under Securities and Exchange Commission Rules 504 and 147. For example, offers and sales of an issuer in compliance with Securities and Exchange Commission Rule 504 or Rule 147 may also be registered by qualification under chapter 21.20 RCW. An issuer that qualifies may elect to register an offering pursuant to the Small Company Offering Registration (SCOR) program as set out in chapter 460-17A WAC.

(6) Issuers are reminded that nothing in these rules alters their obligation under RCW 21.20.010. RCW 21.20.010(2) renders it unlawful "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading..." In addition, issuers must otherwise comply with the anti-fraud provisions of the federal and state securities laws. No format for disclosure is prescribed. However, issuers may wish to consider the question and answer disclosure format of the SCOR Form of chapter 460-17A WAC in determining the disclosure they make. If the SCOR form is used, the issuer should indicate that the Form is being used for an exempt offering under this section rather than in an offering registered under chapter 21.20 RCW and chapter 460-17A WAC.

AMENDATORY SECTION (Amending WSR 94-03-061, filed 1/14/94, effective 2/14/94)

WAC 460-44A-505 Uniform offering exemption for limited offers and sales of securities not exceeding \$5,000,000. (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503; 230.505; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, ~~((and))~~ 33-6996, and 33-8891 that satisfy the conditions in subsection (2) of this section shall be exempt transactions under RCW 21.20.320(17).

(2) Conditions to be met.

(a) General conditions. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 505 (17 CFR Sec. 230.505) of the Federal Securities and Exchange Commission.

(b) Specific conditions.

(i) No commission, fee, or other remuneration shall be paid or given directly or indirectly, to any person for soliciting any prospective purchaser that is not an accredited investor in the state of Washington unless such person is registered in this state as a broker-dealer or salesperson.

(ii) It is a defense to a violation of (b)(i) of this subsection if the issuer sustains the burden of proof to establish that he did not know and in the exercise of reasonable care could not have known that the person who offered or sold the security was not appropriately registered in this state.

(c) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(d) No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.262:

(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Securities Act of Washington, chapter 21.20 RCW, or any other state's securities law, within five years prior to the filing of the notice required under this exemption.

(ii) Has been convicted within ten years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit,

including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(iii) Is currently subject to any state administrative enforcement order or judgment entered by the Washington state administrator of securities or any other state's securities administrator within five years prior to the filing of the notice required under this section or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.

(iv) Is subject to an order or judgment of the Washington state administrator of securities or any other state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any filing with this or any state entered within five years prior to the filing of the notice required under this exemption.

(vi) The prohibitions of (d)(i), (ii), (iii), and (v) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under (d) of this subsection may act in a capacity other than that for which the person is licensed or registered.

(vii) Any disqualification caused by (d) of this subsection is automatically waived if the Washington state administrator of securities or the state securities administrator or other agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption of this section be denied.

(viii) It is a defense to a violation of this paragraph (d) if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.

(e) The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(3) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.

(4) The Washington state administrator of securities may, by rule or order, waive the conditions of this section.

(5) The exemption authorized by this section shall be known and may be cited as the "Washington uniform limited offering exemption."

AMENDATORY SECTION (Amending WSR 98-11-014, filed 5/12/98, effective 6/12/98)

WAC 460-44A-506 Conditions pertaining to the offer and sale of securities pursuant to Rule 506 of the Securities Act of 1933. (1) Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503; 230.506; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, (~~and~~) 33-6996, and 33-8891 shall satisfy the conditions in subsections (2) and (3) of this section.

(2) To qualify for preemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 506 (17 CFR Sec. 230.506) of the Federal Securities and Exchange Commission.

(3) Offers or sales which are exempted under this section may not be combined in the same offering with offers or sales exempted under any other rule or section of chapter 21.20 RCW; however, nothing in this limitation shall act as an election. Should for any reason an offering fail to comply with all of the conditions for this section, the issuer may claim the availability of any other applicable exemption.

WSR 08-16-073

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 31, 2008, 3:33 p.m., effective August 31, 2008]

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

Purpose: WAC 458-20-101 explains the tax registration and tax reporting requirements for businesses engaging in business activities within Washington. WAC 458-20-217 explains the administrative collection remedies and procedures available to the department to collect unpaid and overdue tax liabilities.

These rules have been amended to conform to SSB [2SHB] 3104 (chapter 6, Laws of 2008). SSB [2SHB] 3104 expanded the rights, privileges, obligations, and liabilities of domestic partners and domestic partnerships registered under chapter 26.60 RCW. These amendments revise:

- Subsection (11)(b)(iii) of WAC 458-20-101 to add the phrase "or registered domestic partnership" to "marital community" and "or surviving domestic partner" to "surviving spouse."
- Subsection (6)(c) of WAC 458-20-217 to add the phrase "or surviving domestic partner" to "surviving spouse," change "the surviving spouse's separate property" to "the separate property of the surviving

spouse or surviving domestic partner," add the phrase "or property of the domestic partnership" to "community property," change "the spouse's property" to "property of the surviving spouse or the surviving domestic partner," add the phrase "or deceased domestic partner" to "deceased spouse," and change "the deceased spouse's estate" to "the estate of the deceased spouse or deceased domestic partner."

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-101 Tax registration and tax reporting and 458-20-217 Lien for taxes.

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

Adopted under notice filed as WSR 08-10-113 on May 7, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: July 31, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 07-03-031, filed 1/8/07, effective 2/8/07)

WAC 458-20-101 Tax registration and tax reporting.

(1) **Introduction.** This section explains tax registration and tax reporting requirements for the Washington state department of revenue as established in RCW 82.32.030 and 82.32.045. This section discusses who is required to be registered, and who must file excise tax returns. This section also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax reporting account with the department of revenue. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on volume of business).

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administering and/or collecting a tax or fee, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be

reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is non-transferable, and valid for as long as that person continues in business.

(a) Registration under this section is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department of revenue retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this section, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) The term "tax registration endorsement," as used in this section, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other sections in chapter 458-20 WAC.

(c) The term "person" has the meaning given in RCW 82.04.030.

(d) The term "tax reporting account number" as used in this section, is the number used to identify persons registered with the department of revenue.

(3) Requirement to file tax returns. Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is:

(A) Beginning July 1, 1999, less than twenty-eight thousand dollars per year (chapter 357, Laws of 1999); or

(B) Prior to July 1, 1999, less than twenty-four thousand dollars per year;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) The department will notify those persons it places on an active nonreporting status. (A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.)

(c) Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all facts and circumstances.

(a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds twenty-eight thousand dollars per year, he will be required to file tax returns and remit the appropriate taxes.

(b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(c) Alice Smith operates a taxicab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the twenty-four thousand dollar threshold for the public utility tax, and her consulting income is less than the twenty-four thousand dollar threshold for the business and occupation (B&O) tax. If the department of revenue does not first place her on an active nonreporting status, she may request the department to do so.

(5) Out-of-state businesses. The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the

conditions expressed in subsection (2)(a) of this section. Out-of-state persons required to collect Washington's retail sales or use tax, or who have elected to collect Washington's use tax, even though not statutorily required to do so, must obtain a tax registration endorsement.

(a) Persons with out-of-state business locations should not include income that is disassociated from their in-state activities in their computations for determining whether the gross income thresholds provided in subsection (2)(a)(i) and (ii) of this section are satisfied.

(b) Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

- (i) WAC 458-20-103 (Time and place of sale);
- (ii) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property);
- (iii) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);
- (iv) WAC 458-20-194 (Doing business inside and outside the state); and
- (v) WAC 458-20-221 (Collection of use tax by retailers and selling agents).

(6) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master application enables a person to register or license with several state agencies, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which will be used for all state agencies participating in the UBI program. The department may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

(a) Persons completing the master application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master applications are available at any participating UBI service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):

- (i) The office of the secretary of state;
- (ii) The department of licensing;
- (iii) The department of employment security;
- (iv) The department of labor and industries;
- (v) The department of revenue.

(7) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

(i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or

(ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (8) of this section.

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this section.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

(8) **Seasonal revenue tax reporting accounts.** Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal reporting status. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for the seasonal reporting status.

(9) **Display of registrations and licenses document.** The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

(10) **Multiple locations.** A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this subsection, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or

contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same tax reporting account number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue tax reporting account number. A registrations and licenses document will be issued for each tax reporting account number and will represent a separate account.

(d) A master application must be completed to obtain a separate registrations and licenses document, or revenue tax reporting account number, for a new location.

(11) **Change in ownership.** When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the tax reporting account number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community or registered domestic partnership, by the surviving spouse or surviving domestic partner of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a new master application may be required to reflect the changes in the registered account.

(12) **Change in location.** Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. A new registrations and licenses document will be issued to reflect the change in location.

(13) **Lost registrations and licenses documents.** If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) **Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active non-reporting" status if the requirements of subsection (3)(a) of this section are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) **Reopening of taxpayer accounts.** A business person choosing to resume business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new master application. When an account is reopened a new registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (16) of this section.

(16) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty

days after it has been filed with the clerk of the superior court, or for any other reason expressly provided by law.

(b) The revocation order will be posted in a conspicuous place at the main entrance to the taxpayer's place of business and must remain posted until the tax registration endorsement has been reinstated. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department; and

(ii) The taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(17) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

AMENDATORY SECTION (Amending WSR 02-15-158, filed 7/23/02, effective 8/23/02)

WAC 458-20-217 Lien for taxes. (1) Introduction. This rule provides an overview of the administrative collection remedies and procedures available to the department of revenue (department) to collect unpaid and overdue tax liabilities. It discusses tax liens and the liens that apply to probate, insolvency, assignments for the benefit of creditors, bankruptcy and public improvement contracts. The rule also explains the personal liability of persons in control of collected but unpaid sales tax. Although the department may use judicial remedies to collect unpaid tax, most of the department's collection actions are enforced through the administrative collection remedies discussed in this rule.

(2) **Tax liens.** The department is not required to obtain a judgment in court to have a tax lien. A tax lien is created when a warrant issued under RCW 82.32.210 is filed with a superior court clerk who enters it into the judgment docket. A copy of the warrant may be filed in any county in this state in which the department believes the taxpayer has real and/or personal property. The department is not required to give a taxpayer notice prior to filing a tax warrant. *Peters v Sjolholm*, 95 Wn.2d 871, 877, 631 P.2d 937 (1981) *appeal dismissed, cert. denied* 455 U.S. 914 (1982). The tax lien is an encumbrance on property. The department may enforce a tax lien by administrative levy, seizure or through judicial collection remedies.

(a) **Attachment of lien.** The filed warrant becomes a specific lien upon all personal property used in the conduct of

the business and a general lien against all other real and personal property owned by the taxpayer against whom the warrant was issued.

(i) The specific lien attaches to all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer. Other personal property includes both tangible and intangible property. For example, the specific lien attaches to business assets such as accounts receivable, chattel paper, royalties, licenses and franchises. The specific lien also attaches to property used in the business which is owned by persons other than the taxpayer who have a beneficial interest, direct or indirect, in the operation of the business. (See subsection (3) (~~below~~) of this section for what constitutes a beneficial interest.) The lien is perfected on the date it is filed with the superior court clerk. The lien does not attach to property used in the business that was transferred prior to the filing of the warrant. It does attach to all property existing at the time the warrant is filed as well as property acquired after the filing of the warrant. No sale or transfer of such personal property affects the lien.

(ii) The general lien attaches to all real and personal non-business property such as the taxpayer's home and nonexempt personal vehicles.

(b) **Lien priorities.** The department does not need to levy or seize property to perfect its lien. The lien is perfected when the warrant is filed. The tax lien is superior to liens that vest after the warrant is filed.

(i) The lien for taxes is superior to bona fide interests of third persons that vested prior to the filing of the warrant if such persons have a beneficial interest in the business.

(ii) The lien for taxes is also superior to any interest of third persons that vested prior to the warrant if the interest is a mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as the trustee for unsecured creditors of the taxpayer mentioned in the warrant.

(iii) In most cases, to have a vested or perfected security interest in personal property, the secured party must file a UCC financing statement indicating its security interest. RCW 62A.9-301. See RCW 62A.9-302 for the exceptions to this general rule. The financing statement must be filed prior to the filing of the tax warrant for the lien to be superior to the department's lien.

(c) **Period of lien.** A filed tax warrant creates a lien that is enforceable for the same period as a judgment in a civil case that is docketed with the clerk of the superior court. RCW 82.32.210(4). A judgment lien expires ten years from the date of filing. RCW 4.56.310. The department may extend the lien for an additional ten years by filing a petition for an order extending the judgment with the clerk of the superior court. The petition must be filed within ninety days of the expiration of the original ten-year period. RCW 6.17.020.

(3) **Persons who have a beneficial interest in a business.** A third party who receives part of the profit, a benefit, or an advantage resulting from a contract or lease with the business has a beneficial interest in the operation of the business. A party whose only interest in the business is securing the payment of debt or receiving regular rental payments on

equipment does not have a beneficial interest. Also, the mere loaning of money by a financial institution to a business and securing that debt with a UCC filing does not constitute a beneficial interest in the business. Rather, a party who owns property used by a delinquent taxpayer must also have a beneficial interest in the operation of that business before the lien will attach to the party's property. The definition of the term "beneficial interest" for purposes of determining lien priorities is not the same as the definition used for tax free transfers described in WAC 458-20-106.

(a) **Third party.** A third party is simply a party other than the taxpayer. For example, if the taxpayer is a corporation, an officer or shareholder of that corporation is a "third party" with a beneficial interest in the operation of the business. If the corporate insider has a security interest in property used by the business, the tax lien will be superior even if the corporate insider's lien was filed before the department's lien.

(b) **Beneficial interest of lessor.** In some cases a lessor or franchisor will have a beneficial interest in the leased or franchised business. For example, an oil company that leases a gas station and other equipment to an operator and requires the operator to sell its products is a third party with a beneficial interest in the business. Factors which support a finding of a beneficial interest in a business include the following:

(i) The business operator is required to pay the lessor or franchisor a percentage of gross receipts as rent;

(ii) The lessor or franchisor requires the business operator to use its trade name and restricts the type of business that may be operated on the premises;

(iii) The lease places restrictions on advertising and hours of operation; and/or

(iv) The lease requires the operator to sell the lessor's products.

(c) A third party who has a beneficial interest in a business with a filed lien is not personally liable for the amounts owing. Instead, the amount of tax, interest and penalties as reflected in the warrant becomes a specific lien upon the third party's property that is used in the business.

(4) **Notice and order to withhold and deliver.** A tax lien is sufficient to support the issuance of a writ of garnishment authorized by chapter 6.27 RCW. RCW 82.32.210(4). A tax lien also allows the department to issue a notice and order to withhold and deliver. A notice and order to withhold and deliver (order) is an administrative garnishment used by the department to obtain property of a taxpayer from a third party such as a bank or employer. See RCW 82.32.235. The department may issue an order when it has reason to believe that a party is in the possession of property that is or shall become due, owing or belonging to any taxpayer against whom a warrant has been filed.

(a) **Service of order.** The department may serve an order to withhold and deliver to any person, or to any political subdivision or department of the state. The order may be served by the sheriff or deputy sheriff of the county where service is made, by any authorized representative of the department, or by certified mail.

(b) **Requirement to answer order.** A person upon whom service has been made is required to answer the order in writing within twenty days of service of the order. The date

of mailing or date of personal service is not included when calculating the due date of the answer. All answers must be true and made under oath. If an answer states that it cannot presently be ascertained whether any property is or shall become due, owing, or belonging to such taxpayer, the person served must answer when such fact can be ascertained. RCW 82.32.235.

(i) If the person served with an order possesses property of the taxpayer subject to the claim of the department, the party must deliver the property to the department or its duly authorized representative upon demand. If the indebtedness involved has not been finally determined, the department will hold the property in trust to apply to the indebtedness involved or for return without interest in accordance with the final determination of liability or nonliability. In the alternative, the department must be furnished a satisfactory bond conditioned upon final determination of liability. RCW 82.32.235.

(ii) If the party upon whom service has been made fails to answer an order to withhold and deliver within the time prescribed, the court may enter a default judgment against the party for the full amount claimed owing in the order plus costs. RCW 82.32.235.

(c) **Continuing levy.** A notice and order to withhold and deliver constitutes a continuing levy until released by the department. RCW 82.32.237.

(d) **Assets that may be attached.** Both tangible assets, as a vehicle, and intangible assets may be attached. Examples of intangible assets that may be attached by an order to withhold and deliver include, but are not limited to, checking or savings accounts; accounts receivable; refunds or deposits; contract payments; wages and commissions, including bonuses; liquor license deposits; rental income; dealer reserve accounts held by service stations or auto dealers; and funds held in escrow pending sale of a business. Certain insurance proceeds are subject to attachment such as the cash surrender value of a policy. The department may attach funds in a joint account that are owned by the delinquent taxpayer. Funds in a joint account with the right of survivorship are owned by the depositors in proportion to the amount deposited by each. RCW 30.22.090. The joint tenants have the burden to prove the separate ownership.

(e) **Assets exempt from attachment.** Examples of assets which are not attachable include Social Security, railroad retirement, welfare, and unemployment benefits payable by the federal or state government.

(5) **Levy upon real and/or personal property.** The department may issue an order of execution, pursuant to a filed warrant, directing the sheriff of the county in which the warrant was filed to levy upon and sell the real and/or personal property of the taxpayer in that county. RCW 82.32.-220. If the department has reason to believe that a taxpayer has personal property in the taxpayer's possession that is not otherwise exempt from process or execution, the department may obtain a warrant to search for and seize the property. A search warrant is obtained from a superior or district court judge in the county in which the property is located. See RCW 82.32.245.

(6) **Probate, insolvency, assignment for the benefit of creditors or bankruptcy.** In all of these cases or conditions,

the claim of the state for unpaid taxes and increases and penalties thereon, is a lien upon all real and personal property of the taxpayer. RCW 82.32.240. All administrators, executors, guardians, receivers, trustees in bankruptcy, or assignees for the benefit of creditors are required to notify the department of such administration, receivership, or assignment within sixty days from the date of their appointment and qualification. In cases of insolvency, this includes the duty of the person who is winding down the business to notify the department.

(a) The state does not have to take any action to perfect its lien. The lien attaches the date of the assignment for the benefit of creditors or of the initiation of the probate or bankruptcy. In cases of insolvency, the lien attaches at the time the business becomes insolvent. The lien, however, does not affect the validity or priority of any earlier lien that may have attached in favor of the state under any other provision of the Revenue Act.

(b) Any administrator, executor, guardian, receiver, or assignee for the benefit of creditors who does not notify the department as provided above is personally liable for payment of the taxes and all increases and penalties thereon. The personal liability is limited to the value of the property subject to administration that otherwise would have been available to pay the unpaid liability.

(c) In probate cases in which a surviving spouse or surviving domestic partner is separately liable for unpaid taxes and increases and penalties thereon, the department does not need to file a probate claim to protect the state's interest against the surviving spouse or surviving domestic partner. The department may collect from the ((surviving spouse's)) separate property of the surviving spouse or surviving domestic partner and any assets formerly community property or property of the domestic partnership which become the ((surviving spouse's)) property of the surviving spouse or the surviving domestic partner. If the deceased spouse or deceased domestic partner and/or the community or domestic partnership also was liable for the tax debt, the claim also could be asserted in the administration of the ((deceased spouse's)) estate of the deceased spouse or deceased domestic partner.

(7) Lien on retained percentage of public improvement contracts. Every public entity engaging a contractor under a public improvement project of twenty thousand dollars or more, shall retain five percent of the total contract price, including all change orders, modifications, etc. This retainage is a trust fund held for the benefit of the department and other statutory claimants. In lieu of contract retainage, the public entity may require a bond. All taxes, increases, and penalties due or to become due under Title 82 RCW from a contractor or the contractor's successors or assignees with respect to a public improvement contract of twenty thousand dollars or more shall be a lien upon the amount of the retained percentage withheld by the disbursing officer under such contract. RCW 60.28.040.

(a) **Priorities.** The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under the public improvement contract have a first priority lien against the bond or retainage. The department's lien for taxes, increases, and penalties due or to

become due under such contract is prior to all other liens. The amount of all other taxes, increases and penalties due from the contractor is a lien upon the balance of the retained percentage after all other statutory lien claims have been paid. RCW 60.28.040.

(b) **Release of funds.** Upon final acceptance by the public entity or completion of the contract, the disbursing officer shall contact the department for its consent to release the funds. The officer cannot make any payment from the retained percentage until the department has certified that all taxes, increases, and penalties due have been paid or are readily collectible without recourse to the state's lien on the retained percentage. RCW 60.28.050 and 60.28.051.

(8) **Personal liability for unpaid trust funds.** The retail sales tax is to be held in trust. RCW 82.08.050. As a trust fund, the retail sales tax is not to be used to pay other corporate or personal debts. RCW 82.32.145 imposes personal liability on any responsible person who willfully fails to pay or cause to be paid any collected but unpaid retail sales tax. Collection authority and procedures prescribed in chapter 82.32 RCW apply to the collection of trust fund liability assessments.

(a) **Responsible person.** A responsible person is any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust or who has the responsibility for filing returns or paying the collected retail sales tax.

(i) A responsible person may have "control and supervision" of collected retail sales tax or the responsibility to report the tax under corporate bylaws, job description, or other proper delegation of authority. The delegation of authority may be established by written documentation or by conduct.

(ii) A responsible person must have significant but not necessarily exclusive control or supervision of the trust funds. Neither a sales clerk who only collects the tax from the customer nor an employee who only deposits the funds in the bank has significant supervision or control of the retail sales tax. An employee who has the responsibility to collect, account for, and deposit trust funds does have significant supervision or control of the tax.

(iii) A person is not required to be a corporate officer or have a proprietary interest in the business to be a responsible person.

(iv) A member of the board of directors, a shareholder, or an officer may have trust fund liability if that person has the authority and discretion to determine which corporate debts should be paid and approves the payment of corporate debts out of the collected retail sales trust funds.

(v) More than one person may have personal liability for the trust funds if the requirements for liability are present for each person.

(b) **Requirements for liability.** In order for a responsible person to be held personally liable for collected and unpaid retail sales tax:

(i) The tax must be the liability of a corporate or limited liability business;

(ii) The corporation must be terminated, dissolved, or abandoned;

(iii) The failure to pay must be willful; and

(iv) The department must not have a reasonable means of collecting the tax from the corporation.

(c) **Willful failure to pay.** A willful failure to pay means that the failure was an intentional, conscious, and voluntary course of action. An intent to defraud or a bad motive is not required. For example, using collected retail sales tax to pay other corporate obligations is a willful failure to pay the trust funds to the state.

(i) A responsible person depositing retail sales tax funds in a bank account knowing that the bank might use the funds to off-set amounts owing to it is engaging in a voluntary course of action. It is a willful failure to pay if the bank does exercise its right of set off which results in insufficient funds to pay the corporate retail sales tax that was collected and deposited in the account. To avoid personal liability in such a case, the responsible party can set aside the collected retail sales tax and not commingle it with other funds that are subject to attachment or set off.

(ii) If the failure to pay the trust funds to the state was due to reasons beyond that person's control, the failure to pay is not willful. For example, if the person responsible for remitting the tax provides evidence that the trust funds were unknowingly stolen or embezzled by another employee, the failure to pay is not considered willful. To find that a failure to pay the trust funds to the state was due to reasons beyond that person's control, the facts must show both that the circumstances caused the failure to pay the tax and that the circumstances were beyond the person's control.

(iii) If a responsible person instructs an employee or hires a third party to remit the collected sales tax, the responsible person is not relieved of personal liability for the tax if the tax is not paid.

(d) **Extent of liability.** Trust fund liability includes the collected but unpaid retail sales tax as well as the interest and penalties due on the tax.

(i) An individual is only liable for trust funds collected during the period he or she had the requisite control, supervision, responsibility, or duty to remit the tax, plus interest and penalties on those taxes. RCW 82.32.145(2).

(ii) Any retail sales taxes that were paid to the department but not collected may be deducted from the retail sales taxes collected but not paid.

(e) **No reasonable means of collection.** The department has "no reasonable means of collection" if the costs of collection would be more than the amount that could be collected; if the amount that might be recovered through a levy, foreclosure or other collection action would be negligible; or if the only means of collection is against a successor corporation.

(f) **Appeal of personal liability assessment.** Any person who receives a personal liability assessment is encouraged to request a supervisory conference if the person disagrees with the assessment. The request for the conference should be made to the department representative that issued the assessment or the representative's supervisor at the department's field office. A supervisory conference provides an opportunity to resolve issues with the assessment without further action. If unable to resolve the issue, the person receiving the assessment is entitled to administrative and judicial appeal procedures. RCW 82.32.145(4). See also

RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

While encouraged to request a supervisory conference, any person receiving a personal liability assessment may elect to forego the supervisory conference and proceed directly with an appeal of the assessment. Refer to WAC 458-20-100 for information about the department's administrative appeal procedures, including how to timely file a petition for appeal.

WSR 08-16-075

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 31, 2008, 4:44 p.m., effective August 31, 2008]

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

Purpose: WAC 458-16A-100 is being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008), SSB 5256 (chapter 182, Laws of 2008), and legislation since 2003.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16A-100 Senior citizen and disabled person exemption—Definitions.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Adopted under notice filed as WSR 08-11-079 on May 19, 2008.

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

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

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

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

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

Date Adopted: July 31, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-100 Senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption—Definitions. (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption from property taxes. The definitions apply to the senior citizen (~~and~~), disabled person, and one hun-

dred percent disabled veteran exemption contained in sections RCW 84.36.381 through 84.36.389 unless the context clearly requires otherwise.

(2) **Annuity.** "Annuity" means a series of payments under a contract. Annuity contracts pay a fixed sum of money at regular intervals for more than one full year. An annuity may be paid as the proceeds of a life insurance contract (other than as a lump sum payment), unemployment compensation, disability payments, or even welfare receipts. It does not include payments for the care of dependent children.

(3) **Assessment year.** "Assessment year" means the year when the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes become due and payable. It is always the year before the claimant receives a reduction in his or her property taxes because of the senior citizen ~~((and))~~, disabled person, and one hundred percent disabled veteran exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property (other than inventory) over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller adjusts (increases and decreases) the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen ~~((and))~~, disabled person, and one hundred percent disabled veteran exemption by filing an application with the county assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

- (a) Legally prescribed drugs;
- (b) Home health care; ~~((and))~~
- (c) Nursing home ~~((expenses))~~, boarding home, or adult family home expenses; and

(d) Health care insurance premiums for Medicare under Title XVIII of the Social Security Act.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., Medicare or Medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **Department.** "Department" means the state department of revenue.

(9) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(10) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. (RCW 84.36.383(7); 42 U.S.C. Sec. 423(d)(1)(A).)

(11) **Disabled veteran.** "Disabled veteran" means a veteran of the armed forces of the United States with a one hundred percent disability rating that is service-connected (RCW 84.36.381 (3)(b)).

(12) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383)

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Losses. Amounts deducted for loss;

(c) Depreciation. Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than:

(i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(ii) Disability compensation, defined as payments made by the VA to a veteran because of service-connected disability;

(iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death.

~~((Attendant care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);))~~

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

~~((+))~~ (13) **Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdic-

tion, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(14) Domestic partnership. "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(15) Excess levies. "Excess levies" means voter-approved levies by taxing districts, other than port or public utility districts, of additional taxes in excess of the statutory aggregate dollar rate limit, the statutory dollar rate limit, or the constitutional one percent levy limit. It does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.

((12)) (16) Excluded military pay or benefits. "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for the federal income tax while others are excluded from their gross income. Excluded military pay or benefits include:

- (a) Compensation for active service while in a combat zone or a qualified hazardous duty area;
- (b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;
- (c) Moving allowances;
- (d) Travel allowances;
- (e) Uniform allowances;
- (f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and
- (g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

((13)) (17) Family dwelling unit. "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

((14)) (18) Home health care. "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

- (a) Medical treatment or care received in the home;
- (b) Physical therapy received in the home;
- (c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include improvements or repair of the home itself.

((15)) (19) Lease for life. "Lease for life" means a lease that terminates upon the demise of the lessee.

((16)) (20) Legally prescribed drugs. "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

((17)) (21) Life estate. "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to himself or herself the beneficial interest directly in his or her principal residence, or the part of the trust containing his or her personal residence, for at least the period of his or her life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

((18)) (22) Owned. "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

((19)) (23) Ownership by a marital community or domestic partnership. "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. Example: A person qualifying for the exemption by virtue of age ~~((6))~~, disability, or one hundred percent disabled veteran status cannot claim exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate therein.

((20)) (24) Pension. "Pension" means an agreement to provide for payments, not wages, to a person (or to that person's family) who has fulfilled certain conditions of service or reached a certain age. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

((21) Physical disability. "Physical disability" means ~~the condition of being disabled, resulting in the inability to pursue an occupation because of physical or mental impairment.~~

~~((22))~~ (25) Principal residence. "Principal residence" means the claimant owns and occupies the residence as his or her principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each year.

(b) Confinement of the claimant to a hospital or nursing home does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home ~~((or)),~~ hospital, boarding home or adult family home costs.

~~((23))~~ (26) Regular gainful employment. "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

~~((24))~~ (27) Replacement residence. "Replacement residence" means a residence that qualifies for the senior citizen ~~((and)),~~ disabled person, and one hundred percent disabled veteran exemption and replaces the prior residence of the ~~((senior citizen or disabled))~~ person receiving the exemption.

~~((25))~~ (28) Residence. "Residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides.

(b) A single-family dwelling situated upon leased lands and upon lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which a mobile home is located if both the land and mobile home are owned by the same qualified claimant.

~~((26))~~ (29) Veteran. "Veteran" means a veteran of the armed forces of the United States.

(30) Veterans benefits. "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

WSR 08-16-076
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 31, 2008, 4:46 p.m., effective August 31, 2008]

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

Purpose: WAC 458-16A-150 is being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008), SB 6338 (chapter 62, Laws of 2006), HB 1019 (chapter 248, Laws of 2005), and SB 5034 (chapter 27, Laws of 2004). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.36.381 to domestic partners. SB 6338 changed the definition of "residence" for purposes of the senior citizen, disabled person, and one hundred percent disabled veteran exemption. HB 1019 extended the former senior citizen and disabled person exemption to veterans of the armed forces of the United States with one hundred percent service connected disability. SB 5034 raised income and valuation limits for qualifying for the senior citizen and disabled person exemption; increased the circumstances under which claimants may qualify for the exemption without residing in their residences; added a definition for "disability"; and added additional deductions for the purpose of calculating "disposable income."

Citation of Existing Rules Affected by this Order: Amending WAC 458-16A-150 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Requirements for keeping the exemption.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Adopted under notice filed as WSR 08-11-120 on May 21, 2008.

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

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

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

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

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

Date Adopted: July 31, 2008.

Janis P. Bianchi
 Assistant Director
 Interpretations and
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AMENDATORY SECTION (Amending WSR 03-16-029, filed 7/29/03, effective 8/29/03)

WAC 458-16A-150 Senior citizen ~~((and)),~~ disabled person, and one hundred percent disabled veteran exemption—Requirements for keeping the exemption. (1) Introduction. This rule explains how and when a senior cit-

izen ((~~or~~)), disabled person, or one hundred percent disabled veteran must file additional reports with the county assessor to keep the senior citizen ((~~or~~)), disabled person, or one hundred percent disabled veteran property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on the claimant's continued qualification for the senior citizen ((~~or~~)), disabled person, or one hundred percent disabled veteran property tax exemption. The claimant keeps the assessor up to date in three ways. First, the claimant submits a change in status form when any change affects his or her exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, a surviving domestic partner, or a purchaser to notify the county of a change in status affecting the exemption. Second, the claimant submits a renewal application for the exemption either upon the assessor's request following an amendment of the income requirement, or every four years. Third, the claimant applies to transfer the exemption when moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects his or her qualification for the senior citizen ((~~or~~)), disabled person, or one hundred percent disabled veteran property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of such change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving spouse or surviving domestic partner, should submit a change in status form to avoid interest and in some cases the penalty for willfully claiming the exemption based upon erroneous information.

(b) **Changes in status described.** Changes in status include:

(i) Changes that affect the property (i.e., changes in land use regulations, new construction, boundary line changes, rentals, ownership changes, etc.);

(ii) Changes to the property owner's annual income that increase or decrease property taxes due under the program; or

(iii) Changes that affect the property owner's eligibility for the exemption (i.e., death, moving to a replacement residence, moving to another residence the claimant does not own, moving into a hospice, a nursing home, or any other long-term care facility, marriage, registration in a state registered domestic partnership, improvement of a ((~~physical~~)) disability for a disabled person's claim, or a disabled person entering into gainful employment).

(c) **Change in status form.** The county assessor designs the change in status form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed. The claimant, the claimant's agent, or a subsequent owner of the residence must use a change in status form from the county where the principal residence is located. The person

filing the form must provide true and accurate information on the change in status form.

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where his or her principal residence is located.

(e) **Failure to submit the form after a change in status occurs.** If the claimant fails to submit the change in status form, the application information relied upon becomes erroneous for the period following the change in status. Upon discovery of the erroneous information, the assessor determines the status of the exemption, and notifies the county treasurer to collect any unpaid property taxes and interest from the claimant, the claimant's estate, or if the property has been transferred, from the subsequent property owner. The treasurer may collect any unpaid property taxes, interest, and penalties for a period not to exceed three years as provided for under RCW 84.40.380. In addition, if a person willfully fails to submit the form or provides erroneous information, that person is liable for an additional penalty equal to one hundred percent of the unpaid taxes. RCW 84.36.385. If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were paid as provided in chapter 84.69 RCW.

(f) **Loss of the exemption.** If the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based upon the current full assessed value of the property and paid from the date the change in status occurred. RCW 84.40.360. For example, the exemption is lost when the claimant dies (unless the spouse or domestic partner is also qualified). The property taxes are recalculated to the full assessed amount of the principal residence on a pro rata basis beginning the day following the date of the claimant's death for the remainder of the year.

(g) **Loss of exemption on part of the property.** If the change in status removes a portion of the property from the exemption, property taxes in their full amount on that portion of the property that is no longer exempt must be recalculated based upon the current full assessed value of that portion of the property and paid from the date the change in status occurred. For example, a property owner subdivides his or her one-acre lot into two parcels. The parcel that does not have the principal residence built upon it no longer qualifies for the exemption. The property taxes are recalculated to the full assessed amount of that parcel on a pro rata basis for the remainder of the year beginning the day following the date the subdivision was given final approval.

(h) **Exemption reduced.** If the change in status reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies on her principal residence are exempt. The claimant's income is based upon the assessment year. The following year when the taxes are collected, the property taxes due are calculated with only an exemption for excess levies.

(4) **Renewal application.** The county assessor must notify claimants when to file a renewal application with updated supporting documentation.

(a) **Notice to renew.** Written notice must be sent by the assessor in the year the renewal application is requested.

Notice must be sent no later than December 10th, three weeks before the December 31st filing requirement.

(b) **When to renew.** The assessor must request a renewal application at least once every four years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted. Once notified, the claimant must file the renewal application by December 31st of that year.

(c) **Processing renewal applications.** Renewal applications are processed in the same manner as the initial application.

(d) **The renewal application form.** The county assessor may design the renewal application form or adapt either its own application form or the application master form obtained from the department. The county must obtain approval of the final renewal application form from the department before it may be distributed. The property owner must use a renewal form from the county where the principal residence is located. The claimant must provide true and accurate information on the renewal application form.

(e) **Obtaining the form.** The assessor provides this form to senior citizens ((~~or~~)), disabled persons, or one hundred percent disabled veterans claiming the exemption when requesting renewal.

(f) **Failure to submit the renewal application.** If the property owner fails to submit the renewal application form, the exemption is discontinued until the claimant reapplies for the program. The assessor may postpone collection activities and continue to work with an eligible claimant to complete an application for a missed period.

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, the claimant must file a change in status form with the county where his or her former principal residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

(a) **Exemption on the former residence.** The exemption on the former residence applies to the closing date on the sale of the former residence, provided the claimant lived in the residence for most of the portion of that year prior to the date of closing. Property taxes in their full amount must be recalculated based upon the current full assessed value of the property and paid from the day following the date the sale closed. The taxes are paid for the remaining portion of the year. RCW 84.40.360.

(b) **Exemption upon the replacement residence.** Upon moving, the claimant must reapply for the exemption in the county where the replacement residence is located if the claimant wants to continue in the exemption program. The same application, supporting documents, and application process is used for the exemption on the replacement residence as when a claimant first applies. See WAC 458-16A-135. The exemption on the replacement residence applies on a pro rata basis in the year he or she moves, but only from the latter of the date the claimant moves into the new principal residence or the day following the date the sale closes on his or her previous residence.

WSR 08-16-077
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 31, 2008, 4:48 p.m., effective August 31, 2008]

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

Purpose: WAC 458-18-020 and 458-18-100 are being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.38.030, 84.38.130, and 84.38.150 to domestic partners. In addition, subsection (5) of WAC 458-18-020 has been changed to reflect the 2004 amendment to RCW 84.38.030, which increased the amount of combined disposable income claimants may have in order to qualify for the deferral from thirty thousand dollars to forty thousand dollars.

Citation of Existing Rules Affected by this Order: Amending WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral and 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment.

Statutory Authority for Adoption: RCW 84.38.180.

Adopted under notice filed as WSR 08-10-114 on May 7, 2008.

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

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

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

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

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

Date Adopted: July 31, 2008.

Janis P. Bianchi
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AMENDATORY SECTION (Amending WSR 92-15-057, filed 7/13/92, effective 8/13/92)

WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral. A person may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of his equity value in said property if the following conditions are met:

(1) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection a residence owned by a marital community, a state registered domestic partnership, or ~~((owned by))~~ cotenants shall be deemed to be owned by each spouse, each domestic

partner, and each cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life or a revocable trust does not satisfy the ownership requirement.

(2) If the amount deferred is to exceed one hundred percent of the claimant's equity value in the land or lot only, the claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington and shall designate the state as a loss payee upon said policy. In no case shall the deferred amount exceed the amount of the insured value of the improvement plus the land value.

(3) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

(4) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income requirements, and to the extent eligible, must have first applied for the exemptions under RCW 84.36.381 through 84.36.389 prior to filing a declaration to defer.

(5) The claimant must have a combined disposable income, as defined in RCW 84.36.383 (~~and WAC 458-16-010 and 458-16-013~~), of ~~((thirty))~~ forty thousand dollars or less.

AMENDATORY SECTION (Amending Order PT 84-4, filed 10/5/84)

WAC 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment. (1) Any special assessments and/or real property taxes deferred shall become payable together with interest:

(a) Upon the conveyance of property which has a deferred special assessment and/or real property tax lien upon it.

(b) Upon the death of the claimant except when the surviving spouse or surviving domestic partner is qualified and elects to incur the lien and continue the deferment by (i) filing an original "declaration to defer" within ninety days of the claimant's death and (ii) continuing to meet the qualifications of WAC 458-18-010 through 458-18-100.

When a surviving spouse or surviving domestic partner elects to continue the deferment, the spouse or domestic partner then becomes the claimant and is fully subject to the conditions of WAC 458-18-010 through 458-18-100.

(c) Upon condemnation of property with a deferred special assessment and/or real property tax lien upon it by a public or private body exercising the power of eminent domain: Provided, That if the assessed value of the property not condemned exceeds the amount of the liens, including interest, the claimant may elect to have the liens set over to the property retained: Provided further, That the amount of the lien allowed to be set over shall not exceed ~~((80%))~~ eighty percent of the claimant's equity in the retained property.

(d) At such time as the claimant ceases to reside permanently in the residence upon which the deferral has been granted. If the cessation occurs between filing the declaration and the date the taxes are payable, the deferral shall not be allowed.

(e) Upon the failure of the claimant to have or keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington or failure to keep the state listed as a loss payee upon said policy. Subsection (1)(b) of this section shall take precedence over subsection (1)(d) of this section.

(2) Once a deferral has been granted, the various conditions contained within WAC 458-18-010 through 458-18-100 may prohibit the claimant from qualifying for further deferrals, but any obligations resulting from deferrals previously granted will become due and payable only upon occurrence of the conditions set forth in subsection (1) of this section.

(3) Upon occurrence of any condition requiring the payment of any deferred special assessments and/or real property taxes, the county treasurer shall proceed to collect the same in the manner provided for in chapter 84.56 RCW. For purposes of collection of the deferred taxes and interest, provisions of chapters 84.56, 84.60, and 84.64 RCW shall be applicable. When these moneys are collected, they shall be credited to a special account in the county treasury and shall then be remitted to the state treasurer within thirty days from collection with remittance advice to the department of revenue. The state treasurer shall deposit the moneys in the state general fund.

(4) Any person may at any time pay a part or all of the deferred assessments and/or taxes including the interest, but such payment shall not affect the deferred tax status of the property. Any payment made shall be credited to the oldest deferred amount and shall be prorated between interest and the deferred assessments and/or taxes.

WSR 08-16-078

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 31, 2008, 4:48 p.m., effective August 31, 2008]

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

Purpose: WAC 458-16A-110, 458-16A-115, 458-16A-120, and 458-16A-130 are being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008), SSB 5256 (chapter 182, Laws of 2008), SB 6338 (chapter 62, Laws of 2006), HB 1019 (chapter 248, Laws of 2005), and SB 5034 (chapter 27, Laws of 2004). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.36.381 and 84.36.383 to domestic partners. SSB 5256 changed the calculation for excluding veterans benefits from the income calculation for the senior citizen, disabled person, and one hundred percent disabled veteran exemption. SB 6338 changed the definition of "residence" for purposes of the senior citizen, disabled person, and one hundred percent disabled veteran exemption. HB 1019 extended the former senior citizen and disabled person exemption to veterans of the armed forces of the United States with one hundred percent service connected disability. SB 5034 raised income and valuation limits for qualifying for the senior citizen and disabled person exemption; increased the circumstances under which claimants may qualify for the exemption without residing in their residences; added a definition for "disabil-

ity"; and added additional deductions for the purpose of calculating "disposable income."

Citation of Existing Rules Affected by this Order: Amending WAC 458-16A-110 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Gross income, 458-16A-115 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Adjusted gross income, 458-16A-120 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Determining combined disposable income, and 458-16A-130 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Qualifications for exemption.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Adopted under notice filed as WSR 08-11-126 on May 21, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: July 31, 2008.

Janis P. Bianchi
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AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-110 Senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption—Gross income. (1) **Introduction.** This rule explains the definition of gross income used for federal income tax. In order to meet the income requirements for the senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption program, the claimant must provide supporting documents verifying combined disposable income. The gross income for federal income tax purposes of the claimant, the claimant's spouse or domestic partner, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate both gross income and adjusted gross income amount(s) for the claimant, the claimant's spouse or domestic partner, and any cotenants. The assessor then determines the disposable

income for each person based upon that person's income tax return and the other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax returns, the assessor must determine what constitutes gross income for the nonfiler and obtain copies of income documents to determine that person's gross income. This rule provides the assessor with some guidance in determining the gross income for a nonfiler.

(c) **Verifying the gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the gross income for the claimant, the claimant's spouse or domestic partner, or any of the cotenants.

(2) **Gross income determined.** Internal Revenue Code section 61 defines "gross income," generally, as all income from whatever source derived. WAC 458-16A-135 lists the documentation used to determine the income of the claimant.

(3) **Exclusions from the federal definition of gross income.** A claimant may provide documentation or information about amounts received during the year that are excluded from gross income. These amounts should not be taken into account when determining gross income. The federal definition of gross income, generally, does not include:

(a) Gifts, inheritance amounts, or life insurance proceeds;

(b) Up to two hundred fifty thousand dollars (five hundred thousand dollars for a married couple) gain from the sale of a principal residence that meets the requirements of Internal Revenue Code section 121, see also WAC 458-16A-100 (definition of disposable income);

(c) Amounts received for illness or injury when received from workmen's compensation, a legal settlement, a legal judgment, a Medicare+Choice MSA, a federal employer under the federal Employees Compensation Act, accident insurance, or health insurance. If the amount received is from an employer directly for illness or injury or from employer-provided accident or health insurance, the amount is excluded only if it is paid to reimburse medical expenses, for the loss of limb, or for permanent disfigurement to the employee, the employee's spouse, or the employee's dependents;

(d) Contributions or payments made by an employer to accident and health plans, the employer's qualified transportation plan, a cafeteria plan, a dependent care assistance program, educational assistance programs, or for certain fringe benefits for employees described by Internal Revenue Code section 132. If the claimant earns wages as an employee, he or she should receive a W-2 form from the employer reporting those wages. This W-2 form should have already excluded the described contributions or payments provided for the employee's benefit in the above list. If a question arises about whether or not an employer adjusted the employee's gross income for these exclusions, the claimant should contact their employer and have the employer provide the county with a correct or corrected copy of the W-2 form to verify the correct wages paid to the employee;

(e) Income from discharge of indebtedness under certain limited circumstances, such as insolvency. These circumstances are outlined in Internal Revenue Code section 108;

(f) Improvements by a lessee left upon the lessor's property at the termination of a lease;

(g) Recovery of an amount deducted in a prior tax year that did not reduce federal income taxes paid in that prior year. For example, a person that itemized deductions may get a refund of property taxes or a stolen uninsured item will be returned. This refund or recovery is included in income unless the deduction did not result in a reduction of tax. It may not result in a reduction of tax because the person had to pay alternative minimum tax or taking away that deduction drops that person below the standard deduction amount. When the deduction did not reduce taxes, the recovery amount that did not reduce taxes is excluded. The assessor may request the claimant excluding such a recovery to present prior returns and worksheets such as the worksheets provided in Publication 525, *Taxable and Nontaxable Income*, to demonstrate how the exclusion was calculated;

(h) Qualified scholarships and fellowship grants provided for certain educational expenses (e.g., tuition and books). Internal Revenue Code section 117 provides a complete description of qualified scholarship and fellowship grant amounts excluded from gross income;

(i) Meals or lodging furnished to an employee for the convenience of the employer;

(j) Excluded military pay and benefits. These exclusions are defined in WAC 458-16A-100. A discussion of how to determine and calculate these benefits is found in WAC 458-16A-120;

(k) Amounts received under insurance contracts for certain living expenses: As a general rule, when an individual's principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or the threat of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence;

(l) Certain cost-sharing payments made for conservation purposes on land owned by the claimant: Payments received from federal or state funds primarily to conserve soil, protect or restore the environment, improve forests, or provide a habitat for wildlife are excluded from gross income. In addition, the claimant may exclude energy conservation subsidies provided by public utilities from gross income. If the claimant indicates that he or she has received payments from the government or had improvements made to his or her residence or land by the government for conservation purposes, the assessor may ask for verification of the amount excluded (if any) from gross income and the information received by the claimant supporting this exclusion. See Internal Revenue Code sections 126 and 136;

(m) Child support payments;

(n) Qualified foster care payments made from the government or a qualified nonprofit to a foster parent or guardian. See Internal Revenue Code section 131;

(o) Income from United States savings bonds used to pay higher education tuition and fees. See Internal Revenue Code section 135;

(p) Distributions from a qualified state tuition program or a Coverdell Education Savings Account used to pay for

higher education expenses. Distributions from a Coverdell Education Savings Account used to pay for elementary or secondary education expenses. See Internal Revenue Code sections 529 and 530.

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-115 Senior citizen (~~(and)~~), disabled person, and one hundred percent disabled veteran exemption—Adjusted gross income. (1) Introduction.

This rule explains how an assessor determines the adjusted gross income for the claimant, the claimant's spouse or domestic partner, and any cotenants. In order to meet the income requirements for the senior citizen (~~(and)~~), disabled person, and one hundred percent disabled veteran exemption program, the claimant must provide supporting documents verifying combined disposable income. The adjusted gross income for federal income tax purposes of the claimant, the claimant's spouse or domestic partner, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate adjusted gross income amount(s) for the claimant, the claimant's spouse or domestic partner, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax return(s), the assessor must determine what constitutes the gross income and the adjusted gross income of the nonfiler and obtain copies of income documents to determine that person's income amounts. This rule provides the assessor with some guidance in determining the adjusted gross income for a nonfiler.

(c) **Verifying the adjusted gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the adjusted gross income for the claimant, the claimant's spouse or domestic partner, or any of the cotenants.

(2) **Adjusted gross income.** Internal Revenue Code section 62 defines "adjusted gross income" as gross income minus the following deductions:

(a) **Trade and business deductions.** Business owners may deduct from gross income trade or business expenses. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions will be taken on the Schedule C, the Schedule C-EZ, or, for a farm, the Schedule F. If the business owned is a partnership, limited partnership, S Corporation, or Limited Liability Company (LLC), the deduction is taken on the return submitted by the partnership, limited partnership, S Corporation, or LLC (Tax Return Forms 1065 and 1120S) and passed through to the individual on a Schedule K-1. A claimant, spouse, domestic partner, or cotenant that does not file a federal income tax return, but claims to have trade or business deductions should provide documentation of income and expenses from the business to allow the assessor to determine the amount of trade or business expenses to be deducted.

(b) **Unreimbursed expenses paid or incurred by an elementary or secondary school teacher for educational materials and equipment, an employee who is a qualified performing artist, or a state or local government official paid on a fee basis.** From 2002 until 2010, an elementary or secondary school teacher may deduct from gross income up to two hundred fifty dollars of unreimbursed amounts that the teacher pays for educational materials and equipment used in the teacher's classroom. A teacher may take this deduction on a Form 1040 or a 1040A. A qualified performing artist, defined by Internal Revenue Code section 62(b), or a state or local government official paid on a fee basis may deduct from gross income any unreimbursed trade or business expenses incurred for that employer as an employee. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction will be taken on the dotted line before the final line for determining adjusted gross income with a designation of "QPA" or "FBO." A claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims to have unreimbursed expenses for this deduction, should provide documentation to demonstrate his or her status as an elementary or secondary school teacher, a qualified performing artist, or a government employee paid on a fee basis and documentation of the unreimbursed educational materials and equipment or trade or business amounts spent as an employee for his or her employer.

(c) **Losses from sale or exchange of property.** A property owner may deduct from gross income losses from the sale or exchange of property for federal income tax purposes. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction is generally determined on a Schedule D. For purposes of this program, losses cannot be deducted from income. Any losses taken must be added onto adjusted gross income. An assessor may refuse documentation of losses from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(d) **Deductions attributable to rents and royalties.** A property owner may deduct from gross income expenses attributable to property held for the production of rents and royalties. If the claimant submits a copy of a Form 1040 federal income tax return, the deductions are determined on a Schedule E. A claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims to have expenses from rental property or licensed property, should provide documentation of these expenses.

(e) **Certain deductions of life tenants and income beneficiaries of property.** A life tenant or income beneficiary of a trust or estate may deduct from gross income for federal income tax purposes depreciation or depletion expenses related to the business or rental property in which he or she has a life estate or when the property is owned by a trust or estate, if he or she has a beneficial interest in the property. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions are shown on Schedule E. A claimant, spouse, domestic partner, or cotenant with a beneficial interest in business property owned by a trust or estate would show the depreciation or depletion deduction on the Schedule K-1 from that trust or estate. An assessor may

refuse documentation of depreciation or depletion on property from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these expenses do not result in any change to the claimant's final combined disposable income.

(f) **Pension, profit-sharing, annuity, and annuity plans of self-employed individuals.** A self-employed person may deduct from gross income contributions to a SEP, SIMPLE, or other qualified plan. These deductions are claimed on the Form 1040 federal income tax return. A self-employed claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the contributions made to a qualified plan by his or her business.

(g) **Self-employed health insurance deduction.** As part of his or her trade and business expenses, a self-employed person may deduct from gross income part (and after 2002, all) of the business's payments for his or her health insurance. This deduction is claimed on the Form 1040 federal income tax return. A self-employed claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the payments made for his or her health insurance by his or her business. The assessor may request the claimant to submit a copy of the deduction worksheet provided in the instructions for Form 1040 to calculate this deduction whether or not the self-employed person filed a tax return.

(h) **One-half of self-employment tax.** As part of his or her trade or business expenses, a self-employed person may deduct from gross income one-half of the self-employment tax paid to the federal government determined on a Schedule SE. This deduction is claimed on the Form 1040 federal income tax return. A self-employed person that has not filed a return, may not claim this deduction as the self-employment tax is reported and paid with that return.

(i) **Retirement savings.** A person may deduct from gross income qualifying contributions (up to three thousand five hundred dollars) made to an individual retirement account (IRA). This deduction may be claimed on either the Form 1040 or Form 1040A federal income tax return. A claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims to have made qualifying contributions to an IRA, should provide documentation of these contributions. The assessor may request the claimant to submit a copy of the IRA deduction worksheet provided in the instructions for Form 1040 and Form 1040A to calculate this deduction whether or not the person filed a tax return.

(j) **Penalties on early withdrawal of savings.** A person may deduct from gross income for purposes of federal income tax penalties paid because of an early withdrawal of savings. This deduction is claimed on the Form 1040 federal income tax return. The IRS classifies these penalties as losses. For purposes of this program, losses may not be deducted from income. Any deduction taken on this line must be added to adjusted gross income. An assessor may refuse documentation about these penalties from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(k) **Alimony.** A person may deduct from gross income alimony paid in cash to a previous spouse. This deduction is claimed on the Form 1040 federal income tax return. A person that does not file a tax return, but made alimony payments, should provide copies of documentation showing alimony payments were made in cash to a prior spouse. The documents should include a copy of the divorce or separation instrument providing for the alimony payments and the amount of the alimony payments made during the year.

(l) **Reforestation costs.** A landowner may deduct from gross income for purposes of federal income tax the amortized reforestation costs for qualified timber property over a period of eighty-four months. If the property is held as business property, the deduction will appear with the trade and business expenses. If the property is not held as business property and the claimant submits a copy of a Form 1040 federal income tax return, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identified as "RFST." An assessor may refuse documentation of the amortization of reforestation costs from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these amortized costs are depreciation expenses. These expenses would be added onto adjusted gross income for purposes of this program and do not result in any change to the claimant's final combined disposable income.

(m) **Required repayment of supplemental unemployment compensation.** A person may deduct from gross income required repayments of supplemental unemployment compensation benefits. If the claimant submits a Form 1040 federal income tax return, the deduction may show on the return in one of two ways. If the repayment is made in the same year the benefits are received, the taxpayer reduces the total unemployment compensation reported on the return by the amount of repayment. If the repayment is made in a later year, the taxpayer deducts the repayment on the dotted line before the final line for determining adjusted gross income on the return and identifies it as "Sub-Pay TRA." A person that does not file a tax return, but claims to have repaid supplemental unemployment compensation, should provide documentation of these repayments.

(n) **Jury duty pay given to employer.** An employee may deduct from gross income jury duty pay given to his or her employer. An employee deducts the jury pay given to the employer on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identifies it as "Jury Pay." A person that does not file a tax return, but claims to have given jury pay received during the year to their employer, should provide documentation of the amount of jury pay given over to the employer.

(o) **Clean-fuel vehicles and certain refueling property.** A person may deduct from gross income a portion of the cost for a qualified clean-fuel vehicle and certain refueling property until the end of calendar year 2004. This deduction may show on the Form 1040 federal income tax return in one of two ways. If the property is held as business property, the deduction will appear with the trade and business expenses. If a clean-fuel vehicle is not held as business property, or is claimed by an employee who used it in whole or

part for business, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the return and identified as "Clean Fuel." A purchaser that does not file a tax return, but purchased clean-fuel property, should provide documentation about the qualifying clean-fuel vehicle or the refueling property, the amount paid for the clean-fuel property, and a calculation of the deduction amount allowed.

(p) **Unreimbursed moving expenses.** If the claimant, spouse, domestic partner, or cotenant had to move a significant distance for a job or business, he or she may deduct from gross income the unreimbursed moving costs. This deduction is claimed on the Form 1040 federal income tax return. If the claimant, spouse, domestic partner, or cotenant does not file a tax return, the claimant should provide documentation of the distance moved, the reason for the move, and the moving expenses. The assessor may (~~ask the claimant to submit~~) request a copy of Form 3903, Moving Expenses, and the distance test worksheet on that form to prove the amount of (~~his or her~~) the person's adjusted gross income whether or not the claimant, spouse, domestic partner, or cotenant filed a federal income tax return.

(q) **Archer MSAs (medical savings accounts).** A person may deduct from gross income a qualifying contribution to an Archer MSA. An MSA is an account set up exclusively for paying the qualified medical expenses of the account holder or the account holder's spouse or dependent(s) in conjunction with a high deductible health plan (HDHP). To be eligible for an MSA, the person must work as an employee for a small employer or be self-employed. The person must also have an HDHP, and have no other health insurance coverage except permitted coverage. The calculation of the deduction is performed on a Form 8853. This deduction is claimed on the Form 1040 federal income tax return. If the person does not file a tax return, but claims to have made a qualifying contribution to an Archer MSA, the claimant should provide copies of documentation as to that person's qualifications for the deduction and how the deduction was calculated. If this deduction is claimed, the assessor may ask the claimant to submit a copy of Form 8853, Archer MSAs and Long Term Care Insurance Contracts, whether or not the claimant, spouse, domestic partner, or cotenant filed a federal income tax return.

(r) **Interest on student loans.** A person may deduct from gross income some or all student loan interest paid on his or her student loan(s) during the first sixty months of the loan repayment period. The deduction may not be claimed by a taxpayer claimed as a dependent, a taxpayer filing as married filing separately, or when the taxpayer has an adjusted gross income amount over fifty-five thousand dollars (seventy-five thousand dollars if married filing jointly). This deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid student loan interest, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. For 2002 and after, a person may deduct some or all of this student loan interest (not over two thousand five hundred dollars) repaid for any repayment period (the sixty-month limit is gone), provided the taxpayer does not have adjusted gross

income above sixty-five thousand dollars (one hundred thirty thousand dollars if married filing jointly). The two thousand five hundred dollar limit on the interest gets reduced for taxpayers with adjusted gross income over fifty thousand dollars (one hundred thousand dollars if married filing jointly). See Internal Revenue Code section 221.

(s) **Higher education expenses.** From 2002 to 2005, an individual with adjusted gross income below a set amount (generally sixty-five thousand dollars) may take a deduction for qualified tuition and related expenses paid by that person for that person, that person's spouse, or a dependent of that person. Depending on the individual's gross income, the deduction cannot exceed three thousand dollars (four thousand dollars in 2004 and 2005). The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid higher education expenses, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. This deduction may only be taken if the income was not excluded from gross income. See WAC 458-16A-110 (savings bonds, qualified state tuition programs, and Coverdell Education Savings Accounts).

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-120 Senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption—Determining combined disposable income.

(1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse or domestic partner, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's or domestic partner's, and any cotenant's federal income tax return. If the claimant, the claimant's spouse or domestic partner, or a cotenant does not provide a federal income tax return, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). The assessor may want to review the definitions of gross income, WAC 458-16A-110, and adjusted gross income, WAC 458-16A-115, to help calculate the combined disposable income for a claimant. These rules provide some guidance on how to determine adjusted gross income without copies of a federal income tax return. On the federal income tax return, the adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even when a return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse or domestic partner.** When a spouse or domestic partner has been absent for over a year and the claimant has no knowledge of his/her spouse's or domestic partner's whereabouts or whether the spouse or domestic partner has any income or not, and the claimant has not received anything of value from the spouse or domestic partner or anyone acting (~~upon the spouse's~~) on behalf of the

spouse or domestic partner, the (~~spouse's~~) disposable income of the spouse or domestic partner is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed by the applicant under the penalty of perjury. This statement must state that more than one year prior to filing this application:

(i) The claimant's spouse or domestic partner has been absent;

(ii) The claimant has not and does not know the whereabouts of the claimant's spouse or domestic partner;

(iii) The claimant has not had any communication with the claimant's spouse or domestic partner;

(iv) The claimant has not received anything of value from the claimant's spouse or domestic partner or anyone acting (~~upon~~) on behalf of the claimant's (~~spouse's behalf~~) spouse or domestic partner.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime in the next four years.

(b) **Form 1040EZ.** Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, that person's or couple's adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts that are excluded from their adjusted gross income.

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since there is no federal form used for reporting the exclusion of capital gains from the sale of a principal residence, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The assessor may accept the excluded capital gain amount claimed upon the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned upon the sale.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax exempt interest is marked "TEI" and reported on the Form 1040EZ. The tax-exempt interest is added onto the bond owner's federal adjusted gross income to determine the bond owner's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenant(~~'s~~) own state or local government bonds. If the return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have this form, the bond issuer should be able to tell the owner whether the interest is taxable. The issuer should also give the owner a periodic (or year-end) statement showing the tax treatment of the bond. If the income recipient invested in the bond through a trust, a fund, or other organization, that organization should give the recipient this information.

(iii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail below in paragraph (c)(vii).

(iv) **Veterans benefits.** Veterans benefits (~~(--other than attendant care and medical-aid payments--))~~ are added onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

Veterans benefits are discussed in more detail below in paragraph (c)(viii).

(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding onto the adjusted gross income reported the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The amount is reported on the exemption application. Refer to paragraph (a)(i) above for a more complete discussion of excluded capital gain upon a sold residence.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest reported on Form 1040A is added back onto the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to paragraph (a)(ii) above for a more complete discussion of tax-exempt interest on state and municipal bonds.

(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity

amounts are the difference in the total pension and annuity amounts reported from the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the ~~((claimant's, the claimant's spouse's, or the cotenant's))~~ Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account; and

(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on Form 1040A is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the ~~((claimant's, the claimant's spouse's, or the cotenant's))~~ Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or ~~((Form RRB-1099 to determine))~~ the railroad retirement benefits received.

(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed below in paragraph (c)(vii).

(vi) **Veterans benefits.** Veterans benefits (~~(--other than attendant care and medical-aid payments--))~~ are added back onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

Veterans benefits are discussed below in paragraph (c)(viii).

(d) **Form 1040.** If a claimant provides a copy of a Form 1040, the assessor calculates the disposable income for the person or couple filing the return by adding onto the reported adjusted gross income all the items described below to the

extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The excluded capital gain amount is reported on the exemption application.

(ii) **Capital gains.** If the return shows capital gains or losses, the assessor examines a copy of the following schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds onto the adjusted gross income any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added onto that adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for loss are added onto the adjusted gross income to determine the disposable income. Most losses are reported on the return in parentheses to reflect that these loss amounts are to be deducted. The net losses are reported on Form 1040 as business losses, as capital losses, as other losses, as rental or partnership-type losses, and as farm losses. Add these amounts in parentheses onto the adjusted gross income. In addition, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The taxpayer only reports the net amount of losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the return to calculate adjusted gross income. The assessor adds onto the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. If the assessor has already added capital gains reduced by losses, the assessor does not add this amount onto adjusted gross income as it has already been accounted for. The amount of losses that were used to reduce adjusted gross income must be added onto that adjusted gross income to determine disposable income. For example, the claimant reports on the front page of the 1040 a capital loss of (five thousand dollars). The assessor examines the Schedule D. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already reduced the claimant's adjusted gross income by five thousand dollars from the capital loss reported on the front page of the return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from this Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or

Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income (as this would result in it being added back twice);

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amount reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the ((claimant's, the claimant's spouse's, or the cotenant's)) Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant((s)), the claimant's spouse((s)) or domestic partner, or the cotenant((s Form SSA-1099)) to determine the Social Security benefits or ((Form RRB-1099 to determine)) the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than pay or benefits for attendant care or medical aid, are added onto the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic

allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported in box 12 of the Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** ~~((Veterans benefits, other than attendant care and medical-aid payments, are added onto the veteran's adjusted gross income to determine the veteran's disposable income.))~~ Federal law excludes from gross income any veterans benefits payments, paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA). ~~((Except for payments by the VA made for attendant care or medical aid))~~ To determine disposable income, allowances or payments made from the VA must be added ~~((on to))~~ on the veteran's adjusted gross income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.-383 (5)(f)(iv).)

VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA ~~((Disability compensation or pensions paid by the VA are not attendant care or medical-aid payments))~~;

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added onto the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling him or her the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if he or she has to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax-exempt interest is reported on the Form 1040 and added onto the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** When the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor combines the disposable income of these people together. The assessor reduces this combined income by the amount paid by the claimant or the claimant's spouse or domestic partner during that calendar year for their legally prescribed drugs, home health care ~~((and))~~; nursing home ~~((care))~~, boarding home, or adult family home expenses; and health care insurance premiums for Medicare under Title XVIII of the Social Security Act to calculate the claimant's combined disposable income.

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-130 Senior citizen ~~((and))~~, disabled person, and one hundred percent disabled veteran exemption—Qualifications for exemption. (1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen ~~((or))~~, disabled person, and one hundred percent disabled veteran property tax exemption. In order to qualify for the exemption, the claimant:

(a) Must meet age or disability requirements;

(b) Must have a combined disposable income ~~((of thirty thousand dollars or less))~~ below the statutory limit amount provided in RCW 84.36.381; and

(c) Must own the property and occupy it as his or her principal residence.

(2) **Age, retirement, and disability requirements.** In order to qualify for the exemption:

(a) The senior citizen claiming the exemption must be age sixty-one or older on December 31st of the year in which the claim is filed. No proof is required concerning a senior citizen's employment status to claim the exemption.

(b) The disabled person claiming the exemption must be at the time of filing retired from regular gainful employment ~~((because of his or her physical disability (i.e., unable to work because of a physical or mental impairment). A disabled person is considered retired, although he or she was not working at a job, if he or she is unable to enter into regular gainful employment because of his or her physical disability and does not have a guardian or other person legally required to financially support and care for him or her; or))~~ and unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (42 U.S.C. Sec. 423 (d)(1)(A)).

(c) The veteran claiming the exemption must at the time of filing be a veteran of the armed forces of the United States with one hundred percent service-connected disability.

(d) The surviving spouse or domestic partner of a claimant, who applies to continue their spouse's or domestic partner's exemption, must be age fifty-seven or older in the calendar year the claimant dies.

(3) **Income requirements.** In order to qualify for the exemption, the claimant's combined disposable income, as defined in RCW 84.36.383 and WAC 458-16A-120, must be

below the statutory limit amount provided in RCW 84.36.381.

(4) **Principal residence requirements.** In order to qualify for the exemption, the claimant must own the property and occupy it as his or her principal residence. The claimant must occupy the principal residence at the time of filing for each year the exemption is claimed. See WAC 458-16A-100 (definitions of principal residence and residence), and WAC 458-16A-135 (supporting documents required to demonstrate the property is owned and occupied as a claimant's principal residence).

WSR 08-16-079

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 31, 2008, 4:50 p.m., effective August 31, 2008]

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

Purpose: WAC 458-16A-135 and 458-16A-140 are being amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008), SSB 5256 (chapter 182, Laws of 2008), SB 6338 (chapter 62, Laws of 2006), HB 1019 (chapter 248, Laws of 2005), SB 5034 (chapter 27, Laws of 2004), and SB 5758 (chapter 53, Laws of 2003). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.36.381 to domestic partners. SSB 5256 changed the calculation for excluding veteran's benefits from the income calculation for the senior citizen, disabled person, and one hundred percent disabled veteran exemption. SB 6338 changed the definition of "residence" for purposes of the senior citizen, disabled person, and one hundred percent disabled veteran exemption. HB 1019 extended the former senior citizen and disabled person exemption to veterans of the armed forces of the United States with one hundred percent service connected disability. SB 5034 raised income and valuation limits for qualifying for the senior citizen and disabled person exemption; increased the circumstances under which claimants may qualify for the exemption without residing in their residences; added a definition for "disability"; and added additional deductions for the purpose of calculating "disposable income." SB 5758 clarified language related to gender and perjury in RCW 84.36.387.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16A-135 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Application procedures and 458-16A-140 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Adopted under notice filed as WSR 08-11-121 on May 21, 2008.

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

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

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

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

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

Date Adopted: July 31, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-135 Senior citizen (~~and~~), disabled person, and one hundred percent disabled veteran exemption—Application procedures. (1) **Introduction.** This rule explains when and how a senior citizen (~~or~~), disabled person, or one hundred percent disabled veteran may apply for a property tax exemption on that person's principal residence. RCW 84.36.381 through 84.36.389.

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that he or she meets the age (~~or~~), disability, or disabled veteran requirements for exemption of taxes due in the following year. If the claimant does not apply when he or she meets the age (~~or~~), disability, or disabled veteran requirements, then he or she may apply for the exemption in any subsequent year. The exemption may be claimed on his or her principal residence for previous years by applying with separate applications for each year. However, refunds based upon an exemption made in previous years may be refunded only for up to three years after the taxes were paid as provided in chapter 84.69 RCW.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. If the claimant applies for more than one year when the application is first made, an application must be made for each year the claimant seeks the exemption.

(4) **Where to obtain the application form.** A claimant may obtain the application form and the list of required supporting documents from the county assessor's office where his or her principal residence is located.

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person or by mail at the county assessor's office where the principal residence is located.

(a) **The application form.** The county assessor designs the application form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed and used. The claimant must use an application form from the county where the principal residence is located and provide true and accurate information in the application.

(b) **Signatures.** The signature must certify that under penalty of perjury under the laws of Washington the application is true and correct. The application must be signed, dated, and state the place (city, county, or address) where it was signed. The application must be signed by:

- (i) The claimant;
- (ii) The claimant's designated agent;
- (iii) The legal guardian for the claimant (if applicable);

or

(iv) If the property is subject to a deed of trust, mortgage, or purchase contract requiring an accumulation of reserves to pay property taxes, the lien holder; and

(v) If the claimant resides in a cooperative housing unit or portion of a cooperative structure representing the claimant's ownership share in that cooperative, the authorized agent of the cooperative must also sign the application.

(c) **Perjury statement.** The perjury statement certifying under the penalty of perjury that the application is true and correct must be placed upon the application immediately above a line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax ~~((commits))~~ is guilty of perjury under chapter 9A.72 RCW. If a person receives an exemption based on erroneous information, the assessor assesses any unpaid taxes with interest for up to three years. If a person receives an exemption based on erroneous information, and the person either provided that information with the intent to defraud or intentionally failed to correct that information, the assessor assesses any unpaid taxes with interest, for up to three years, with the one hundred percent penalty provided in RCW 84.40.130. RCW 84.36.385(5).

(d) **Cooperative agreement to reduce rent.** A cooperative must also agree, in a statement attached to the application, to reduce amounts owed by the claimant to the cooperative by the amount of the tax exemption. The agreement must also state that when the exemption exceeds the amount owed to the cooperative, the cooperative must pay to the claimant any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(5).

(e) **Supporting documents.** Unless the assessor determines that all or some of the supporting documents are not necessary, a claimant must present the documents listed below with his or her application. Except for affidavits, the assessor's office should not accept original documents from the claimant. If the assessor's office is presented with original documents (other than affidavits), they must make copies or note the information provided in the documents on a separate sheet and return these original documents to the claimant. The claimant submits the following documents with the application:

(i) If the county records do not reflect the claimant as the property owner, copies of any legal instruments demonstrating the claimant's interest held in the property;

(ii) Documents demonstrating that the property is the claimant's principal residence (i.e., copy of a driver's license and voter's registration card);

(iii) Copies of legal identification showing the claimant's age (i.e., copy of a driver's license or birth certificate);

(iv) If the claim is based upon a physical disability, either:

(A) An affidavit from a licensed physician or certified physician's assistant (medical or osteopath doctor), a licensed or certified psychologist for disabling mental impairments, or a licensed podiatrist for disabling impairments of the foot, that states the claimant is unable to enter into regular gainful employment because of his or her ~~((physical))~~ disability and the expected term of the disability; or

(B) Copies of a written acknowledgment or decision by the Social Security Administration or Veterans Administration that the claimant is permanently ~~((physically))~~ disabled;

(v) If the claim is based upon the claimant's veteran status, copies of legal documents showing that the claimant is a veteran of the armed forces of the United States with one hundred percent service-connected disability as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005:

(vi) Copies of documents showing income earned or reported by the claimant, the claimant's spouse or domestic partner and any cotenants, even when the income is estimated (income information should be provided to the degree possible and then confirmed with supporting documents in the follow-up period), such proof shall include to the extent it is relevant:

(A) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive Social Security payments, a federal statement showing Social Security paid (generally, Form SSA-1099);

(B) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive railroad retirement benefits, a federal statement showing railroad retirement benefits paid (generally, Forms RRC-1099 and RRC 1099-R);

(C) If the claimant, the claimant's spouse or domestic partner, or any cotenants file federal income tax returns, those returns with supporting forms, schedules, and, if specifically requested, worksheets for the deductions taken from gross income (generally, Form 1040 with its supporting forms and schedules);

(D) If the claimant or the claimant's spouse or domestic partner has been in a nursing home, boarding home, or adult family home or has been receiving in-home care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed nursing home and in-home care;

(E) If the claimant indicates that the ~~((claimant's and the claimant's spouse's))~~ nonreimbursed prescription drug ~~((s))~~ expenses for the claimant and the claimant's spouse or domestic partner for the period under review exceeds five hundred dollars, copies of checks or other payment statements (i.e., pharmacy printout of payments for purchases) showing amounts paid for nonreimbursed prescription drug expenses;

(F) Copies of documents showing premiums paid if the claimant or the claimant's spouse or domestic partner pays health care insurance premiums for Medicare under Title XVIII of the Social Security Act (i.e., 1099, or Medicare plan policy declaration);

(G) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate his or her income and the income of his or her spouse or domestic partner and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT

(interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment), or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income to maintain themselves and their residences. In these situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

~~((vi))~~ (vii) Any other copies of documents the assessor requires in his or her discretion for the claimant to produce in order to demonstrate the claimant qualifies for the exemption.

(f) Public disclosure of the application. The application form may not be disclosed. A copy of the application may be disclosed only if all income information on the form is obliterated so that it cannot be read. Except as required by law, no public disclosure may be made of the checklist of supporting documents or any supporting documents retained that concern the ~~((claimant's, the claimant's spouse's, or any cotenant's))~~ income of the claimant, the claimant's spouse or domestic partner, or any cotenant.

AMENDATORY SECTION (Amending WSR 03-09-002, filed 4/2/03, effective 5/3/03)

WAC 458-16A-140 Senior citizen ~~((and))~~, disabled person, and one hundred percent disabled veteran exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values.

(1) **Introduction.** This rule explains how county assessors process a claimant's application form for the senior citizen ~~((or))~~, disabled person, or one hundred percent disabled veteran property tax exemption. The rule describes the exemption and what happens when the exemption is granted or denied by the assessor.

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's ~~((or))~~, disabled person's, or one hundred percent disabled veteran's principal residence. Except for benefit charges made by a fire protection district, this exemption does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exception related to this program is for benefit charges made by a fire protection district. Fire protection district benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090.

(a) **Excess levies.** A qualifying claimant receives an exemption from excess levies on his or her principal residence.

(b) **Regular levies.** Depending upon the claimant's combined disposable income, the exemption may also apply to all or a portion of the regular levies on the claimant's principal residence. Both the level of the claimant's combined disposable income and the assessed value of the home determine the amount of the regular levy exempted from property taxes. The exemption applies to all the regular and excess levies when the assessed value of the claimant's principal residence falls below the amount of exempt assessed value identified in RCW 84.36.381 (5)(b) and the claimant's combined disposable income is also below the levels set in that section.

(c) **Property taxes due.** Generally the owner pays the property taxes on the principal residence and obtains directly the benefit of this exemption. If the claimant is not the property's owner, or is not otherwise obligated to pay the property taxes on the principal residence, but "owned" the principal residence for purposes of this exemption, the property owner that owes the tax must reduce any amounts owed to them by the claimant up to the amount of the tax exemption. If the amounts owed by the claimant to this property owner are less than the tax exemption, the owner must pay to the claimant in cash any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(6).

(3) **Processing exemption applications.** County assessors process applications for the senior citizen ~~((or))~~, disabled person, or one hundred percent disabled veteran exemption. The assessors grant or deny the exemption based upon these completed applications.

(a) **Application review.** The county assessor reviews a completed application and its supporting documents.

The assessor:

(i) Notes on a checklist for the claimant's file the supporting documents received;

(ii) Reviews the supporting documents;

(iii) Records relevant information from the supporting documents into the file the claimant's file. In particular, the assessor records into the file the claimant's age and a summary of the income information received; and

(iv) After reviewing the supporting documents, must either destroy or return the supporting documents used to verify the claimant's age and income.

(b) **Incomplete applications.** A county assessor may return an incomplete application or a duplicate application. An incomplete application may be missing:

(i) Signatures;

(ii) Information upon the form; or

(iii) Supporting documents.

Upon returning an incomplete application, the assessor should provide the claimant with a dated denial form listing the signatures, information, or documents needed to complete the application. The denial of an incomplete application may be appealed in the same manner as a denial of the exemption.

(c) The assessor may accept any late filings for the exemption even after the taxes have been levied, paid, or become delinquent. An application filed for the exemption in previous years constitutes a claim for a refund under WAC 458-18-210.

(4) **Exemption timing if approved.** Property taxes are reduced or eliminated on the claimant's principal residence for the year following the year the claimant became eligible

for the program. When a late application is filed, the exemption may only result in:

(a) A property tax refund for taxes paid within three years of the payment date; and

(b) Relief from unpaid property taxes for previous years.

(5) **Exemption procedure when claim granted.** When the exemption is granted, the county assessor:

(a) Freezes the assessed value of the principal residence upon the assessment roll;

(b) Determines the level of exemption the claimant qualifies for;

(c) Notifies the claimant that the exemption has been granted;

(d) Notifies the claimant of his or her duty to file timely renewal applications;

(e) Notifies the claimant of his or her duty to file change of status forms when necessary;

(f) Notifies the claimant of the need to reapply for the exemption if the claimant moves to a replacement residence;

(g) Notifies the claimant that has supplied estimated income information whether or not follow-up income information is needed;

(h) Places the claimant on a notification list for renewal of the exemption;

(i) Places the claimant on a notification list if supporting documents are needed to confirm estimated income information prior to May 31st of the following year;

(j) Exempts the residence from all or part of its property taxes; and

(k) Provides the department with a recomputation of the assessed values for the immediately preceding year as a part of the annual recomputation process.

(6) **Exemption procedure when claim denied.** The assessor denies the exemption when the claimant does not qualify. The assessor provides a dated denial form listing his or her reasons for this denial. A claimant may appeal the exemption's denial to the county board of equalization as provided for in WAC 458-14-056.

(7) **Freezing the property value.** The assessor freezes the assessed value of the principal residence either on the latter of January 1, 1995, or January 1st of the year when a claimant first qualifies for the exemption. The assessor then tracks both the market value of the principal residence and its frozen value. The assessor provides both the principal residence's market value and its frozen value in the valuation notices sent to the owner.

(a) **Frozen values in counties using a cyclical revaluation plan.** In counties using a cyclical revaluation plan, the assessor:

(i) Revalues the principal residence, for property revalued in that assessment year, before the assessed value is frozen; or

(ii) Freezes the principal residence's value at the most recent assessed value for property that is not revalued in that assessment year.

The assessor continues to revalue the principal residence during the regular revaluation cycles to track the market value for the property.

(b) **Adding on improvement costs.** The assessor adds onto the frozen assessed value the cost of any improvements made to the principal residence.

(c) **One-year gaps in qualification.** If a claimant receiving the exemption fails to qualify for only one year because of high income, the previous frozen property value must be reinstated on January 1st of the following year when the claimant again qualifies for the program.

(d) **Moving to a new residence.** If an eligible claimant moves, the county assessor freezes the assessed value of the new principal residence on January 1st of the assessment year in which the claimant transfers the exemption to the replacement residence.

WSR 08-16-080

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed August 1, 2008, 10:05 a.m., effective September 1, 2008]

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

Purpose: WAC 458-18-010 has been amended to conform to SSHB [2SHB] 3104 (chapter 6, Laws of 2008). SSHB [2SHB] 3104 extended the rights and liabilities of spouses under RCW 84.38.030, 84.38.130, and 84.38.150 to domestic partners. Definitions for "domestic partner" and "domestic partnership" have been added at new subsections (6) and (7) and subsequent subsections have been renumbered. In addition, new subsection (16) has been changed to reflect the 2006 amendment to RCW 84.36.383(1), which revised the definition of "residence" for purposes of chapter 84.38 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions.

Statutory Authority for Adoption: RCW 84.38.180, 84.38.020.

Adopted under notice filed as WSR 08-10-104 on May 7, 2008.

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

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

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

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

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

Date Adopted: August 1, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 99-21-044, filed 10/15/99, effective 11/15/99)

WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions. Introduction. This section is intended to provide definitions of the terms most frequently used to administer the deferral program for special assessments and/or property taxes on residential housing created by chapter 84.38 RCW. Unless a different meaning is plainly required by the context, the words and phrases used in this chapter have the following meanings:

(1) "Boarding house" means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(2) "Claimant" means a person who either elects under chapter 84.38 RCW or is required under RCW 84.64.050 to defer payment of special assessments and/or real property taxes accrued on his or her residence by filing a declaration to defer as allowed under chapter 84.38 RCW. If more than one individual in a household wishes to defer special assessments and/or taxes, only one may file a declaration to defer; in other words, only one claimant per household is allowed.

(3) "Cooperative housing" means any existing structure, including surrounding land and improvements, that contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

(4) "Department" means the state department of revenue.

(5) ~~("Equity value" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property excluding the deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.~~

~~(6)) "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.~~

~~(6) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.~~

(7) "Equity value" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property excluding the deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(8) "Fire and casualty insurance" means a policy with an insurer that is authorized by the state insurance commission to insure property in this state.

~~((7))~~ (9) "Irrevocable trust" means a trust that may not be revoked after its creation by the trustor.

~~((8))~~ (10) "Lease for life" means a lease that terminates upon the death of the lessee.

~~((9))~~ (11) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and/or property taxes deferred and the interest thereon. It also may include any other outstanding balance owed to local government for special assessments.

~~((10))~~ (12) "Life estate" means an estate that consists of total rights to use, occupy, and control real property but is limited to the lifetime of a designated party; this party is often called a "life tenant."

~~((11))~~ (13) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

~~((12))~~ (14) "Perjury" means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

~~((13))~~ (15) "Real property taxes" means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

~~((14))~~ (16) "Residence" has the same meaning given in RCW 84.36.383(~~, except that it includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size for the construction of a residential dwelling~~); it means a single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size.

~~((15))~~ (17) "Revocable trust" means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during his or her lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

~~((16))~~ (18) "Rooming house" means a residence where persons may rent rooms.

~~((17))~~ (19) "Special assessment" means the charge or obligation imposed by local government upon real property specially benefited by improvements.

WSR 08-16-091
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 4, 2008, 3:27 p.m., effective September 4, 2008]

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

Purpose: This rule making is a result of chapter 436, Laws of 2007 (SHB 1843), which passed the 2007 legislature. The legislation closed loopholes that left consumers vulnerable and strengthened L&I's ability to enforce current law. The legislation corrects recent court rulings that conflicted with past practices, adds a requirement to a prevailing party in a suit against a contractor to notify L&I of all judgments and legal actions resulting from the suit, and increases a violation of the statute to a gross misdemeanor which will allow the department and local prosecutors additional time to build a case against an unregistered contractor. It also lowers the threshold that allows the department to triple the contractor's bond.

Citation of Existing Rules Affected by this Order: Amending WAC 296-200A-015 What terms do I need to know to understand this chapter?, 296-200A-025 How does a contractor register, renew, reregister or reinstate its registration?, 296-200A-030 How much are the surety bond or savings account amounts?, 296-200A-040 What can cause the suspension of a contractor's registration?, 296-200A-065 What procedures must be followed when surety bonds and/or other securities approved by the department become impaired?, 296-200A-080 How is a suit filed against a contractor?, 296-200A-090 How are judgments against contractors paid?, 296-200A-111 How does a city, town, or county verify a contractor's registration?, 296-200A-300 What violations of chapter 18.27 RCW can result in the issuance of a notice of infraction?, 296-200A-305 How does the department notify registered contractors regarding any unregistered subcontractors they may employ?, 296-200A-320 How can a notice of infraction be served?, 296-200A-340 How does a contractor appeal a notice of infraction?, 296-200A-360 Who may represent the contractor and the department at the appeal hearing?, 296-200A-390 What does the department do with the appeal notices that they receive?, 296-200A-400 What monetary penalties will be assessed for an infraction issued for violations of RCW 18.27.100, 18.27.110, 18.27.114 or 18.27.200?, 296-200A-405 When must a contractor pay assessed monetary penalties? and 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration?; and repealing WAC 296-200A-310 What information must be included in a notice of infraction? and 296-200A-330 How are notices of infraction issued?

Statutory Authority for Adoption: Chapter 18.27 RCW and chapter 436, Laws of 2007 (SHB 1843).

Adopted under notice filed as WSR 08-03-117 on January 22, 2008.

Changes Other than Editing from Proposed to Adopted Version:

- WAC 296-200A-015, added the definition of mobile/manufactured home dealer to read "a vehicle dealer that deals in mobile homes, park trailers, or

travel trailers, or more than one type of these vehicles and licensed as required under chapter 46.70 RCW."

- WAC 296-200A-016(38), added "sheet metal" after "metal fabrication."

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 17, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 17, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 17, Repealed 2.

Date Adopted: August 4, 2008.

Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-015 What terms do I need to know to understand this chapter? For the purposes of this chapter, the following terms and definitions are important:

"Administrative law judge" is any person appointed by the chief administrative law judge (as defined in RCW 34.12.020(2)) to preside at a notice of infraction appeal hearing convened under chapter 18.27 RCW and this chapter.

"Appeal bond" is a certified check or money order in the amount prescribed under RCW 18.27.250 made payable to the Washington state department of labor and industries.

"Appeal hearing" is any proceeding in which an administrative law judge is empowered to determine legal rights, duties or privileges of specific parties on behalf of the director.

"Applicant" is any person, firm, corporation or other entity applying to become a registered contractor according to chapter 18.27 RCW and this chapter. Applicant includes all principal officer(s), members, partners of a partnership, firm, corporation, or other entity named on the application.

"Citation" means the same as "infraction."

"Compliance inspector" refers to the departmental staff responsible for investigating potential violations of chapter 18.27 RCW and this chapter.

"Consultant" means any person, individual, firm, agent or other entity who directs, controls or monitors construction activities for a property owner. A general contractor registration is required. A licensed professional acting in the capacity of their license is exempt from registration.

"Contractor compliance chief" refers to the person designated by the director to address all policy and technical issues related to chapter 18.27 RCW and this chapter.

"Department" refers to the department of labor and industries.

"Developer" means any person, firm, corporation or other entity that undertakes:

- The subdivision or development of land for residential purposes; or
- The construction or reconstruction of one or more residential units.

A general contractor registration is required.

"Director" refers to the director of the department of labor and industries or the director's designee acting in the place of the director.

"Final judgment" means any money that is owed to a claimant as a result of court action against or settlement with a contractor and/or contractor's bond or assigned savings account with the department or any money that is owed the department as a result of a contractor's unsuccessful appeal of an infraction. Final judgment also includes any penalties assessed against the contractor and owed the department as a result of an ~~((unappealed))~~ infraction or notice of correction that has not been appealed, final tax warrants or any ((out-standing)) delinquent fees or penalties due ((under this chapter)).

"Final tax warrant" is a document used by the department to establish the debt of a tax payer.

"Infraction" means a violation of chapter 18.27 RCW and this chapter as cited by the chief contractor compliance inspector or the department's construction compliance inspectors.

"Mobile/manufactured home dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles and licensed as required under chapter 46.70 RCW.

"On-premise sign" means a sign at a permanent place of business or a sign placed at a job location while the registered contractor is working at the site. A sign left at a work site after a contractor has left is not an "on-premise" sign and must contain the registered contractor's registration number.

"Property management company" means any person, firm or other entity that in the pursuit of a property management business advertises, bids/offers, or performs construction, maintenance or repair services with their own employees on property not owned by the property management company. A general contractor registration is required.

"Renewal" or **"renewed"** means the renewal of a contractor's registration before it expires.

"Reinstatement" or **"reinstated"** means the reinstatement of a contractor's registration after the registration has expired, or has been suspended, or been revoked.

"Preregistration" or **"reregister"** means an update to a contractor's registration because of business structure change.

"Secured contractor" is a contractor who has complied with RCW 18.27.040 by assigning to the department a savings account held in a Washington state bank, or by filing with the department a surety bond.

"Security" is a savings account held in a Washington state bank and assigned to the department in lieu of a surety bond.

"Unregistered contractor" means a person, firm, corporation or other entity working as a contractor without being

registered in compliance with chapter 18.27 RCW and this chapter.

"Unsatisfied final judgment" means a judgment that has not been satisfied either through payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

NEW SECTION

WAC 296-200A-016 What are the definitions of the specialty contractor classifications for the purpose of contractor registration only? (1) **"Appliances, equipment"** - A contractor in this specialty installs or replaces appliances where minimal gas and water connection are required, such as a refrigerator with an icemaker, gas clothes dryer, gas cook top, gas oven or other similar appliances and only from the existing shut off at wall or floor to the appliance or an appliance that becomes a fixed part of a structure (use of flex for the connection is limited to six feet or less). *The installation or replacement of dishwashers, hot water tanks, and garbage disposals requires a plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(2) **"Asbestos and lead"** - A contractor in this specialty cleans, handles, repairs, removes, encapsulates, encloses, hauls and disposes of paper or hard block insulation on hot water piping, heating ducts, or as molded pipe fitting insulation and joint compounds on furnaces or floor tiles, sheet flooring, ceiling tiles and acoustical (stucco) finishes or as wall and attic insulation materials, or for shingles or siding material and cement pipes for interior or exterior asbestos or lead products. *All asbestos contractors shall adhere to state (DOSH) and/or federal (OSHA) standards regulating all forms of this hazardous material. Asbestos certification per chapter 296-65 WAC is required. Lead abatement certification for workers may be required per chapter 70.103 RCW.*

(3) **"Awnings, canopies, patio covers and exterior screens"** - A contractor in this specialty installs and repairs window awnings, door hoods, exterior screens, freestanding or attached canopies, and patio covers constructed of metal, fabric, fiberglass, and plastic.

(4) **"Boiler, steam fitting, process piping"** - A contractor in this specialty installs, services and repairs power boiler installations and hot water heating systems, including fire-tube and water-tube steel power boilers and hot water heating low pressure boilers, steam fitting and piping, fittings, valves, gauges, pumps, radiators, convectors, hydraulics, fuel oil tanks and fuel oil lines. Also includes chimney connections, flues, refractories, burners, thermal insulation, and accessories, fuel and nonpotable water lines from source of supply to boilers; process and specialty piping and related equipment, pneumatic and electrical control, sheet insulation and all other equipment, including solar heating equipment associated with these systems. *Work in this specialty may also require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(5) **"Cabinets, millwork and finish carpentry"** - A contractor in this specialty installs cabinets, countertop frames, cases, sashes, doors (including hardware), trims, non-bearing partitions, closets and other items of finish carpentry by cutting, surfacing, joining, gluing, and framing wood and

wood products. Also places, erects, fabricates and finishes such cabinets and millwork in structures, including the cutting, framing, installation and finishing of wood and wood products, such as prefabricated cabinets and millwork.

(6) **"Central vacuum systems"** - A contractor in this specialty installs, modifies, or repairs central vacuum systems, pneumatic tube dispatching systems or any other type of pipeline which operates systems of reduced pressure for industrial and residential cleaning. *(This specialty does not include any medical or hazardous waste systems.)*

(7) **"Closets"** - A contractor in this specialty installs, repairs and maintains the lateral or horizontal shelving systems, racks, rails, or drawers involved in a closet or storage system.

(8) **"Commercial/industrial refrigeration"** - A contractor in this specialty installs, alters, and repairs refrigeration equipment and systems used for processing, storage, and display of food products and other perishable commodities for the control of air temperatures below fifty degrees Fahrenheit. This allows construction, fabrication, erection, installation, service, maintenance and repairs of devices, machinery and units, including refrigerators, refrigerated rooms, air-conditioning units and insulated spaces. Also includes installation of any related insulation, ducts, blowers, registers, controls over humidity and thermostatic controls for the control of air, liquid, and/or gas temperatures below fifty degrees Fahrenheit or ten degrees Celsius. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(9) **"Concrete"** - A contractor in this specialty completes all work in connection with the processing and placing of concrete composed of materials common to the concrete industry, including finishing, coloring, curing, repairing, testing, drilling, sawing, grinding, chipping, and grouting. Placing film barriers, sealing, and waterproofing are included. The construction, centering, and assembling of forms, molds, slip forms, and pans.

(10) **"Construction clean-up"** - A contractor in this specialty cleans up and/or removes from buildings, grounds or structures any debris resulting from any construction project including but not limited to: Concrete, plaster, dry-wall, any paint or adhesive products from windows, floors, ceramic tile and bathroom fixtures. *(Registration is not required for janitorial services, i.e., at final cleaning.)*

(11) **"Demolitions and salvage"** - A contractor in this specialty is involved in the wrecking of existing structures intended for disposal or salvage, by use of tools, equipment or explosives, and the raising, cribbing and underpinning of buildings and other structures so the alterations, repairs and temporary structures may be constructed under the retained and undisturbed portion of the building or other structures. Includes the erection of temporary ramps, barricades, and pedestrian walkways when required for demolition/wrecking and/or salvage projects. *(This specialty does not include the alterations, additions, repairs or rehabilitation of the permanently retained portions of such structures.)*

(12) **"Doors, gates and activating devices"** - A contractor in this specialty installs, modifies or repairs all types of residential, commercial or industrial doors including sliding door assemblies. This includes but is not limited to: Wood and screen doors, metal-clad doors, glass sliding/sta-

tionary doors and frames, automatic revolving doors, hospital cubical doors and related installations. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(13) **"Drain cleaning and snaking"** - A contractor in this specialty can perform camera examination, cleaning or snaking of building drainage and vent pipes and/or sewer pipe. Nothing in this specialty is intended to waive any plumbing certification requirements of chapter 18.106 RCW or any local enforcement agency code provisions or allow for the removal, installation or replacement of any damaged plumbing parts or fixtures.

(14) **"Drilling, blasting and soil sampling"** - A contractor in this specialty does core and post hole drilling, horizontal drilling (no piping) and drilling for placement of charges and performing blasting work and performs soil sampling. *(Does not include water well drilling.) Work with explosives requires licensing per chapter 70.74 RCW.*

(15) **"Drywall"** - A contractor in this specialty lays out and installs gypsum wall board and gypsum wall board assemblies including nonstructural metal framing members, and performs the taping, primer and texturing operations including the application of compounds that adhere to wall board to produce a continuous smooth or textured surface. Includes interior lath and plaster repair.

(16) **"Electrical"** - Please see chapter 19.28 RCW.

(17) **"Elevator"** - A contractor in this specialty installs, repairs, alters, relocates, demolishes and maintains elevators and other conveyances, including all associated equipment and equipment associated with the safe and efficient installation and operation of electrical, hydraulic and manual operated elevators. *Work in this specialty may also require elevator licensing per chapter 70.78 RCW and/or an electrical license per chapter 19.28 RCW.*

(18) **"Excavation, grading and land clearing"** - A contractor in this specialty digs, moves and alters materials forming the surface of the earth by digging, horizontal boring, trenching, grading, or compacting the material for a cut, fill, grade, or trench, with hand and power tools, machines and explosives. Included is the placement of shoring, the oiling of base materials, and incidental blasting and drilling. *(This specialty excludes excavating for water, gas, and oil wells.) Use of explosives requires licensing per chapter 70.74 RCW.*

(19) **"Fencing"** - A contractor in this specialty constructs, erects, alters, or repairs all types of fences, corrals, runs, railings, cribs, game court enclosures (excludes roof), guard rails and barriers, backstops, posts, flagpoles, and gates. This includes installing, cutting, shaping, fabricating and repair of metal and wood fencing, cattle guards and supplemental materials. *(This specialty excludes masonry walls.) Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(20) **"Fireproofing and coating"** - A contractor in this specialty applies by industry accepted practices independently qualified fireproofing and coating materials that are fire resistant.

(21) **"Fire protection"** - A contractor in this specialty lays out, fabricates, repairs and installs all types of fire protection systems, including all the equipment associated with these systems using water, steam, gas or chemicals. Systems

may include the following areas of work and related equipment: Restaurant hood protection systems; fire pumps and drivers; pressure and storage tanks; all piping and valves; sprinkler heads and nozzles; and application of materials for the prevention of corrosion or freezing. *Work in this specialty may also require an electrical license per chapter 19.28 RCW and/or fire-protection licensing.*

(22) "**Floor covering and counter tops**" - A contractor in this specialty installs, repairs or replaces floor covering materials and related accessories including preparation of the surface to be covered. Included are: Linoleum, carpets, carpet backings and pads, and materials manufactured of asphalt, wood, vinyl, laminates, rubber and material common to the industry installed for sanitary and decorative purposes for nonstructural bearing interior and exterior use. Excludes work outlined in subsection (56) of this section. *Work in this specialty may also require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(23) "**Framing and rough carpentry**" - A contractor in this specialty performs any form work, framing or rough carpentry necessary to construct framed structures; installs or repairs individual components of framing systems and performs any rough carpentry or associated work, including but not limited to the construction or installation of: Subflooring, siding (flat work only), decks, exterior staircases, new exterior doors and railings, fascia, roof decking, truss members and rafters, and sheathing using carpenter hand tools and power tools.

(24) "**Glass and glazing**" - A contractor in this specialty selects, cuts, assembles, and/or installs, replaces and repairs all makes and kinds of glass, glass work, mirrored glass, and glass substitute materials for glazing; executes the installation and glazing of frames, panels, sashes, skylights and glass doors; and/or installs these items in any structure. Also includes the installation of steel and aluminum glass holding members, glass products, and related hardware, as well as standard methods of weatherproofing, caulking, glazing, sealants, and adhesives.

(25) "**Gutters and downspouts**" - A contractor in this specialty installs, repairs, and maintains gutters and exterior downspouts of metal, wood, and plastic and channel devices common to the industry, for the use of water run-off of the exterior of a building.

(26) "**Handyman**" - A contractor in this specialty must be an individual who does all work personally without employees or other specialty contractors. A handyman may perform more than one unrelated specialty trade or craft provided they do all work themselves. All work shall be limited to minor and casual work of existing residential maintenance and repair with a total dollar value of time and materials under two thousand dollars. Work requiring a building permit may not be done by this specialty. If the registered contractor is a corporation or limited liability company (LLC), one person must be identified as a handyman. *Work in this specialty may also require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(27) "**House moving**" - A contractor in this specialty raises, lowers, cribs, underpins, and moves structures, includ-

ing their foundations. *(This specialty does not include the alterations, additions, repairs or rehabilitation of such structures.)*

(28) "**Heating, ventilation, air-conditioning and refrigeration (HVAC/R)**" - A contractor in this specialty fabricates, installs, services, and maintains equipment for the purpose of heating and cooling of indoor air. Systems may include the following areas of work and related equipment using industry accepted materials: Duct work; air filtering devices; water treatment devices; pneumatic controls; control piping; thermal and acoustical insulation; vibration isolation materials and devices; liquid fuel (propane) piping and tanks; gas piping from service connection to equipment it serves; and stainless steel kitchen systems. Includes the testing and balancing of the air handling systems. Also includes systems that utilize solar energy. *Work in this specialty may also require electrical licensing per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

(29) "**Industrial equipment/machines**" - A contractor in this specialty installs all industrial machinery such as generators, compressors and processors which are bolted or otherwise attached so as to be permanently affixed to a structure. *Work in this specialty may also require an electrical license per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

(30) "**Institutional equipment, stationary furniture, lab tables, lockers**" - A contractor in this specialty installs, alters and repairs equipment and furniture that become a fixed part of the structure, such as stationary desks, lockers, chalkboards, shelving, storage, seats in an auditorium (including stationary bleachers) and equipment used in a stage or gymnasium. Work includes the installation, alteration and repair of institutional kitchen equipment and laboratory equipment, such as stationary counters and tables, shelving partitions, and such other equipment as is generally accepted for use as commercial building accessory.

(31) "**Insulation and acoustical**" - A contractor in this specialty installs, alters, and repairs insulation materials used for the nonmechanical control of heat, sound, and moisture for use in the construction of structures and equipment. Work includes installation methods and devices such as supports, fastening systems, adhesives, mastics, plastics, weather-stripping and material used for the preparation of insulation work and common to the industry. Also includes application and installation of materials to protect or finish insulated surfaces.

(32) "**Irrigation sprinkler systems**" - A contractor in this specialty installs, repairs, and maintains sprinkler systems to distribute water for the purpose of irrigation, dust and soil erosion control using equipment, materials, and fittings common to the industry. Connections to potable water lines, installation of backflow prevention devices for nonpotable water, installation of hose bibs and installation of service lines from source of supply are permitted only when they are an integral part of the sprinkler system and outside a building. *The use of pumps to draw or boost the pressure from any source of water that are used on a residential sprinkler system or for irrigation on a farm require plumber certification per chapter 18.106 RCW and/or an electrical license per*

chapter 19.28 RCW. (If both the electrical and plumbing trades are pursued this specialty is not allowed.)

(33) "**Landscaping**" - A contractor in this specialty constructs, maintains, repairs, installs and develops landscape systems and facilities for public and private gardens and other areas which are designed to aesthetically, architecturally, horticulturally, or functionally improve the ground within or surrounding a structure or tract or plot of land. Also prepares and grades plots; treats, conditions, prepares, and installs topsoil; performs hydroseed spraying; and plants all decorative vegetation. Landscaping includes installation of nonload bearing slabs, walkways and areas using concrete, brick, stone, or gravel; decorative wooden decks; garden walls, fences and screens up to six feet in height; and all other materials and equipment common to the industry. This specialty includes installation of lawn sprinklers (without pumps), ponds and water-features. *(Excluded from this specialty are cast in place or tilt up concrete, load bearing walls for structures, perimeter fencing along property lines or boundaries.) Work in this specialty may also require an electrical license per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

(34) "**Lathing and plastering**" - A contractor in this specialty coats surfaces with a mixture of sand, gypsum plaster, quick-lime or hydrated lime and water, or sand and cement and water, or a combination of such other materials that create a permanent surface coating, including coatings for the purpose of soundproofing and fireproofing. These coatings are applied with a plasterer's trowel or sprayed over any surface which offers a mechanical means for the support of such coating, and will adhere by suction. This contractor also installs lath (including metal studs) or any other material prepared or manufactured to provide a base or bond for such coating.

(35) "**Locks, security alarms and warning systems**" - A contractor in this specialty sets up, installs, maintains and repairs all doors and door assemblies, gates, locks and locking devices, panic and fire rated exit devices, manual and automatic operated gate and door closures and releases, jail and prison locking devices and permanently installed or built-in safes and vaults as well as early warning systems. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(36) "**Masonry**" - A contractor in this specialty installs concrete units and baked clay products; concrete, glass and clay block; natural and manufactured stone; terra cotta; and firebrick or other material for refractory work. Includes the fabrication and installation of masonry component units for structural load bearing and nonload bearing walls for structures and fences installed with or without mortar; ceramic veneer (not tile) and thin brick that resembles full brick for facing; paving; and clear waterproofing, cleaning and caulking incidental to masonry construction. This specialty also includes chimney cleaning and repair.

(37) "**Manufactured/mobile home set up**" - A contractor in this specialty installs, alters, repairs or prepares for moving any type of manufactured mobile home for the purpose of sitting the home which includes connections of the plumbing, gas, electrical and foundation system. *Installation of electrical wires and equipment that convey electrical*

power to the home or to an outlet in the home, and the ground cross-over, requires an electrical license per chapter 19.28 RCW. A certified installer per chapter 46.63B RCW must be employed. (Equipment does not include plug-in household appliances.)

(38) "**Metal fabrication/sheet metal**" - A contractor in this specialty fabricates, installs and repairs architectural and general products made of sheet metal including but not limited to exhaust hoods, counters, etc. This includes layout, cutting, fabrication, and installation of sheet metal products, assembly and installation of premanufactured sheet metal or other industry accepted products, and bracing and reinforcing materials. *(Does not include structural metal fabrication.)*

(39) "**Overhead/garage doors**" - A contractor in this specialty installs wood, wood panel, steel panel or steel roll-up doors and the rails and support systems common to the industries. The installation of power or hand operated opening/closing motors and devices is included. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(40) "**Painting and wall covering**" - A contractor in this specialty applies materials common to the painting and decorating industry for protective or decorative purposes. Includes the installation of surface coverings including paints, papers, textures, fabrics, pigments, oils, turpentine, japons, dryers, thinners, varnishes, shellacs, stains, fillers, waxes, adhesives, water, and any other vehicles, mediums, and materials which by evaporation may be mixed and applied to the surface of structures. Surface preparation, caulking, pressure washing, sandblasting, and cleaning preparatory to painting/wall covering are included.

(41) "**Paving/stripping/seal coating**" - A contractor in this specialty installs, excavates, grades, compacts, and repairs the application of asphalt/cement to streets, driveways, parking lots, boat ramps, and landing strips and taxiways for an airport. Also includes the filling of cracks and voids in existing surfaces, the application of sealants and the installation of precast bumpers, nonelectrical traffic signs/markers and striping on the surface.

(42) "**Plumbing**" - A contractor in this specialty installs, alters, repairs and renovates all potable water, building supply, and distribution pipes; all plumbing fixtures and traps; all drainage and vent pipes; and all building drains and building sewers, including their respective joints and connections, devices, receptors, and appurtenances within the property lines of the premises and shall include potable water piping, potable water treating or using equipment, medical gas and medical vacuum systems, liquid and fuel gas piping, and water heaters, hydronic heating systems and vents for same. Includes solar heating equipment attached to potable water systems. *Plumber certification is required for work within a building per chapter 18.106 RCW.*

(43) "**Pressure washing**" - A contractor in this specialty uses the force of pressurized water to clean and prepare surfaces for any protective, decorative and/or functional treatment in a commercial or residential structure.

(44) "**Roofing**" - A contractor in this specialty installs and repairs materials common to the industry that form a water tight, weather resistant surface for roofs and decks, including all accessories, plywood, coping, flashing, valleys,

gravel stops, and roof insulation panels above the roof decks. The work is completed using the following materials: Asphaltum, pitch, tar, felt, glass fabric, urethane foam, metal roofing systems, flax, shakes, shingles, roof tile, slate or any other roofing, waterproofing, weatherproofing or membrane material(s) or a combination thereof. Also includes roofing related architectural sheet metal. *(This specialty does not allow for structural repair of trusses, beams or joists.)*

(45) "**Sandblasting**" - A contractor in this specialty uses the force of compressed air in conjunction with abrasive materials and prepares surfaces for any protective, decorative and/or functional treatment in a commercial or residential structure.

(46) "**Sanitation systems and/or side sewers**" - A contractor in this specialty fabricates and installs septic tanks, storm drains, and other sewage disposal and drain systems outside the building structures. This classification includes the laying of cast-iron, steel, concrete, vitreous and nonvitreous pipe and any other hardware associated with these systems, including any related excavating, grading, trenching, surfacing and backfilling.

(47) "**Scaffolding and safety railings**" - A contractor in this specialty erects metal or wood scaffolding including temporary sidewalk sheltered construction work barricades, safety railings, stages and bleachers.

(48) "**Service station equipment and maintenance**" - A contractor in this specialty installs auto hoisting equipment, hydraulic systems, grease racks, compressors, air hoses, fuel dispensing, cathodic and other service station equipment. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(49) "**Siding**" - A contractor in this specialty installs all types of exterior siding including but not limited to wood, wood products, vinyl, aluminum and metal siding to new or existing buildings.

(50) "**Signs**" - A contractor in this specialty fabricates and installs all types of signs, including but not limited to: Post or pole supported signs, signs attached to structures, painted wall signs and modifications to existing signs. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(51) "**Steel erectors**" - A contractor in this specialty fabricates and erects structural steel shapes and plates of any profile, perimeter or cross-section, which are or may be used as structural members for buildings and structures, including the rebar, riveting, welding, rigging and metal roofing and decking systems.

(52) "**Structural pest control**" - A contractor in this specialty constructs, repairs, and installs the ventilation screens, bird exclusion devices, and caulking of cracks and holes for exclusion of and repelling pests. Includes the replacement of bird blocking screens.

(53) "**Suspended ceilings and acoustical tile**" - A contractor in this specialty installs, modifies or repairs all types of suspended ceilings, including but not limited to lay-in-grid and other types of systems involving solid, perforated or translucent ceiling panels.

(54) "**Swimming pools, spas and hot tubs**" - A contractor in this specialty constructs, alters, and repairs permanent swimming pools and spas or hot tubs, including associ-

ated equipment. May also do repairs to damaged acrylic, fiberglass, porcelain and other like materials in standard bathtubs or showers. *Work in this specialty may also require an electrical license per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

(55) "**Tanks and tank removal**" - A contractor in this specialty installs and/or removes fuel storage, grain and other types of tanks which have been or are to be used for dispensing gasoline, diesel fuel, waste oil, kerosene, propane or other chemicals. This work involves the installation and/or removal of all incidental tank related piping. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(56) "**Tile, ceramic, mosaic and natural and manufactured stone**" - A contractor in this specialty prepares surfaces as necessary and installs glazed wall, ceramic, mosaic, quarry, faience, glass mosaic and stone tiles, thin tile that resembles full brick, natural or simulated stone slabs for bathtubs, showers and horizontal surfaces inside of buildings, or any tile units set in the traditional or innovative tile methods, excluding hollow or structural partition tile. *Work in this specialty may also require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(57) "**Tree removal**" - A contractor in this specialty falls and/or removes trees, stumps and/or branches on residential or commercial property or near a residential or commercial structure, outbuilding or fence. *(Stump grinding does not require contractor registration.)*

(58) "**Utilities and telecommunications**" - A contractor in this specialty provides excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of a utility or telecommunication system prior to the line of demarcation. Also performs fabrication and/or installs pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances.

(59) "**Window coverings**" - A contractor in this specialty installs window treatment rods and other handling devices and covering products, including but not limited to the following: Material and fabric that make up louvers, shutters, and blinds; residential and commercial draperies; permanent screens; expanded metal window and door guards; and plastic film and/or other treatments applied for temperature control.

(60) "**Water conditioning equipment**" - A contractor in this specialty installs water conditioning equipment or water treatment equipment with the use of only such pipe and fittings as are necessary to connect the water conditioning or water treatment equipment in a water supply system and only within six feet of the water service supply. Drainlines must run to existing floor drain, standpipe or outside the structure. *Work in this specialty may also require plumber certification per chapter 18.106 RCW.*

(61) "**Welding and ornamental metal**" - A contractor in this specialty installs, alters, removes, or repairs all architectural, structural and decorative steel, aluminum or other materials in welding techniques by the use of processes common to the industry.

(62) "**Well Drilling**" - A contractor in this specialty installs and repairs water wells and pumps by boring, drilling,

excavating, casing, cementing and cleaning to provide a supply of uncontaminated water. May also install water conditioning equipment and perform soil sampling. *(Excludes the installation of jet and submersible pumps; electrical pump controls and wiring from pump equipment to first readily accessible disconnect; and water line to storage or pressure tank.)* Work in this specialty may also require plumber certification per chapter 18.106 RCW or an electrical license per chapter 19.28 RCW. *(If both the electrical and plumbing trades are pursued this specialty is not allowed.)*

(63) "**Wood/pellet and gas stove**" - A contractor in this specialty installs wood, pellet, or gas stoves, zero clearance and fire place inserts. These systems may include the following areas of work and related equipment: Air-filtering devices; gas piping from service connection to equipment; chimney, flashing and flues; and outside combustion air ducts. *The installing of piping, ducting and equipment for transmitting the heated air or water produced by the devices may also require an electrical license per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-025 How does a contractor register, renew, reregister or reinstate its registration? (1) A contractor may register/renew/reregister/reinstate if it:

- (a) Completes an application for contractor registration and submits it to the department as required by RCW 18.27.030;
- (b) Satisfies one of the following:
 - (i) Obtains a continuous surety bond in the total amount specified in WAC 296-200A-030 and submits the original bond with bond number to the department (see RCW 18.27-040); or
 - (ii) Assigns, to the department, a security deposit in the form of a savings account held in a Washington state bank ~~((as))~~ on a department issued form (F625-000-008) in the amounts specified in WAC 296-200A-030;
- (c) Obtains public liability and property damage insurance and submits the original insurance certificate with policy number to the department (see RCW 18.27.050); and
- (d) Pays the issuance/renewal/reregistration/reinstatement fee shown in WAC 296-200A-900.

(2) A contractor may renew its registration if it submits, to the department, a completed contractor registration renewal notice and the material required in subsection (1)(b) and (c) of this section and pays the renewal fee shown in WAC 296-200A-900. No more than forty-five days before the contractor's registration expires, the department must send a renewal notice to the contractor's last recorded address. It is the responsibility of the contractor to notify the department **in writing** of a change in address.

(3) The contractor must:

- (a) Submit all required documents to the department in a manner approved by the department as set forth in subsections (3)(b), (c), (d), and (4) of this section;
- (b) Include, on each document, the name exactly as it appears on the contractor registration application or renewal notice;

(c) Include, if renewing a registration, the contractor's registration number on each of the documents; and

(d) Include a copy of the certificate or document (when required) by the secretary of state for the contractor to do business in the state of Washington.

(4) The department will not register, renew, or reinstate the registration of a contractor if:

- (a) Any of the required documents are missing;
- (b) The documents do not have the proper name of the contractor;
- (c) In the case of a renewal, the documents do not include the registration number; or
- (d) The applicant or person pursuant to RCW 18.27.030 has an unsatisfied final judgment based on work which is subject to chapter 18.27 RCW and this chapter.

(5) The contractor may request, in a letter filed with the application or renewal materials, that the registration period end on a particular day. However, the registration period cannot exceed two years.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-030 How much are the surety bond or savings account amounts? (1) The continuous surety bond or savings account amounts for applicants of contractors with five or fewer final judgments involving ~~((a))~~ two or more residential single-family dwellings ~~((on two or more different structures))~~ in the previous five years are as follows:

- (a) Twelve thousand dollars for general contractors.
 - (b) Six thousand dollars for specialty contractors.
- (2) The surety bond or savings account amounts for applicants of contractors with ~~((six))~~ three or more final judgments involving ~~((a))~~ two or more residential single-family dwellings ~~((on two or more different structures))~~ in the previous five years will be based upon (a) and (b) of this subsection. ~~((a) and (b) of this subsection do not apply to final judgments rendered before July 22, 2001.)~~
- (a) General contractors.

Number of Final Judgments	Bond or Savings Account Amount per ((Calendar-Year)) <u>Registration Cycle</u>
((6)) <u>3</u>	\$18,000.00
((7)) <u>4</u>	\$24,000.00
((8)) <u>5</u>	\$30,000.00
((9)) <u>6</u> or more	\$36,000.00

(b) Specialty contractors.

Number of Final Judgments	Bond or Savings Account Amount per ((Calendar-Year)) <u>Registration Cycle</u>
((6)) <u>3</u>	\$ 8,000.00
((7)) <u>4</u>	\$12,000.00
((8)) <u>5</u>	\$16,000.00
((9)) <u>6</u> or more	\$18,000.00

(3) At the time of reregistration, renewal or reinstatement the department shall only consider final judgments from the previous five years which will be used to determine the bond or savings account amount according to subsection (2)(a) and (b) of this section. (~~Final judgments rendered before July 22, 2001, will not be considered toward the required bond or savings account amount.~~)

(4) A contractor's required bond or savings account amount may only be reviewed for reduction to a lower level at their next regular renewal. The increased bond requirement must remain in effect during the entire registration cycle even if reinstatement or reregistration occurs.

(5) For purposes of this section, final judgment does not include infractions.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-040 What can cause the suspension of a contractor's registration? (1) A contractor's registration will be suspended if the following impairments, cancellations, noncompliance, or errors occur:

(a) A surety bond or other security has an unsatisfied final judgment against it or becomes otherwise impaired.

(b) A surety bond is canceled.

(c) An insurance policy is expired, canceled, revoked or the insurer is withdrawn from the insurance policy.

(d) The contractor has an unsatisfied final judgment against it under chapter 18.27 RCW and this chapter.

(e) The department has notice that the contractor is a sole proprietor or ((~~an~~)) an owner, principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of chapter 18.27 RCW and this chapter.

(f) The department is notified that the contractor has been certified by the department of social and health services as a person who is not in compliance with a support order as provided in RCW 74.20A.320.

(g) The department finds that the contractor has provided false information or has otherwise been registered in error.

(h) The contractor fails to comply with a penalty payment plan agreement.

(i) The contractor has been certified by a ((~~leading~~)) lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service conditional scholarship.

(j) The contractor does not maintain a valid unified business identifier number, if required by the department of revenue.

(2) The contractor's registration will be automatically suspended on the effective date of the impairment or cancellation. The department must mail a notice of the suspension to the contractor's address on the certificate of registration by certified mail **and** first class mail within two days after suspension.

(3) A contractor must not advertise, offer to do work, submit a bid, or perform any work as a contractor while its registration is suspended. To continue to operate as a contractor while its registration is suspended is a violation of chapter 18.27 RCW and subject to infractions.

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-065 What procedures must be followed when surety bonds and/or other securities approved by the department become impaired? (1) Once the department has been notified that the surety bond or other ((~~securities~~)) security approved by the department has been impaired by a final judgment or reduced by payment to an amount less than is required by WAC 296-200A-030, the contractor's registration will automatically be suspended and the department will send a letter to the contractor by certified mail and first class mail within two days.

(2) Once the unsatisfied final judgment has been satisfied, the contractor may reapply according to the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-080 How is a suit filed against a contractor? (1) A civil suit against a contractor must be filed in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. Unless the suit is filed in a superior court, the department will not be able to direct payment on an unsatisfied final judgment against a secured contractor.

(2) Notice that a suit has been filed (a summons and complaint) against a contractor, the contractor's bond, and/or the contractor's deposit must be exclusively delivered to the department by registered or certified mail to: P.O. Box 44450, Olympia, Washington 98504-4450 or by any delivery requiring notice of receipt to: 7273 Linderson Way S.W., Tumwater, WA 98501. The notice must be addressed to the department and must include three copies of the summons and complaint filed against the contractor, the contractor's bond and/or the contractor's deposit. The person filing the suit must pay a ((~~twenty~~)) fifty-dollar service fee to the department.

(3) The summons and complaint against a contractor must include the following information:

(a) The name of the contractor exactly as it appears in the contractor's registration file;

(b) The contractor's business address;

(c) The names of the owners, partners or officers of the contractor if known; and

(d) The contractor's registration number.

(4) If the suit joins a bonding company, the summons and complaint should also include:

(a) The name of the bonding company that issued the contractor's bond;

(b) The bond number; and

(c) The effective date of the bond.

(5) If the suit is against a contractor using an assigned account in lieu of a bond, the complaint must also include:

(a) The name of the institution where the assigned account is held;

(b) The account number; and

(c) The date the assigned account was opened.

(6) Service is not considered complete until the department receives the documents in Tumwater with the ~~((twenty))~~ fifty-dollar fee and three copies of the summons and complaint.

(7) Within two days of receiving a summons and complaint, the department must transmit a copy of the summons and complaint to the registrant at the address listed on the registrant's application or at their last known address provided to the department and to the registrant's surety. Under the definition for "service" as described in RCW 18.27.010 (11) as related to mailing of summons and complaints under RCW 18.27.040 the requirement of "return receipt" will be fulfilled by use of the United States Postal Service "tracking and confirming" web site data.

(8) The department will return a summons and complaint without it being served, if the department cannot readily identify either the contractor or bonding company being sued, if the action did not arise under chapter 18.27 RCW, or if the fee and three copies of the summons and complaint are not received.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-090 How are judgments against contractors paid? (1) **The department can only release or order release of payment for a superior court final judgment.** The department cannot release or order the release of payment to a district court or to satisfy other types of judgments.

(2) Payment of a final judgment by bond. If a contractor is bonded, the department can neither pay a final court judgment against a contractor nor force the contractor or its bonding company to pay. Only the claimant can pursue payment from the contractor or its bonding company.

(3) Payment of a final judgment by assignment of account.

(a) If a contractor's security is held by the department it must be used to pay a superior court final judgment against a secured contractor.

The department must order release of funds to pay a superior court final judgment against a secured contractor if the claimant supplies the department with one certified copy of the unpaid final court judgment. The certified copy must be delivered by registered or certified mail within one year of the date the final judgment was officially entered into the court record.

(b) Assignment of account ~~((payments))~~ orders to release funds under subsection (2) of this section will be paid out in the order the final judgments ~~((is))~~ are received by the department.

(c) For the department to order release of funds to pay a superior court final judgment, the claimant must include the following information with the copy of the judgment:

(i) The name of the contractor exactly as it appears on the contractor's registration file;

(ii) The contractor's business address;

(iii) The names of the owners, partners, or officers of the contractor;

(iv) The contractor's registration number; and

(v) The exact amount of the judgment, including court costs, attorneys' fees and interest.

If the department does not receive enough information to ~~((pay))~~ order release of funds to satisfy the judgment, it will inform the claimant.

The department shall have no liability for ~~((payment))~~ claims in excess of the amount ~~((of))~~ available in the secured account.

(4) Payment of a final judgment by the contractor. The contractor may pay a superior court final judgment in lieu of the department releasing or ordering the release of a bond or the assignment of account funds to satisfy the final judgment. The contractor must provide the department with a "full satisfaction of judgment" from the superior court that the final judgment has been satisfied.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-111 How does a city, town, or county verify a contractor's registration? ~~((+))~~ A city, town, or county may verify ~~((an original))~~ contractor's registration by ~~((receiving and duplicating a current contractor registration card, by))~~ checking the department's contractor registration internet web site ~~((, checking the computer disk (CD) circulated by the department,))~~ or by calling the department to confirm that the contractor is registered.

~~((2))~~ The contractor's registration is valid if the contractor provides a notarized copy of the original contractor registration card or a facsimile verification from the department.

Note: Although the contractor registration card states that the contractor has an active status, the contractor may have since been suspended.)

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-300 What violations of chapter 18.27 RCW can result in the issuance of a notice of infraction? (1) Under RCW 18.27.100, the department can issue a notice of infraction to a contractor and assess a penalty up to ten thousand dollars for:

(a) Using an unregistered name while advertising as a contractor;

(b) Using an unregistered name and address in advertising, correspondence, signs, documents, etc.;

(c) Using a false or expired registration number in advertisements where a contractor's registration number is required;

(d) Using the bond and insurance requirements of chapter 18.27 RCW to advertise as a bonded and insured contractor;

(e) Using a false registration number to either solicit business or pose as a contractor or providing false information on an application for registration as a contractor;

(f) Failing to include the contractor's current registration number in all advertising that shows the contractor's name or

address. This registration number may be omitted in an alphabetized listing of registered contractors stating only the name, address, and telephone number. The registration number may also be omitted on company vehicles and on "on-premise" signs. See RCW 18.27.100(3).

(2) ~~((For violations of chapter 18.27 RCW, the department may issue penalties for violations and notices of infractions containing an order of correction to a person holding a registration, an applicant for registration, or a person acting in the capacity of a contractor, who is not otherwise exempted from chapter 18.27 RCW, that has violated chapter 18.27 RCW or this chapter. Such order shall require the violator to cease the unlawful advertising.~~

~~(3))~~ Under RCW 18.27.114, the department may issue a notice of infraction to a contractor for:

(a) Failing to provide a residential or commercial customer with a proper disclosure statement before beginning a repair, alterations or construction project; or

(b) Failing to retain a signed copy of the disclosure statement for three years; or

(c) Failing to produce the signed copy when requested by a compliance inspector.

See RCW 18.27.114 (1)(a) and/or (b) for both the project dollar cost limits affecting this requirement and a sample disclosure statement language.

This requirement does not apply to either contracts authorized under chapter 39.04 RCW or to contractors contracting with other contractors.

A service company is not required to execute a disclosure statement prior to receiving payment for a service call unless there is a bid or contract in place. In the case of an annual service contract they may execute the disclosure at the annual contract signing.

~~((4))~~ (3) Under RCW 18.27.200, the department must issue a notice of infraction to a contractor for:

(a) Advertising, offering to work, submitting a bid, or performing any contracting work without being registered or when the contractor's registration is suspended or revoked; or

(b) Transferring a valid contractor registration to an unregistered, suspended or expired contractor; or

(c) Allowing an unregistered contractor to work under a registration issued to another contractor.

Each day that a contractor works without being registered, works while the registration is suspended or revoked, or works under a registration issued to another contractor is a separate infraction. A cited contractor who continues to work while unregistered, or while their registration is suspended or revoked, or under a registration issued to another contractor is guilty of a separate gross misdemeanor for each day worked.

Each workaday at which a contractor works without being registered, works while the registration is suspended or revoked, or works under a registration issued to another contractor is a separate infraction. A cited contractor who continues to work while unregistered, or while their registration is suspended or revoked, or under a registration issued to another contractor is guilty of a separate gross misdemeanor for each worksite on which a violation occurs.

~~((5))~~ (4) Under RCW 18.27.200 (1)(a), the department may issue a notice of infraction to a registered contractor for:

(a) Working outside the scope of their designated specialty registration; or

(b) Subcontracting more than incidental work within the scope of their designated specialty registration.

(5) Under RCW 18.27.040 the department may issue a notice of infraction to a contractor, consumer, supplier or other for: Failure by the prevailing party in a lawsuit against a contractor and/or the contractor's surety or assigned savings account to provide the department a copy of the final judgment or settlement of that suit.

(6) See WAC 296-200A-400 for the specific monetary penalties associated with each of the violations discussed in this section.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-305 How does the department notify registered contractors (~~regarding any~~) about unregistered subcontractors they (~~may employ~~) have employed? (1) Unless a general contractor or its representative has been given written notification by the department that a subcontractor they have employed, who was registered when employed, has subsequently become unregistered, it is not unlawful for the general contractor to employ that subcontractor. (See RCW 18.27.020(3).)

(2) To comply with RCW 18.27.020(3), the department, when feasible, will issue a written "notice of unregistered subcontractors" to a general contractor or its representative.

(3) A "notice of unregistered subcontractor" issued under this section must be personally served on the general contractor named in the notice by the department's compliance inspectors or must be served by certified mail directed to the general contractor named in the notice.

(4) If the general contractor named in the notice is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If the notice is personally served upon an employee and the department is able to obtain the general contractor's address, the department must send a copy of the notice by certified mail to the general contractor within four days of service.

(5) A "notice of unregistered subcontractor" **is not** a notice of infraction.

(6) A "notice of unregistered subcontractor" is not required to issue an infraction to a contractor for employing a subcontractor that was unregistered, suspended or expired at the time they were hired by the general contractor.

If no signed contract between the contractor and the unregistered subcontractor exists, the first date of work performed by the subcontractor will be used as the hire date.

(7) If, after receiving the "notice of unregistered subcontractor," the general contractor continues to employ the subcontractor in question, it will be liable for an infraction under RCW 18.27.200.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-320 How can a notice of infraction be served? (1) A notice of infraction is served when the notice of infraction is issued personally to the contractor

named in the notice or to an employee of the contractor named by the compliance inspector issuing it, or when ((the notice of infraction is)) sent by certified mail ((to the contractor)) with "return receipt" requested.

(2) ((Any employee of a contractor can be served a notice of infraction at a job site. When the notice is signed by the employee, it is binding upon the contractor. To avoid confusion, the department must have the employee sign the "name of the contractor, by name of the employee." The signature will appear as:

Jane Doe Construction Co.

((by) Richard Roe, Employee.)) If the notice of infraction is personally served and the person served does not know the contractor's name or address, the department does not need to mail a copy of the infraction to the contractor; however, the notice remains in force.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-340 How does a contractor appeal a notice of infraction? ((The contractor must file)) (1) Under RCW 18.27.250 a contractor may appeal a notice of infraction by:

(a) Filing the notice of appeal with the department within twenty calendar days ((after the earlier)) of service of the infraction on-site or ((service of)) within twenty calendar days of the postmark date of the infraction ((mailed to the contractor.)) served through the mail, whichever is earlier; and

(b) Stating the basis for the appeal of the infraction in their written request; and

(c) Including a certified check or money order in the amount of two hundred dollars as a bond on the appeal.

(2) Each notice of infraction required a separate two hundred dollar appeal bond.

(3) These time frames apply to the issuance of the infraction for all violations of chapter 18.27 RCW.

If the twentieth calendar day falls on a holiday or weekend, receipt will be accepted up to the next business day.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-360 Who may represent the contractor and the department at the appeal hearing? (1) Contractors may be represented by themselves or be represented by an attorney at law qualified to practice in the state of Washington((; or)).

(2) The department shall be represented by the office of the attorney general.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-390 What does the department do with the appeal notices that they receive? (1) Appeal notices that are received timely are first reviewed by the department for purposes of reconsideration.

(2) Appeal notices that are not received timely will be returned to the appellant with appeal rights stated, and return of the required two hundred dollar appeal bond will be made by a refund check issued by the department.

(3) Appeal notices that are received timely and are not reconsidered according to subsection (1) of this section are recorded and forwarded to the office of the attorney general then to the office of administrative hearings.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-400 What monetary penalties will be assessed for an infraction issued for violations of RCW 18.27.100, 18.27.110, 18.27.114 or 18.27.200? (1) Each day that a violation occurs will be a separate offense.

(2) Once a violation of chapter 18.27 RCW or this chapter becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the tables that follow.

(3) Second or additional offenses subject to increased penalties also include individuals or entities.

(4) A person, firm, corporation, or other entity who violates a provision of chapter 18.27 RCW and this chapter is liable for a civil penalty based upon the following schedule.

(a) Monetary penalties that may be assessed for a violation of RCW 18.27.040(10) are:

<u>Monetary Penalties</u>	<u>Dollar Amount</u>
<u>First Final Violation</u>	<u>\$250.00*</u>
<u>Second Final Violation</u>	<u>\$500.00</u>
<u>Third Final Violation</u>	<u>\$750.00</u>
<u>Each Additional Final Violation</u>	<u>\$1,000.00</u>

(b)(i) Monetary penalties that may be assessed for a violation of RCW 18.27.100 (1), (2), (3), and (4) are:

<u>Monetary Penalties</u>	<u>Dollar Amount</u>
<u>First Final Violation</u>	<u>\$ 250.00*</u>
<u>Second Final Violation</u>	<u>\$ ((500.00))</u> <u>750.00</u>
<u>Third Final Violation</u>	<u>\$ ((1,000.00))</u> <u>2,250.00</u>
<u>Fourth Final Violation</u>	<u>\$ ((2,000.00))</u> <u>5,000.00</u>
<u>((Fifth Final Violation</u>	<u>\$ 4,000.00</u>
<u>Sixth Final Violation</u>	<u>\$ 8,000.00))</u>
<u>Each Additional Final Violation</u>	<u>\$ 10,000.00</u>

* Minimum penalty per violation. Once a violation of RCW 18.27.100 (1), (2), (3), and (4) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(ii) Monetary penalties that may be assessed for a violation of RCW 18.27.100(5) are:

Monetary Penalties

Dollar Amount

First Final Violation	\$ ((1,000.00)) <u>2,000.00*</u>
Second Final Violation	\$ ((2,000.00)) <u>4,000.00</u>
Third Final Violation	\$ ((4,000.00)) <u>6,000.00</u>
((Fourth Final Violation	\$ 8,000.00)
Each Additional Final Violation	\$ ((10,000.00)) <u>8,000.00</u>

* Minimum penalty per violation. Once a violation of RCW 18.27.100(5) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

((iii)) Monetary penalties that may be assessed for a violation of RCW 18.27.100(6) are:

Monetary Penalties

Dollar Amount

First Final Violation	\$ 1,000.00*
Second Final Violation	\$ ((2,000.00)) <u>3,000.00</u>
Third Final Violation	\$ ((4,000.00)) <u>6,000.00</u>
Each Additional Final Violation	\$ ((5,000.00)) <u>10,000.00</u>

* Minimum penalty per violation. Once a violation of RCW 18.27.100(6) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

((((b))) (c)) Monetary penalties that may be assessed for a violation of RCW 18.27.110 are:

Monetary Penalties

Dollar Amount

First Final Violation	\$ 250.00*
Second Final Violation	\$ ((500.00)) <u>750.00</u>
Third Final Violation	\$ ((1,000.00)) <u>2,250.00</u>
Fourth Final Violation	\$ ((2,000.00)) <u>7,500.00</u>
((Fifth Final Violation	\$ 4,000.00
Sixth Final Violation	\$ 8,000.00)
Each Additional Final Violation	\$10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.110 becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

((((e))) (d)) Monetary penalties that may be assessed for a violation of RCW 18.27.114 are:

Monetary Penalties

Dollar Amount

First Final Violation	\$ 500.00*
Second Final Violation	\$ 1,000.00
Third Final Violation	\$ 2,000.00
Fourth Final Violation	\$ 4,000.00
Each Additional Final Violation	\$ 5,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.114 becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

((((d))) (e)) Monetary penalties that may be assessed for a violation of RCW 18.27.200 according to RCW 18.27.340 (1) and (3) are:

(i)

RCW 18.27.340(1) Monetary Penalties Dollar Amount

First Final Violation	\$ 500.00*
Second Final Violation	\$ ((1,000.00)) <u>3,000.00</u>
((Third Final Violation	\$ 2,000.00
Fourth Final Violation	\$ 4,000.00)
Each Additional Final Violation	\$ 5,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.340(1) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(ii)

RCW 18.27.340(3) Monetary Penalties Dollar Amount

First Final Violation	\$ 1,000.00*
Second Final Violation	\$ ((2,000.00)) <u>3,000.00</u>
((Third Final Violation	\$ 4,000.00)
Each Additional Final Violation	\$ 5,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.340(3) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the above table. However, if the unregistered contractor becomes registered within ten days of receiving the notice of infraction and the notice is the contractor's first offense, the director may reduce the penalty. In no case can the director reduce the penalty below five hundred dollars.

((((4))) (5)) For violations of RCW 18.27.200, the director may waive a penalty collection from a contractor in exchange for a payment of restitution to a damaged consumer in an amount at least equal to the assessed penalty. Prior to the infraction becoming final, the contractor must provide to the department a notarized release from the damaged consumer stating that he or she paid the damaged consumer in an amount at least equal to the assessed penalty.

~~((5)(a)) The department shall deny an application for registration if:~~

~~(i) The applicant has been previously performing work subject to this chapter as a sole proprietor, partnership, corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on this chapter or the applicant owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment;~~

~~(ii) The applicant was a principal or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment; or~~

(iii) The applicant does not have a valid unified business identifier number, if required by the department of revenue.

(b) The department shall suspend an active registration if the department has notice that the registrant is a sole proprietor or a principal or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of this chapter.)

NEW SECTION

WAC 296-200A-401 When will the department deny an application for registration, renewal or reinstatement?

The department shall deny an application for registration, renewal or reinstatement if:

(1) The applicant has been previously performing work subject to this chapter as a sole proprietor, partnership, corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on this chapter or the applicant owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment;

(2) The applicant was an owner, principal, or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment;

(3) The applicant does not have a valid unified business identifier number, if required by the department of revenue; or

(4) The applicant has not complied with a department of social and health services - support enforcement division support enforcement order.

NEW SECTION

WAC 296-200A-402 When will the department suspend an active contractor registration? (1) The department shall suspend an active registration if:

(a) The department has notice that the registrant is a sole proprietor or an owner, principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of this chapter.

(b) The department has been notified that the contractor owes the department money for work performed under this chapter, such as industrial insurance premiums owed for workers' hours or penalties for violation of chapter 18.27 RCW and this chapter.

(c) The department determines an applicant was registered in error.

(d) The department determines a contractor provided false or misleading information on an application or renewal document.

(e) The department is notified by the department of social and health services - support enforcement division that a registered contractor is not in compliance with a support enforcement order.

(f) The department is notified that a bond, assignment of savings or insurance has been canceled or impaired.

(2) The department may suspend an active registration if: The department has notice that the registrant was a sole pro-

prietor or a principal or officer of a previously registered contractor that has an unsatisfied final judgment against it for work within the scope of this chapter.

AMENDATORY SECTION (Amending WSR 03-20-097, filed 9/30/03, effective 11/17/03)

WAC 296-200A-405 When must a contractor pay assessed monetary penalties? (1) If a contractor named in a notice of infraction does not choose to appeal the notice, then the contractor must pay the department the amount of the penalty prescribed for the infraction.

(2) After an administrative law judge decides that an infraction has been committed, a contractor who does not appeal the decision to a superior court, has thirty days to pay any outstanding monetary penalties. Failure to do so is a gross misdemeanor and may be prosecuted in the county where the infraction occurred.

(3) A contractor who has exhausted all appeal opportunities and fails to pay an assessed monetary penalty within thirty days after exhausting those opportunities shall be guilty of a gross misdemeanor and may be prosecuted in the county where the infraction occurred.

AMENDATORY SECTION (Amending WSR 07-11-128, filed 5/22/07, effective 6/30/07)

WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration? The department charges the following fees:

(1) \$113.40 for each issuance, renewal or reregistration of a certificate of registration for contractors. This registration is valid for two years from date of issuance, renewal or reregistration or until it is suspended or revoked.

(2) \$53.60 for the reinstatement of a certificate of registration.

(3) \$12.60 for providing a duplicate certificate of registration.

(4) \$25.60 for each requested certified letter prepared by the department.

(5) \$162.00 for the construction and electrical contractor listing publication on CD ROM per year, prorated according to the number of issues left in the subscription year, which runs from November 1 through October 31. Each issue costs \$13.50.

(6) \$2.00 per copy for documents copied from a contractor's file. The maximum copy charge for copies from one contractor's file will be \$28.10.

(7) ~~\$(20.00)~~ 50.00 is required to cover the costs for the service of process in an action against a contractor, the contractor's bond, or the deposit under RCW 18.27.040.

(8) \$25.00 is required to cover the costs for the service of processing refunds.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|------------------|--------------------------------------------------------------|
| WAC 296-200A-310 | What information must be included in a notice of infraction? |
| WAC 296-200A-330 | How are notices of infraction issued? |

WSR 08-16-092**PERMANENT RULES****DEPARTMENT OF****FINANCIAL INSTITUTIONS**

(Division of Consumer Services)

[Filed August 5, 2008, 8:16 a.m., effective September 5, 2008]

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

Purpose: The amendments clarify licensee reporting requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 208-630-410, 208-630-850, 208-630-860, 208-630-870 and 208-630-900; and amending WAC 208-630-830.

Statutory Authority for Adoption: RCW 43.320.040.

Adopted under notice filed as WSR 08-12-103 on June 4, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 1, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 1, Repealed 5; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 5, 2008.

Deborah Bortner, Director
Division of Consumer ServicesAMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-830 What are a licensee's annual ((financial and)) reporting requirements? ((Each licensee must submit the reports of its Washington activities described in this section, on a form prescribed and made available by the director, due not later than one hundred five days after the close of the calendar year (or fiscal year if a licensee has established a fiscal year different from the calendar year).

~~Licensees must make each report for the prior calendar year or fiscal year, which shall be referred to in these rules as the "period." A consolidated annual report must contain:))~~ On or before April 15, each licensee must submit financial statements for the calendar year just ended. If the licensee has established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.

(1) Annual financial statements. The financial statements must include at least a balance sheet and a statement of income prepared in accordance with generally accepted accounting principles.

(2) Annual assessment report (AAR). Each licensee must submit an AAR of its Washington activities, in a form prescribed by the director. The AAR must contain the following:

(a) The total dollar volume of checks cashed during the period, if applicable; and

(b) The total dollar volume of checks sold during the period, if applicable; and

(c) The total dollar volume of small loans made during the period, if applicable; and

(d) The annual assessment fee calculation. See WAC 208-630-400.

(3) Consolidated annual report (CAR). Each licensee must submit a CAR of its Washington activities, in a form prescribed by the director. The CAR must contain at least the following:

(a) For all licensees, the CAR must contain:

(i) The total number of employees and annual payroll during the period;

~~((2))~~ (ii) The total number and dollar volume of transactions during the period;

~~((3))~~ (iii) The total dollar amount of fees collected during the period;

~~((4))~~ (iv) The total number and dollar amount of undeposited checks taken or held in connection with check cashing and small loan endorsement business at the end of the period;

~~((5))~~ (v) The total number and dollar amount of returned (NSF) checks taken or held in connection with check cashing and small loan business at the end of the period, and the total dollar amount of fees collected for returned (NSF) checks during the period;

~~((6))~~ (vi) The total number and dollar amount of charge-offs (losses), net of any recoveries, for the period; and

~~((7))~~ (vii) The total dollar amount of net income before and after taxes earned under authority of this chapter.

(viii) Such other relevant information as the director may require, in a form prescribed by the director.

(b) For all licensees with a small loan endorsement, the CAR must contain:

(i) The total dollar volume of small loans made during the period, including payment plan loans;

(ii) The total number of loans made for the period;

(iii) The total number of borrowers for the period;

(iv) The number of borrowers whose accounts were referred to collection agencies;

(v) The number of loans rescinded during the period;

(vi) The number of borrowers entering into a payment plan;

(vii) The number of loans made to borrowers to be paid through an ACH (automated clearing house) or other electronic transaction;

(viii) The number of loans made to borrowers through other than a physical visit to the licensee's location (e.g., internet, telephone, etc.); and

(ix) The number of active military borrowers during the period.

(c) For all licensees with small loan endorsements and total loan volume of at least ten million dollars in principal for the reporting period, the CAR must contain the following:

(i) The number of loans per borrower for the period;

(ii) The number of loans per military borrower during the period; and

(iii) The number of loans with terms in each of the following categories for the period:

(A) One to seven days;

(B) Eight to fourteen days;

(C) Fifteen to twenty-one days;

(D) Twenty-two to thirty-one days; and

(E) Thirty-two or more days.

NEW SECTION

WAC 208-630-8301 What happens if a licensee is late filing the annual reports and paying the annual assessment? If a licensee does not file the financial statements, assessment report, consolidated annual report, and pay its annual assessment fee by April 15 of each year, the director will send the licensee a notice of suspension and assess a late fee of twenty-five percent of the annual assessment fee. The licensee's reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after April 15, unless the department is not open for business on that date, then the licensee's reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the next day the department is open for business. If the reports and payment of both the annual assessment fee and any late fee do not arrive prior to such time and date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after April 15.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-630-410 What happens if a licensee is late with an annual assessment fee?

WAC 208-630-850 What information must a licensee have in the annual assessment report?

WAC 208-630-860 If licensee has a small loan endorsement, what other reports must be filed?

WAC 208-630-870

If a licensee has a loan volume of at least ten million dollars in principal in the year prior, what additional reports must the licensee file with the director?

WAC 208-630-900

What additional information must a licensee include with annual reports and financial statements?

**WSR 08-16-095
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES**

[Filed August 5, 2008, 9:15 a.m., effective September 5, 2008]

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

Purpose: The purpose of the rule is to clarify the agency's practice and procedure.

Citation of Existing Rules Affected by this Order: Repealing existing sections of chapter 332-08 WAC and chapter 344-08 WAC; and amending WAC 332-08-015.

Statutory Authority for Adoption: RCW 34.05.220.

Adopted under notice filed as WSR 08-12-068 on June 3, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 59, Amended 1, Repealed 72.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 59, Amended 1, Repealed 72.

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

Date Adopted: August 5, 2008.

Bonnie B. Bunning
Executive Director of
Policy and Administration

**PART I
PURPOSE AND AUTHORITY
—GENERAL PROVISIONS**

NEW SECTION

WAC 332-08-001 Purpose and scope. (1) What do these rules do? The department's practices and procedures rules, set out in this chapter, govern the method, time and place for challenging department actions and the procedures for conducting an adjudicative proceeding of that challenge.

(2) **Do these rules govern my issue?** Generally, these rules apply if you are challenging a department determination regarding:

- (a) Derelict vessels (chapter 79.100 RCW);
- (b) Forest practices notices to comply (chapter 76.09 RCW);
- (c) Oil and gas drilling (chapter 78.52 RCW);
- (d) Surface mining (chapter 78.44 RCW);
- (e) Other department determinations that are not proprietary and do not fall within the exclusive jurisdiction of separate quasi-judicial boards, such as the forest practices appeals board.

(3) **How are these rules organized?** This chapter contains provisions for all reviews (adjudicative proceedings) heard by the department or the office of administrative hearings on the department's behalf. WAC 332-08-101 through 332-08-610 contain specific procedures for adjudicative proceedings and are divided by subject matter. Subject-specific sections apply to the following topics:

- (a) Derelict vessels - Part II;
- (b) Forest practices notices to comply - Part III;
- (c) Oil and gas drilling - Part IV;
- (d) Surface mining - Part V; and
- (e) Other department determinations that are not proprietary and fall within the direct review authority of the department - Part VI.

(4) When reviewing these rules, one should review the general provisions under Part I and the specific rules contained in Parts II through VI that relate to the applicable subject matter.

NEW SECTION

WAC 332-08-002 Proprietary decisions. Is review under the Administrative Procedure Act available for proprietary decisions? No. This section, concerning administrative review, is not available for proprietary decisions. Under RCW 34.05.010(3), sales, leases, contracts, or other proprietary decisions in the management of public lands or real property interests are not agency actions and are not subject to adjudicative proceedings under the Administrative Procedure Act (APA). Accordingly, the department will not commence APA-based adjudicative proceedings for proprietary decisions, including, but not limited to, actions taken under the terms of geoduck harvesting agreements, aquatic lands leases, easements, rights of way, revocation to install residential dock and residential mooring buoys, purchases or leases of public lands or any valuable materials thereon, permits to use state-owned land and resources, timber sale contracts, mineral prospecting leases, mining contracts, or other proprietary agreements to which the department is a party. Nonjudicial review of these actions may be available or required under the terms of the specific agreement or related laws.

NEW SECTION

WAC 332-08-003 Exhaustion of administrative remedies. What happens if I don't file a timely challenge of a department action? You may be precluded from filing any

challenge if you do not timely file your challenge with the department under these rules.

AMENDATORY SECTION (Amending Order 573, filed 6/17/91, effective 7/18/91)

WAC 332-08-015 Definitions. (1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. This definition includes an agency's or quasi-judicial board's consideration of a challenge through a brief adjudicative proceeding, formal adjudicative proceeding, petition for administrative review of an initial order, or a request for reconsideration.

(2) "BAP" means "brief adjudicative proceeding" as described in RCW 34.05.482 through 34.05.494.

~~((2))~~ (3) "Department" means the department of natural resources.

~~((3))~~ Where the rules of this chapter use words defined in RCW 34.05.010, those definitions shall govern. (4) "Filing a document that is required to be filed with an agency" means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head. A document is not delivered until it is received by the intended recipient.

(5) "Formal adjudicative proceeding" refers to the adjudicative process described in RCW 34.05.413 through 34.05.476.

(6) "Service" means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail.

(7) For adjudicative hearings before the department, including hearings conducted by the office of administrative hearings, words used in this chapter have the meaning stated in RCW 34.05.010.

(8) For adjudicative hearings before the pollution control hearings board, terms used in this chapter relating to practice and procedure have the meaning stated in the pollution control hearings board's practices and procedures rules, chapter 371-08 WAC, except that "department" means the department of natural resources.

NEW SECTION

WAC 332-08-022 Incorporation of model rules of procedure. (1) **Formal adjudicative proceedings:** The department incorporates by reference the model rules of procedure, as now or as hereinafter amended, for the department's adjudicative proceedings conducted under RCW 34.05.413 through 34.05.479. The model rules of procedure are those that are adopted by the chief administrative law judge pursuant to RCW 34.05.250. The procedures are contained in chapter 10-08 WAC.

(a) Other rules adopted in this chapter supplement the model rules of procedure.

(b) The rules of this chapter supersede the procedures of chapter 10-08 WAC where there is a conflict.

(2) **Brief adjudicative proceedings.** The department does not incorporate by reference the model rules of procedure for BAPs, which are conducted under less formal requirements provided in RCW 34.05.482 through 34.05.494.

NEW SECTION

WAC 332-08-030 Department settlement authority. May the department settle a dispute without an adjudicative proceeding? The department may informally settle disputes. To explore the possibility of settlement, you should consider discussing settlement options with the department. Generally, settlement negotiations will not be admissible as evidence to show wrongdoing pursuant to Evidence Rule 408. Settlement negotiations do not alter the timelines associated with adjudicative proceeding or judicial appeals.

NEW SECTION

WAC 332-08-035 Standard of proof. What is the standard of proof? Unless the rules or law requires otherwise, the standard of proof in an adjudicative proceeding is a preponderance of the evidence. Preponderance of the evidence means the evidence as a whole makes a fact more probable than not.

NEW SECTION

WAC 332-08-045 De novo review. What does a presiding officer consider? The presiding officer will conduct a de novo review of the department's action(s) in reaching its initial order. New facts and law may be presented to the presiding officer to support or contest a department action in the course of an adjudicative proceeding, except to the extent that new facts or argument are limited by other laws and rules.

NEW SECTION

WAC 332-08-055 Discovery. What limits apply to discovery in adjudicative proceedings being conducted by the department? Discovery in any adjudicative proceeding must comply with Civil Rule (CR) 26 through CR 36 unless otherwise agreed by the parties or ordered by the presiding officer.

NEW SECTION

WAC 332-08-065 Exhibits. How may exhibits be presented? Any party intending to offer documentary evidence during the hearing must prepare a minimum of two copies of each document to be offered, and must give one complete copy to each of the other parties of record no later than the date set for the hearing. The presiding officer may in her/his discretion order different requirements so long as consistent with the parties' rights. The presiding officer may exclude from evidence documents that fail to conform to his/her order or this rule unless the offering party shows good cause for the failure.

NEW SECTION

WAC 332-08-075 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. May the parties access the data underlying expert or opinion testimony? The presiding officer or other appropriate officer, in her/his discretion but consistent with the rights of the parties, may cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying expert or opinion testimony including testimony based on economic and statistical data. Wherever practicable, she/he will restrict to a minimum the placing of such data in the record.

PART II

PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR DERELICT AND ABANDONED VESSEL ACTIONS

NEW SECTION

WAC 332-08-101 Applicability to department actions under the derelict and abandoned vessel act, chapter 79.100 RCW. When is this chapter applicable to department actions relating to the derelict and abandoned vessel act? This chapter applies when a challenge to the action of a state agency acting as an authorized public entity is filed with the department under the derelict and abandoned vessel act as provided in RCW 79.100.120 (2)(a).

NEW SECTION

WAC 332-08-102 Derelict and abandoned vessel—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written action that is the subject of the appeal.

NEW SECTION

WAC 332-08-111 Derelict and abandoned vessel—Appeal deadline. When must my appeal be filed? An application for an adjudicative proceeding regarding an agency action under chapter 79.100 RCW can be filed with the department as soon as the department issues its notice of its intent to take custody, but the application must be filed no later than twenty days after the date the authorized public entity took custody of the vessel, or if the vessel was redeemed before the authorized public entity took custody, no later than twenty days after the date of redemption.

NEW SECTION

WAC 332-08-121 Derelict and abandoned vessel— Filing location and presiding officer. (1) **Where must my appeal be filed?** An application for adjudicative proceeding concerning a decision to take temporary possession or custody of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW must be filed at the following address:

Department of Natural Resources
Aquatic Resources Division
Derelict Vessel Removal Program
P.O. Box 47027
Olympia, WA 98504-7027

(2) **Who may serve as the presiding officer?** Adjudicative proceedings governed by subsection (1) of this section will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

NEW SECTION

WAC 332-08-135 Derelict and abandoned vessel— Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings pursuant to RCW 34.05.413 through 34.05.476 shall be on the department in proceedings concerning the decision to take custody or temporary possession of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW.

NEW SECTION

WAC 332-08-145 Derelict and abandoned vessel— Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any prehearing order. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

NEW SECTION

WAC 332-08-155 Derelict and abandoned vessel— Administrative review of initial orders. (1) How may I obtain review of an initial order?

(a) Initial orders in all adjudicative proceedings relating to a decision to take temporary possession or custody of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the policy director or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) If a reply is filed, a copy must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) **May the parties offer new evidence on review?**

The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

NEW SECTION

WAC 332-08-165 Derelict and abandoned vessel— Petition for reconsideration of a final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

PART III

PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR FOREST PRACTICES, CHAPTER 76.09 RCW

NEW SECTION

WAC 332-08-201 Applicability to department actions under forest practices laws and rules. When is this chapter applicable to the department's forest practices actions? This chapter applies to challenges of notices to comply that the department issues under chapter 76.09 RCW (Forest Practices Act) and chapter 222-46 WAC. These challenges are initially reviewed through brief adjudicative proceedings (BAPs). Other department actions regarding forest practices, including appeals from department BAP actions on notices to comply, are generally subject to review by the forest practices appeals board under chapter 223-08 WAC.

NEW SECTION

WAC 332-08-205 Forest practices—Statutes for brief adjudicative proceedings (BAPs) for notices to comply. What statutes apply to brief adjudicative proceedings (BAPs) for notices to comply? RCW 34.05.482 through 34.05.494 apply to BAPs reviewing forest practices notices to comply.

NEW SECTION

WAC 332-08-215 Forest practices—Appeal of notice to comply—BAP. How do I appeal a notice to comply?

(1) An application for a BAP must be written, and must specify the factual basis for appeal and the issue to be adjudicated in the proceeding.

(2) A copy of the department's written action that is the subject of the appeal must be attached to the application for an adjudicative proceeding.

(3) An application for a BAP concerning a forest practices notice to comply must be filed within fifteen days after the date of service of the notice to comply. The application must be filed with the resource protection and services assistant region manager (RP&S Asst. Reg. Mgr) at the following addresses:

Northwest Region
RP&S Asst. Reg. Mgr
919 N Township St
Sedro-Woolley, WA 98284

Pacific Cascade Region
RP&S Asst. Reg. Mgr
601 Bond Rd
Castle Rock, WA 98611

Southeast Region
RP&S Asst. Reg. Mgr
713 Bowers Rd
Ellensburg, WA 98926

Olympic Region
RP&S Asst. Reg. Mgr
411 Tillicum Lane
Forks, WA 98331

South Puget Sound Region
RP&S Asst. Reg. Mgr
950 Farman Ave. N
Enumclaw, WA 98022

Northeast Region
RP&S Asst. Reg. Mgr
P.O. Box 190
Colville, WA 99114

NEW SECTION

WAC 332-08-225 Forest practices—BAP presiding officer. Who is the decision maker for a BAP? The presiding officer shall be a department region manager or resource protection and services assistant region manager unless otherwise designated by the commissioner of public lands.

NEW SECTION

WAC 332-08-235 Forest practices—BAP scheduling. When will a BAP hearing occur?

(1) The department shall schedule a hearing for a date not more than twenty days after receiving an application for a BAP on a forest practices notice to comply.

(2) The applicant may waive the requirement that a hearing be held within twenty days.

(3) Subject to the approval of the presiding officer, a continuance of any hearing date may be made by agreement of the parties. The presiding officer will provide written documentation to all parties of their decision related to request for continuances.

NEW SECTION

WAC 332-08-245 Forest practices—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the department shall have the burden of proof to support its issuance of a forest practices notice to comply.

NEW SECTION

WAC 332-08-255 Forest practices—Timing of BAP decision. When will a BAP decision be made? Within ten days of completing the BAP hearing on a forest practices notice to comply, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by the recipient of the notice to comply.

NEW SECTION

WAC 332-08-265 Forest practices—Appeal of BAP decision. (1) How do I administratively appeal a BAP decision? The operator, forest land owner, or timber owner subject to a final order of the department on a forest practices notice to comply may, within thirty days from the date of the order, appeal to the forest practices appeals board.

(2) **Who reviews the BAP decision?** The forest practices appeals board will conduct the review. The provisions of chapter 223-08 WAC govern such appeals.

PART IV

PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR OIL AND GAS DRILLING, CHAPTER 78.52 RCW

NEW SECTION

WAC 332-08-301 Oil and gas drilling—Department of natural resources replaces the oil and gas conservation committee. Who replaced the oil and gas conservation committee? The department of natural resources has replaced the Washington oil and gas conservation committee in administering chapter 78.52 RCW and the oil and gas rules. Appeals of department determinations regarding chapter 78.52 RCW and the implementing rules will be governed by the department's practices and procedures rules in Part IV of this chapter and the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 332-08-311 Applicability to department actions under the oil and gas laws and rules. When is this chapter applicable to department actions relating to the Oil and Gas Conservation Act (chapter 78.52 RCW)? This chapter applies when a challenge is filed against a department action under the Oil and Gas Conservation Act.

NEW SECTION

WAC 332-08-325 Oil and gas drilling—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and

- (4) Include a copy of the department's written determination that is the subject of the appeal.

NEW SECTION

WAC 332-08-335 Oil and gas drilling—Appeal deadline. When must my appeal be filed? An appeal of a department suspension must be filed within fifteen days. Appeals of any other determination regarding oil and gas issues, chapter 78.52 RCW, must be filed within thirty days of the department's determination.

NEW SECTION

WAC 332-08-345 Oil and gas drilling—Filing location and presiding officer. (1) Where must my appeal be filed? Applications for adjudicative proceedings regarding department determinations under the Oil and Gas Conservation Act, chapter 78.52 RCW must be filed with:

Oil and Gas Supervisor
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

- (2) **Who considers my appeal?** Adjudicative proceedings governed by this section will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

NEW SECTION

WAC 332-08-355 Oil and gas drilling—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings relating to department determinations under the Oil and Gas Conservation Act, chapter 78.52 RCW, shall be:

- (1) On a person challenging the department's decision approving or disapproving an application for an oil and gas permit or permit renewal under chapter 78.52 RCW;
- (2) On a person seeking the imposition of any other order of the department; and
- (3) On the department to support an enforcement action, such as a suspension, civil penalty, or cancellation of the permit.

NEW SECTION

WAC 332-08-365 Oil and gas drilling—Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any prehearing order. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

NEW SECTION**WAC 332-08-375 Oil and gas drilling—Administrative review of initial orders. (1) How may I obtain review of an initial order?**

(a) Initial orders in all adjudicative proceedings relating to department actions under the Oil and Gas Conservation Act, chapter 78.52 RCW, shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
 Department of Natural Resources
 P.O. Box 47001
 Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) If a reply is filed, a copy must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in sup-

port of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) **May the parties offer new evidence on review?** The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

NEW SECTION**WAC 332-08-385 Oil and gas drilling—Petition for reconsideration of final order. May I seek further agency review of the agency's final order?**

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

PART V**PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR SURFACE MINING, CHAPTER 78.44 RCW**NEW SECTION

WAC 332-08-401 Applicability to department actions under surface mining laws and rules. When is this chapter applicable to department determinations relating to the surface mining act, chapter 78.44 RCW? This chapter applies when a challenge is filed against a department

determination made under the surface mining act, chapter 78.44 RCW.

NEW SECTION

WAC 332-08-411 Surface mining—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written determination that is the subject of the appeal.

NEW SECTION

WAC 332-08-415 Surface mining—Appeal deadline. When must my appeal be filed? Time limits for filing applications for adjudicative proceedings regarding department determinations under the surface mining act, chapter 78.44 RCW, are as follows:

- (1) Concerning approval or disapproval of a new or revised reclamation permit, a new, modified, or revised reclamation plan, or reclamation permit transfer - filed within thirty days of the department's determination;
- (2) Concerning a civil penalty - served on the department and filed with the pollution control hearings board within thirty days of the date the applicant receives the civil penalty notice, or within thirty days of the date the applicant receives the department's notice of disposition of a timely application for remission or mitigation of the civil penalty under WAC 332-18-05007. The pollution control hearings board's practice and procedure rules govern these proceedings;
- (3) Concerning a stop work order to rectify deficiencies, an emergency notice and order to rectify deficiencies or emergency order to suspend surface mining, a suspension order, a cancellation of a permit, an order to submit performance security, or any other appealable surface mining determination - filed within thirty days of the date of the department's service of the order or notice.

NEW SECTION

WAC 332-08-421 Surface mining—Filing location and presiding officer. Where must my appeal be filed? Applications for adjudicative proceedings relating to surface mining must be filed at the location identified below for each of the issues listed below:

- (1) Civil penalty.
 - (a) File with:

Pollution Control Hearings Board
4224 6th Avenue S.E., Building 2, Rowe Six
P.O. Box 40903
Lacey, WA 98504-0903

- (b) And serve:

Assistant Division Manager
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(c) **Who considers my appeal?** The pollution control hearings board will consider properly filed appeals and enter the final decision on appeals of department civil penalties. Chapter 371-08 WAC will govern the proceedings conducted by the pollution control hearings board, except that the burden of proof and standard of proof will be as provided in this chapter.

(2) **Where must my appeal of other department surface mining actions be filed?** All other surface mining related determinations including requests for brief adjudicative proceedings governed by WAC 332-08-445:

- (a) File with:

Assistant Division Manager
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(b) **Who considers my appeal?** Adjudicative proceedings governed by this subsection will be initially decided through the office of administrative hearings unless subject to a brief adjudicative proceeding through WAC 332-08-445 or the commissioner of public lands decides that he/she will enter a decision.

NEW SECTION

WAC 332-08-425 Surface mining—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings regarding department determinations under the surface mining act, chapter 78.44 RCW, shall be:

- (1) On the person challenging the department's decision approving or disapproving an application for a new or revised surface mining reclamation permit, new modified, or revised reclamation plan or a reclamation permit transfer under chapter 78.44 RCW;
- (2) On the department to show that a reclamation permit holder must submit a modified reclamation plan under RCW 78.44.151;
- (3) On the department in proceedings concerning reclamation permit cancellation under chapter 78.44 RCW;
- (4) On the department in civil penalty proceedings and proceedings concerning suspension orders; and
- (5) On the department in proceedings concerning a declaration of abandonment.

NEW SECTION

WAC 332-08-431 Surface mining—Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of

any prehearing order. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

NEW SECTION

WAC 332-08-435 Surface mining—Administrative review of initial orders. (1) How may I obtain review of an initial order?

(a) Initial orders in all adjudicative proceedings relating to department actions under the surface mining act, chapter 78.44 RCW, shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) A copy of the reply must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in

support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) **May the parties offer new evidence on review?** The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

NEW SECTION

WAC 332-08-441 Surface mining—Petition for reconsideration of final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

NEW SECTION

WAC 332-08-442 Surface mining—Appeal procedures for stop work orders. What appeal procedures apply to surface mining stop work orders? The procedures in WAC 332-08-401 through 332-08-441 apply to challenges of stop work orders; however, the department shall

proceed as quickly as feasible to complete the requested adjudicative proceeding for any immediately effective stop work order. DNR shall request the office of administrative hearings to quickly schedule and hear the matter. Neither the department nor the office of administrative hearings is required to review an appeal more quickly than the parties' agreed timeline. If the department issues a stop work order that is not effective immediately, the department and the office of administrative hearings may proceed on a normal schedule.

NEW SECTION

WAC 332-08-443 Surface mining—Appeal procedures for emergency orders. What appeal procedures apply to emergency surface mining orders? The procedures in WAC 332-08-401 through 332-08-441 apply to administrative appeals of emergency orders to rectify deficiencies, emergency orders to suspend surface mining, or other enforcement actions under chapter 78.44 RCW that are effective when entered and call for emergency adjudications; however, the department shall also follow the provisions of RCW 34.05.479. DNR shall proceed as quickly as feasible to complete any requested adjudicative proceedings regarding these enforcement actions. DNR shall request the office of administrative hearings to quickly schedule and hear these matters. Neither the department nor the office of administrative hearings is required to review an appeal more quickly than the parties' agreed timeline.

NEW SECTION

WAC 332-08-445 Surface mining—Availability of brief adjudicative proceedings (BAPs). When may BAPs be used for surface mining determinations? RCW 34.05.482 through 34.05.494 apply to BAPs under Part V. The department may use brief adjudicative proceedings (BAPs) where their use will violate no provision of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. The department may use BAPs for matters relating to surface mining under chapter 78.44 RCW when agreed in writing by all parties and consistent with chapter 34.05 RCW, specifically RCW 34.05.482.

NEW SECTION

WAC 332-08-451 Surface mining—BAP presiding officer. Who is the decisionmaker for a BAP? The presiding officer shall be the nonregulatory assistant division manager for the geology and earth resources division unless otherwise designated by the commissioner of public lands.

NEW SECTION

WAC 332-08-455 Surface mining—Conversion of BAP to formal adjudicative proceeding. When may a BAP be converted to a formal proceeding? Any BAP concerning surface mining under chapter 78.44 RCW may, in the department's discretion, be converted to a formal adjudicative hearing. Formal proceedings are conducted pursuant to pro-

cedures of RCW 34.05.413 through 34.05.479 and WAC 332-08-401 through 332-08-441. The decision to convert the proceeding to a formal adjudicative proceeding may be made by either the presiding BAP officer or a geology division manager or assistant manager. Conversion to a formal adjudicative proceeding may be completed by:

- (1) The BAP officer's notification to the parties; or
- (2) A geology division manager or assistant manager's notification to the BAP officer and the parties. Upon conversion, the department shall promptly forward the application for an adjudicative proceeding to the office of administrative hearings.

NEW SECTION

WAC 332-08-461 Surface mining—BAP scheduling. When will the BAP occur? The department shall serve notice of a hearing date within ten days of the parties' written agreement to use a BAP. The BAP hearing is not required to occur within this ten-day period, but should be conducted so an initial decision can be issued within ninety days of the initial filing of the appeal.

NEW SECTION

WAC 332-08-465 Surface mining—Timing of a BAP decision. When will a BAP decision be made? Within ten days of completing the BAP hearing, the presiding officer shall serve upon each party an initial order, containing a brief written statement of the department's decision and the reasons for the decision.

NEW SECTION

WAC 332-08-471 Surface mining—Appeal of BAP decision and reviewing officer. (1) Who may seek review of a BAP decision? A party affected by an initial order of the department may request administrative review of the initial order. The department may review any BAP decision on its own motion.

(2) **How do I appeal a BAP decision?** A request for administrative review must be in writing, and must be filed at the following address within twenty-one days after the date of service of the initial order:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(3) **Who else gets a copy of my petition?** A copy of the petition for review must also be served on all parties or their authorized representatives at the time of filing.

(4) **Who considers my appeal of the BAP decision?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case. The provisions of WAC 10-08-211 apply to petitions for review of initial orders.

(5) **When is the initial order final?** The initial order becomes a final order if no timely petition for administrative review is filed.

**PART VI
PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR OTHER DEPARTMENT DETERMINATIONS**

NEW SECTION

WAC 332-08-501 Applicability to other department actions. When is this chapter applicable to department determinations that are not expressly identified in this chapter? This chapter applies when a nonproprietary department action is subject to challenge in an adjudicative proceeding.

NEW SECTION

WAC 332-08-511 Other department actions—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written determination that is the subject of the appeal.

NEW SECTION

WAC 332-08-521 Other department actions—Appeal deadline. When must I file my appeal of a department determination that is not expressly discussed in statute or rule? Applications for adjudicative proceedings by the department must be filed within thirty days of the department's action unless a different time period is provided in statute or rule.

NEW SECTION

WAC 332-08-531 Other department actions—Filing location and presiding officer. (1) Where must I file my appeal of "other" department actions? Applications for adjudicative proceedings regarding department actions that are not expressly addressed in this chapter and that are not subject to review according to some other statute or rule must be filed with:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(2) **Who will consider my appeal?** Adjudicative proceedings under this subsection will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

NEW SECTION

WAC 332-08-541 Other department actions—Burden of proof. Who has the burden of proof? For adjudicative proceedings that are not specified in other DNR practices and procedures rules, the proponent of an order shall carry the burden of proof in adjudicative proceedings unless otherwise set out in rule, ordered by the presiding officer, or required by law. The department shall have the burden to prove its enforcement actions.

NEW SECTION

WAC 332-08-555 Other department actions—May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any pre-hearing order. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

NEW SECTION

WAC 332-08-575 Other department actions—Administrative review of initial orders. (1) How may I obtain review of an initial order? Initial orders in all adjudicative proceedings relating to other department actions shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(2) **Who else gets a copy of my petition?** A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(3) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(4) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(5) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) A copy of the reply must be served on all parties or their representatives at the time the reply is filed.

(6) May I provide written and oral argument?

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(7) May the parties offer new evidence on review?

The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

NEW SECTION

WAC 332-08-585 Other department actions—Petition for reconsideration of a final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall

be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section is not subject to judicial review.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 332-08-005	Adoption of model rules of procedure.
WAC 332-08-025	Inapplicability to proprietary decisions.
WAC 332-08-105	Adjudicative proceedings—Application.
WAC 332-08-115	Application for adjudicative proceeding—Time limit.
WAC 332-08-125	Application for adjudicative proceeding—Place of filing.
WAC 332-08-305	Exhibits.
WAC 332-08-315	Burden of proof.
WAC 332-08-405	Petitions for review of initial orders—Final orders.
WAC 332-08-490	Expert or opinion testimony and testimony based on economic and statistical data—Supporting data.
WAC 332-08-505	Brief adjudicative proceedings—Matters to which subject.
WAC 332-08-515	Brief adjudicative proceedings—Application procedure.
WAC 332-08-525	Brief adjudicative proceedings—Hearing.
WAC 332-08-535	Brief adjudicative proceedings—Decision.
WAC 332-08-545	Brief adjudicative proceedings—Review.

WSR 08-16-102
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 5, 2008, 9:37 a.m., effective October 1, 2008]

Effective Date of Rule: October 1, 2008.

Purpose: This change will offer WorkFirst career services, administered by the employment security department, to employed adults, working thirty or more hours a week and who receive diversion cash assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-2100.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055.

Adopted under notice filed as WSR 08-11-089 on May 20, 2008.

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

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

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

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

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

Date Adopted: July 21, 2008.

Katherine Iyall Vasquez, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 07-20-042, filed 9/26/07, effective 10/27/07)

WAC 388-310-2100 WorkFirst career services program. (1) What is the WorkFirst career services program?

((The WorkFirst career services program is available to employed adults who leave temporary assistance for needy families (TANF) or state family assistance (SFA) and are working thirty hours or more per week. The employment security department administers the program.))

WorkFirst career services, administered by employment security department, provides up to six months of:

- Basic needs payments;
• Wage progression services; and
• Job retention services.

(2) ((Who is eligible for the)) Can I get WorkFirst career services ((program))?

(a) To ((qualify for the program)) get career services, you must:

(i) Enroll with the employment security department within the first two calendar months after your TANF/SFA

ends or within the first two calendar months after you received your first diversion cash assistance (DCA) payment.

((b) You must also meet the following conditions:

((i) You are)) (ii) Be working thirty hours or more per week in a paid unsubsidized job; and

((ii) You are)) (iii) Be a custodial parent or caretaker relative who received TANF/SFA or DCA within at least one of the past two calendar months; and

((iii) You did not leave)) (iv) Not have left TANF/SFA in sanction status.

((e)) (b) Each adult in your family who meets these conditions and enrolls in the program will receive their own basic needs payments and services.

(3) What services and basic needs payments are available while I am enrolled in the WorkFirst career services program?

The WorkFirst career services program provides wage progression services, job retention services and basic needs payments.

(a) Services include employment planning that will help you keep your job and increase your wages.

(b) As shown in the chart below, cash payments and bonuses are made monthly, for up to six consecutive months after leaving TANF/SFA or receiving DCA.

(c) You may receive up to six hundred fifty dollars in cash payments and bonuses over the six-month period following your TANF/SFA case closing or getting your first DCA payment.

Table with 3 columns: Eligible Month, Payments & Bonus Amounts, Description of Payments and Bonuses. Rows include Month 1-6 After TANF/SFA or DCA, Month 1 or 2, and Month 4 and 6.

(4) How long can I receive WorkFirst career services and basic needs payments?

(a) WorkFirst career services and basic needs payments are available for a maximum of six consecutive months. Month one begins the calendar month after your TANF/SFA assistance ends or the calendar month after you receive your first DCA payment.

(b) Your WorkFirst career services ((and basic needs)) payments will stop ((when)) for any of the following reasons:

- (i) We learn you are no longer working thirty hours a week in unsubsidized employment; ~~((or))~~
- (ii) You begin receiving TANF/SFA assistance ~~((again))~~; ~~((or))~~
- (iii) We do not have your current mailing address; ~~((or))~~
- (iv) You are not living in Washington; or
- (v) It has been more than six months since your initial DCA payment or since you stopped receiving TANF/SFA.

(5) What happens if the employment security department learns I am no longer working thirty hours or more per week?

- (a) The employment security department will provide you with a letter ~~((giving you))~~ with at least ten days advance notice that your WorkFirst career services will close. ~~((This means that))~~ Your WorkFirst career services basic needs payments will stop at the end of the month in which your ten days notice expires. The letter will tell you how to request an administrative hearing if you disagree with the decision.
- (b) If you find a new job or increase your hours back up to thirty hours before the end of the month, you will remain eligible for career services payments.
- (c) Employment security staff can help you find new employment or work with you to increase your hours of employment.

(6) What happens if I am approved for TANF/SFA assistance while I am receiving WorkFirst career services?

If you start receiving TANF/SFA assistance, the employment security department will provide you with a letter and close your WorkFirst career services case at the end of the month. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(7) What happens if I request an administrative hearing?

- (a) You have the right to request an administrative hearing if you disagree with a decision or action regarding the WorkFirst career services Program. For more information, see chapter 388-02 WAC and RCW 74.08.080.
- (b) If you receive continued benefits, they will still end when you reach your benefit maximum as outlined under (3)(c) regardless of any other pending administrative hearing.

WSR 08-16-105
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed August 5, 2008, 9:42 a.m., effective September 5, 2008]

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

Purpose: This change will amend WAC 388-478-0020 and 388-478-0035 to bring the cash payment standards and the maximum earned income limits into compliance with ESHB 2687, section 207 (1)(e) requiring a 3% increase in the payment standards for temporary assistance for needy families (TANF), state family assistance (SFA) and refugee cash assistance (RCA).

Citation of Existing Rules Affected by this Order:
 Amending WAC 388-478-0020 and 388-478-0035.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055.

Other Authority: ESHB 2687, section 207 (1)(e).

Adopted under notice filed as WSR 08-13-045 on June 12, 2008.

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

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

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

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

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

Date Adopted: August 1, 2008.

Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-478-0020 Payment standards for TANF, SFA, ~~((GA-S, GA-H))~~ and RCA. (1) The payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), ~~((general assistance for pregnant women (GA-S), general assistance for children (GA-H)))~~ and refugee cash assistance (RCA) assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
1	\$(349) <u>359</u>	6	\$(841) <u>866</u>
2	((440)) <u>453</u>	7	((971)) <u>1,000</u>
3	((546)) <u>562</u>	8	((1,075)) <u>1,107</u>
4	((642)) <u>661</u>	9	((1,180)) <u>1,215</u>
5	((740)) <u>762</u>	10 or more	((1,283)) <u>1,321</u>

(2) The payment standards for TANF, SFA, ~~((GA-S, GA-H))~~ and RCA assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
1	\$(212) <u>218</u>	6	\$(511) <u>526</u>

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
2	((268)) <u>276</u>	7	((591)) <u>608</u>
3	((332)) <u>341</u>	8	((654)) <u>673</u>
4	((391)) <u>402</u>	9	((718)) <u>739</u>
5	((451)) <u>464</u>	10 or more	((780)) <u>803</u>

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-478-0035 Maximum earned income limits for TANF, ~~(and)~~ SFA and RCA. To be eligible for temporary assistance for needy families (TANF), ~~(or)~~ state family assistance (SFA), or refugee cash assistance (RCA), a family's gross earned income must be below the following levels:

Number of Family Members	Maximum Earned Income Level	Number of Family Members	Maximum Earned Income Level
1	\$ ((698)) <u>718</u>	6	\$ ((1,682)) <u>1,732</u>
2	((880)) <u>906</u>	7	((1,942)) <u>2,000</u>
3	((1,092)) <u>1,124</u>	8	((2,150)) <u>2,214</u>
4	((1,284)) <u>1,322</u>	9	((2,360)) <u>2,430</u>
5	((1,480)) <u>1,524</u>	10 or more	((2,566)) <u>2,642</u>

WSR 08-16-109

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 08-05—Filed August 5, 2008, 10:34 a.m., effective September 5, 2008]

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

Purpose: Increase fees for all wastewater and storm water permit holders by 5.57% for fiscal year 2009 (state fiscal growth factor) and 5.39% for fiscal year 2010 (state fiscal growth factor if authorized by the legislature); increase the maximum extreme hardship fee reduction by 5.57% for fiscal year 2009 and 5.39% for fiscal year 2010; define seafood processing; and add language to allow for the proration of fees to permit issuance and termination dates for aquatic pest control permits.

Citation of Existing Rules Affected by this Order: Amending chapter 173-224 WAC, Wastewater discharge permit fees.

Statutory Authority for Adoption: Chapter 90.48 RCW, Water pollution control.

Adopted under notice filed as WSR 08-12-066 on June 3, 2008.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: August 5, 2008.

Jay J. Manning
Director

AMENDATORY SECTION (Amending WSR 04-15-046, filed 7/13/04, effective 8/13/04)

WAC 173-224-030 Definitions. "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

"Aggregate production" means the mining or quarrying of sand, gravel, or rock, or the production of concrete, or asphalt or a combination thereof.

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type	Number of Animals per Animal Unit
Dairy Cows	
Jersey Breed	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
Other Breeds	
Milking Cow	1.400
Dry Cow	1.000
Heifer	0.800
Calf	0.500
Feedlot Beef	0.877
Horses	0.500
Sheep	0.100
Swine for breeding	0.375

Animal Type	Number of Animals per Animal Unit
Swine for slaughter	0.110
Laying hens & pullets > 3 months	0.004
Broilers & pullets < 3 months	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the crop preparing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 CFR 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents will be considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for the hoisting and lifting of ship hulls.

"Crop preparing" means the preparation of fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"cu. yds/yr" means the total production from an aggregate production facility in cubic yards during the most recent completed calendar year.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any ground water infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

"Existing operations" means those industrial operations requiring a wastewater discharge permit before July 1, 1993.

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal byproducts, excluding crop preparing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

"Gross revenue for business" means the gross income from Washington business activities as reported to the Washington state department of revenue.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial storm water" means an operation required to be covered under ecology's NPDES and state waste discharge baseline general permit for storm water discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for storm water only.

"MGD" means permitted flow expressed in million gallons per day.

"Manufacturing" means the making of goods and articles by hand or especially, by machinery into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means the preparation of metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or

finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means the manufacturing of semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating aggregate site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that has no current mining or processing, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a nonoperating site. This definition can be found in ecology's *National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations*.

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70.105 and 70.105D RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals (fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means the activity of receiving sewage deposited into and carried off by a system of sewers, drains,

and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW 98.48.260.

"Storm water" means an industrial operation or construction activity discharging storm water runoff as defined in 40 CFR 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means the washing, packing, and shipping of fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

AMENDATORY SECTION (Amending Order 05-17, filed 5/30/06, effective 6/30/06)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is being modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) 2009 ANNUAL PERMIT FEE	FY ((2008)) 2010 ANNUAL PERMIT FEE ((AND BEYOND))*
Aluminum Alloys	\$((15,007.00)) <u>16,713.00</u>	\$((15,831.00)) <u>17,614.00</u>
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	((88,496.00)) <u>98,554.00</u>	((93,354.00)) <u>103,866.00</u>
b. State Permit	((44,250.00)) <u>49,279.00</u>	((46,679.00)) <u>51,935.00</u>
Aluminum Forming	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Aggregate Production - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	((2,582.00)) <u>2,876.00</u>	((2,724.00)) <u>3,031.00</u>
2. Nonoperating aggregate site (fee per site)	((106.00)) <u>118.00</u>	((112.00)) <u>124.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	((1,076.00)) <u>1,198.00</u>	((1,135.00)) <u>1,263.00</u>
2. 50,000 - < 300,000 tons/yr.	((2,583.00)) <u>2,877.00</u>	((2,725.00)) <u>3,032.00</u>
3. 300,000 tons/yr. and greater	((3,231.00)) <u>3,598.00</u>	((3,408.00)) <u>3,792.00</u>
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	((1,076.00)) <u>1,198.00</u>	((1,135.00)) <u>1,263.00</u>
2. 25,000 - < 200,000 cu. yds/yr.	((2,583.00)) <u>2,877.00</u>	((2,725.00)) <u>3,032.00</u>
3. 200,000 cu. yds/yr. and greater	((3,231.00)) <u>3,598.00</u>	((3,408.00)) <u>3,792.00</u>

The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND BEYOND))*
d.	Portable Operations		
1.	Rock Crushing	((2,582.00)) <u>2,876.00</u>	((2,724.00)) <u>3,031.00</u>
2.	Asphalt	((2,582.00)) <u>2,876.00</u>	((2,724.00)) <u>3,031.00</u>
3.	Concrete	((2,582.00)) <u>2,876.00</u>	((2,724.00)) <u>3,031.00</u>
Aggregate Production - General Permit Coverage			
a.	Mining Activities		
1.	Mining, screening, washing and/or crushing	((1,807.00)) <u>2,012.00</u>	((1,906.00)) <u>2,120.00</u>
2.	Nonoperating aggregate site (fee per site)	((75.00)) <u>83.00</u>	((79.00)) <u>87.00</u>
b.	Asphalt Production		
1.	0 - < 50,000 tons/yr.	((755.00)) <u>840.00</u>	((796.00)) <u>885.00</u>
2.	50,000 - < 300,000 tons/yr.	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
3.	300,000 tons/yr. and greater	((2,260.00)) <u>2,517.00</u>	((2,384.00)) <u>2,653.00</u>
c.	Concrete Production		
1.	0 - < 25,000 cu. yds/yr.	((755.00)) <u>840.00</u>	((796.00)) <u>885.00</u>
2.	25,000 - < 200,000 cu. yds/yr.	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
3.	200,000 cu. yds/yr. and greater	((2,260.00)) <u>2,517.00</u>	((2,384.00)) <u>2,653.00</u>
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.			
d.	Portable Operations		
1.	Rock Crushing	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
2.	Asphalt	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
3.	Concrete	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
Aquaculture			
a.	Finfish hatching and rearing - Individual Permit	((4,501.00)) <u>5,012.00</u>	((4,748.00)) <u>5,282.00</u>
b.	Finfish hatching and rearing - General Permit Coverage	((3,153.00)) <u>3,511.00</u>	((3,326.00)) <u>3,700.00</u>
c.	Shellfish hatching	((155.00)) <u>173.00</u>	((164.00)) <u>182.00</u>
Aquatic Pest Control			
a.	Irrigation Districts	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
b.	Mosquito Control Districts	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND BEYOND))*
c. Invasive Moth Control	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
d. Aquatic Species Control & Eradication	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
e. Oyster Growers	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
f. Rotenone Control	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
Boat Yards - Individual Permit Coverage		
a. With storm water only discharge	((384.00)) <u>428.00</u>	((405.00)) <u>451.00</u>
b. All others	((769.00)) <u>856.00</u>	((811.00)) <u>902.00</u>
Boat Yards - General Permit Coverage		
a. With storm water only discharge	((268.00)) <u>298.00</u>	((282.00)) <u>314.00</u>
b. All others	((540.00)) <u>602.00</u>	((570.00)) <u>634.00</u>
Coal Mining and Preparation		
a. < 200,000 tons per year	((5,999.00)) <u>6,680.00</u>	((6,328.00)) <u>7,040.00</u>
b. 200,000 - < 500,000 tons per year	((13,507.00)) <u>15,042.00</u>	((14,248.00)) <u>15,853.00</u>
c. 500,000 - < 1,000,000 tons per year	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
d. 1,000,000 tons per year and greater	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Combined Industrial Waste Treatment		
a. < 10,000 gpd	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b. 10,000 - < 50,000 gpd	((7,501.00)) <u>8,354.00</u>	((7,913.00)) <u>8,804.00</u>
c. 50,000 - < 100,000 gpd	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
d. 100,000 - < 500,000 gpd	((30,012.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
e. 500,000 gpd and greater	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Combined Food Processing Waste Treatment Facilities	((14,367.00)) <u>16,000.00</u>	((15,156.00)) <u>16,862.00</u>
Combined Sewer Overflow System		
a. < 50 acres	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b. 50 - < 100 acres	((7,501.00)) <u>8,354.00</u>	((7,913.00)) <u>8,804.00</u>
c. 100 - < 500 acres	((9,007.00)) <u>10,030.00</u>	((9,501.00)) <u>10,571.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND BEYOND))*
d. 500 acres and greater	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
Commercial Laundry	((384.00)) <u>428.00</u>	((405.00)) <u>451.00</u>
Concentrated Animal Feeding Operation		
a. < 200 Animal Units	((154.00)) <u>171.00</u>	((162.00)) <u>180.00</u>
b. 200 - < 400 Animal Units	((384.00)) <u>428.00</u>	((405.00)) <u>451.00</u>
c. 400 - < 600 Animal Units	((769.00)) <u>856.00</u>	((811.00)) <u>902.00</u>
d. 600 - < 800 Animal Units	((1,153.00)) <u>1,284.00</u>	((1,216.00)) <u>1,353.00</u>
e. 800 Animal Units and greater	((1,539.00)) <u>1,714.00</u>	((1,624.00)) <u>1,806.00</u>
Crop Preparing - Individual Permit Coverage		
a. 0 - < 1,000 bins/yr.	((299.00)) <u>333.00</u>	((315.00)) <u>351.00</u>
b. 1,000 - < 5,000 bins/yr.	((601.00)) <u>669.00</u>	((634.00)) <u>705.00</u>
c. 5,000 - < 10,000 bins/yr.	((1,200.00)) <u>1,337.00</u>	((1,266.00)) <u>1,409.00</u>
d. 10,000 - < 15,000 bins/yr.	((2,403.00)) <u>2,676.00</u>	((2,535.00)) <u>2,820.00</u>
e. 15,000 - < 20,000 bins/yr.	((3,974.00)) <u>4,425.00</u>	((4,192.00)) <u>4,664.00</u>
f. 20,000 - < 25,000 bins/yr.	((5,552.00)) <u>6,183.00</u>	((5,857.00)) <u>6,516.00</u>
g. 25,000 - < 50,000 bins/yr.	((7,427.00)) <u>8,271.00</u>	((7,835.00)) <u>8,717.00</u>
h. 50,000 - < 75,000 bins/yr.	((8,254.00)) <u>9,192.00</u>	((8,707.00)) <u>9,687.00</u>
i. 75,000 - < 100,000 bins/yr.	((9,603.00)) <u>10,694.00</u>	((10,130.00)) <u>11,270.00</u>
j. 100,000 - < 125,000 bins/yr.	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
k. 125,000 - < 150,000 bins/yr.	((15,006.00)) <u>16,712.00</u>	((15,830.00)) <u>17,613.00</u>
l. 150,000 bins/yr. and greater	((18,008.00)) <u>20,055.00</u>	((18,997.00)) <u>21,136.00</u>
Crop Preparing - General Permit Coverage		
a. 0 - < 1,000 bins/yr.	((209.00)) <u>232.00</u>	((220.00)) <u>245.00</u>
b. 1,000 - < 5,000 bins/yr.	((420.00)) <u>468.00</u>	((443.00)) <u>493.00</u>
c. 5,000 - < 10,000 bins/yr.	((842.00)) <u>937.00</u>	((888.00)) <u>988.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE (<u>AND BEYOND</u>)*
d.	10,000 - < 15,000 bins/yr.	((1,682.00)) <u>1,873.00</u>	((1,774.00)) <u>1,974.00</u>
e.	15,000 - < 20,000 bins/yr.	((2,783.00)) <u>3,100.00</u>	((2,936.00)) <u>3,267.00</u>
f.	20,000 - < 25,000 bins/yr.	((3,887.00)) <u>4,328.00</u>	((4,100.00)) <u>4,561.00</u>
g.	25,000 - < 50,000 bins/yr.	((5,198.00)) <u>5,788.00</u>	((5,483.00)) <u>6,100.00</u>
h.	50,000 - < 75,000 bins/yr.	((5,777.00)) <u>6,433.00</u>	((6,094.00)) <u>6,780.00</u>
i.	75,000 - < 100,000 bins/yr.	((6,717.00)) <u>7,481.00</u>	((7,086.00)) <u>7,884.00</u>
j.	100,000 - < 125,000 bins/yr.	((8,405.00)) <u>9,360.00</u>	((8,866.00)) <u>9,865.00</u>
k.	125,000 - < 150,000 bins/yr.	((10,504.00)) <u>11,698.00</u>	((11,081.00)) <u>12,329.00</u>
l.	150,000 bins/yr. and greater	((12,604.00)) <u>14,037.00</u>	((13,296.00)) <u>14,794.00</u>
Dairies \$.50 per Animal Unit not to exceed \$ ((1,077.00)) <u>1,199.00</u> for FY ((2007)) <u>2009</u> and \$ ((1,136.00)) <u>1,264.00</u> for FY ((2008 and beyond)) <u>2010</u>			
Facilities Not Otherwise Classified - Individual Permit Coverage			
a.	< 1,000 gpd	((1,501.00)) <u>1,671.00</u>	((1,583.00)) <u>1,761.00</u>
b.	1,000 - < 10,000 gpd	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
c.	10,000 - < 50,000 gpd	((7,502.00)) <u>8,355.00</u>	((7,914.00)) <u>8,805.00</u>
d.	50,000 - < 100,000 gpd	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
e.	100,000 - < 500,000 gpd	((23,890.00)) <u>26,606.00</u>	((25,202.00)) <u>28,040.00</u>
f.	500,000 - < 1,000,000 gpd	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
g.	1,000,000 gpd and greater	((45,019.00)) <u>50,135.00</u>	((47,490.00)) <u>52,837.00</u>
Facilities Not Otherwise Classified - General Permit Coverage			
a.	< 1,000 gpd	((1,052.00)) <u>1,172.00</u>	((1,110.00)) <u>1,235.00</u>
b.	1,000 - < 10,000 gpd	((2,177.00)) <u>2,425.00</u>	((2,297.00)) <u>2,556.00</u>
c.	10,000 - < 50,000 gpd	((5,254.00)) <u>5,851.00</u>	((5,542.00)) <u>6,166.00</u>
d.	50,000 - < 100,000 gpd	((8,405.00)) <u>9,360.00</u>	((8,866.00)) <u>9,865.00</u>
e.	100,000 - < 500,000 gpd	((16,805.00)) <u>18,715.00</u>	((17,728.00)) <u>19,724.00</u>
f.	500,000 - < 1,000,000 gpd	((21,007.00)) <u>23,394.00</u>	((22,160.00)) <u>24,655.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) 2009 ANNUAL PERMIT FEE	FY ((2008)) 2010 ANNUAL PERMIT FEE ((AND BEYOND))*
g.	1,000,000 gpd and greater	((31,513.00)) <u>35,095.00</u>	((33,243.00)) <u>36,987.00</u>
Flavor Extraction			
a.	Steam Distillation	((154.00)) <u>171.00</u>	((162.00)) <u>180.00</u>
Food Processing			
a.	< 1,000 gpd	((1,500.00)) <u>1,670.00</u>	((1,582.00)) <u>1,760.00</u>
b.	1,000 - < 10,000 gpd	((3,824.00)) <u>4,259.00</u>	((4,034.00)) <u>4,489.00</u>
c.	10,000 - < 50,000 gpd	((6,828.00)) <u>7,604.00</u>	((7,203.00)) <u>8,014.00</u>
d.	50,000 - < 100,000 gpd	((10,729.00)) <u>11,948.00</u>	((11,318.00)) <u>12,592.00</u>
e.	100,000 - < 250,000 gpd	((15,007.00)) <u>16,712.00</u>	((15,830.00)) <u>17,613.00</u>
f.	250,000 - < 500,000 gpd	((19,734.00)) <u>21,977.00</u>	((20,817.00)) <u>23,162.00</u>
g.	500,000 - < 750,000 gpd	((24,758.00)) <u>27,572.00</u>	((26,117.00)) <u>29,058.00</u>
h.	750,000 - < 1,000,000 gpd	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
i.	1,000,000 - < 2,500,000 gpd	((36,974.00)) <u>41,175.00</u>	((39,003.00)) <u>43,394.00</u>
j.	2,500,000 - < 5,000,000 gpd	((41,266.00)) <u>45,957.00</u>	((43,532.00)) <u>48,434.00</u>
k.	5,000,000 gpd and greater	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Fuel and Chemical Storage			
a.	< 50,000 bbls	((1,501.00)) <u>1,671.00</u>	((1,583.00)) <u>1,761.00</u>
b.	50,000 - < 100,000 bbls	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
c.	100,000 - < 500,000 bbls	((7,501.00)) <u>8,354.00</u>	((7,913.00)) <u>8,804.00</u>
d.	500,000 bbls and greater	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
Hazardous Waste Clean Up Sites			
a.	Leaking Underground Storage Tanks (LUST)		
1.	State Permit	((3,936.00)) <u>4,383.00</u>	((4,152.00)) <u>4,619.00</u>
2.	NPDES Permit Issued pre 7/1/94	((3,936.00)) <u>4,383.00</u>	((4,152.00)) <u>4,619.00</u>
3.	NPDES Permit Issued post 7/1/94	((7,871.00)) <u>8,765.00</u>	((8,303.00)) <u>9,237.00</u>
b.	Non-LUST Sites		
1.	1 or 2 Contaminants of concern	((7,696.00)) <u>8,570.00</u>	((8,118.00)) <u>9,032.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND BEYOND))*
2. > 2 Contaminants of concern	((15,391.00)) <u>17,140.00</u>	((16,236.00)) <u>18,064.00</u>
Ink Formulation and Printing		
a. Commercial Print Shops	((2,308.00)) <u>2,571.00</u>	((2,435.00)) <u>2,710.00</u>
b. Newspapers	((3,849.00)) <u>4,286.00</u>	((4,060.00)) <u>4,517.00</u>
c. Box Plants	((6,156.00)) <u>6,856.00</u>	((6,494.00)) <u>7,226.00</u>
d. Ink Formulation	((7,696.00)) <u>8,571.00</u>	((8,119.00)) <u>9,033.00</u>
Inorganic Chemicals Manufacturing		
a. Lime Products	((7,501.00)) <u>8,354.00</u>	((7,913.00)) <u>8,804.00</u>
b. Fertilizer	((9,031.00)) <u>10,058.00</u>	((9,527.00)) <u>10,600.00</u>
c. Peroxide	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
d. Alkaline Earth Salts	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
e. Metal Salts	((21,006.00)) <u>23,393.00</u>	((22,159.00)) <u>24,654.00</u>
f. Acid Manufacturing	((30,006.00)) <u>33,416.00</u>	((31,653.00)) <u>35,217.00</u>
g. Chlor-alkali	((60,024.00)) <u>66,846.00</u>	((63,319.00)) <u>70,449.00</u>
Iron and Steel		
a. Foundries	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
b. Mills	((30,039.00)) <u>33,453.00</u>	((31,688.00)) <u>35,256.00</u>
Metal Finishing		
a. < 1,000 gpd	((1,799.00)) <u>2,004.00</u>	((1,898.00)) <u>2,112.00</u>
b. 1,000 - < 10,000 gpd	((3,000.00)) <u>3,341.00</u>	((3,165.00)) <u>3,521.00</u>
c. 10,000 - < 50,000 gpd	((7,500.00)) <u>8,353.00</u>	((7,912.00)) <u>8,803.00</u>
d. 50,000 - < 100,000 gpd	((15,006.00)) <u>16,712.00</u>	((15,830.00)) <u>17,613.00</u>
e. 100,000 - < 500,000 gpd	((30,010.00)) <u>33,420.00</u>	((31,657.00)) <u>35,221.00</u>
f. 500,000 gpd and greater	((45,017.00)) <u>50,133.00</u>	((47,488.00)) <u>52,835.00</u>
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	((939.00)) <u>1,046.00</u>	((991.00)) <u>1,102.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND BEYOND))*
b.	1,000 - < 10,000 gpd	((1,310.00)) <u>1,459.00</u>	((1,382.00)) <u>1,538.00</u>
c.	10,000 - < 50,000 gpd	((2,816.00)) <u>3,136.00</u>	((2,971.00)) <u>3,305.00</u>
d.	50,000 - < 100,000 gpd	((6,567.00)) <u>7,314.00</u>	((6,928.00)) <u>7,708.00</u>
e.	100,000 - < 500,000 gpd	((11,252.00)) <u>12,531.00</u>	((11,870.00)) <u>13,206.00</u>
f.	500,000 - < 1,000,000 gpd	((15,946.00)) <u>17,758.00</u>	((16,821.00)) <u>18,715.00</u>
g.	1,000,000 - < 2,500,000 gpd	((20,636.00)) <u>22,982.00</u>	((21,769.00)) <u>24,221.00</u>
h.	2,500,000 - < 5,000,000 gpd	((25,216.00)) <u>28,082.00</u>	((26,600.00)) <u>29,596.00</u>
i.	5,000,000 gpd and greater	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
Noncontact Cooling Water With Additives - General Permit Coverage			
a.	< 1,000 gpd	((657.00)) <u>733.00</u>	((694.00)) <u>773.00</u>
b.	1,000 - < 10,000 gpd	((1,312.00)) <u>1,461.00</u>	((1,384.00)) <u>1,540.00</u>
c.	10,000 - < 50,000 gpd	((1,971.00)) <u>2,195.00</u>	((2,079.00)) <u>2,313.00</u>
d.	50,000 - < 100,000 gpd	((4,598.00)) <u>5,120.00</u>	((4,850.00)) <u>5,396.00</u>
e.	100,000 - < 500,000 gpd	((7,878.00)) <u>8,773.00</u>	((8,310.00)) <u>9,246.00</u>
f.	500,000 - < 1,000,000 gpd	((11,163.00)) <u>12,432.00</u>	((11,776.00)) <u>13,102.00</u>
g.	1,000,000 - < 2,500,000 gpd	((14,444.00)) <u>16,086.00</u>	((15,237.00)) <u>16,953.00</u>
h.	2,500,000 - < 5,000,000 gpd	((17,725.00)) <u>19,739.00</u>	((18,698.00)) <u>20,803.00</u>
i.	5,000,000 gpd and greater	((21,007.00)) <u>23,394.00</u>	((22,160.00)) <u>24,655.00</u>
Noncontact Cooling Water Without Additives - Individual Permit Coverage			
a.	< 1,000 gpd	((753.00)) <u>838.00</u>	((794.00)) <u>883.00</u>
b.	1,000 - < 10,000 gpd	((1,501.00)) <u>1,671.00</u>	((1,583.00)) <u>1,761.00</u>
c.	10,000 - < 50,000 gpd	((2,253.00)) <u>2,509.00</u>	((2,377.00)) <u>2,644.00</u>
d.	50,000 - < 100,000 gpd	((5,254.00)) <u>5,851.00</u>	((5,542.00)) <u>6,166.00</u>
e.	100,000 - < 500,000 gpd	((9,006.00)) <u>10,030.00</u>	((9,501.00)) <u>10,571.00</u>
f.	500,000 - < 1,000,000 gpd	((12,754.00)) <u>14,203.00</u>	((13,454.00)) <u>14,969.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND BEYOND))*
g.	1,000,000 - < 2,500,000 gpd	((16,442.00)) <u>18,310.00</u>	((17,344.00)) <u>19,297.00</u>
h.	2,500,000 - < 5,000,000 gpd	((20,257.00)) <u>22,559.00</u>	((21,369.00)) <u>23,775.00</u>
i.	5,000,000 gpd and greater	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
Noncontact Cooling Water Without Additives - General Permit Coverage			
a.	< 1,000 gpd	((526.00)) <u>586.00</u>	((555.00)) <u>618.00</u>
b.	1,000 - < 10,000 gpd	((1,052.00)) <u>1,172.00</u>	((1,110.00)) <u>1,235.00</u>
c.	10,000 - < 50,000 gpd	((1,577.00)) <u>1,757.00</u>	((1,664.00)) <u>1,852.00</u>
d.	50,000 - < 100,000 gpd	((3,677.00)) <u>4,095.00</u>	((3,879.00)) <u>4,316.00</u>
e.	100,000 - < 500,000 gpd	((6,303.00)) <u>7,019.00</u>	((6,649.00)) <u>7,397.00</u>
f.	500,000 - < 1,000,000 gpd	((8,929.00)) <u>9,944.00</u>	((9,419.00)) <u>10,480.00</u>
g.	1,000,000 - < 2,500,000 gpd	((11,555.00)) <u>12,868.00</u>	((12,189.00)) <u>13,562.00</u>
h.	2,500,000 - < 5,000,000 gpd	((14,181.00)) <u>15,793.00</u>	((14,960.00)) <u>16,644.00</u>
i.	5,000,000 gpd and greater	((16,805.00)) <u>18,715.00</u>	((17,728.00)) <u>19,724.00</u>
Nonferrous Metals Forming		((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
Ore Mining			
a.	Ore Mining	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b.	Ore mining with physical concentration processes	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
c.	Ore mining with physical and chemical concentration processes	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
Organic Chemicals Manufacturing			
a.	Fertilizer	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
b.	Aliphatic	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
c.	Aromatic	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Petroleum Refining			
a.	< 10,000 bbls/d	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
b.	10,000 - < 50,000 bbls/d	((59,503.00)) <u>66,266.00</u>	((62,770.00)) <u>69,838.00</u>
c.	50,000 bbls/d and greater	((120,054.00)) <u>133,699.00</u>	((126,645.00)) <u>140,905.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND BEYOND))*
Photofinishers		
a. < 1,000 gpd	((1,200.00)) <u>1,337.00</u>	((1,266.00)) <u>1,409.00</u>
b. 1,000 gpd and greater	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	((5,999.00)) <u>6,680.00</u>	((6,328.00)) <u>7,040.00</u>
b. Hydroelectric	((5,999.00)) <u>6,680.00</u>	((6,328.00)) <u>7,040.00</u>
c. Nonfossil Fuel	((9,005.00)) <u>10,028.00</u>	((9,499.00)) <u>10,569.00</u>
d. Fossil Fuel	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
Pulp, Paper and Paper Board		
a. Fiber Recyclers	((15,005.00)) <u>16,711.00</u>	((15,829.00)) <u>17,612.00</u>
b. Paper Mills	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
c. Groundwood Pulp Mills		
1. < 300 tons per day	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
2. > 300 tons per day	((90,037.00)) <u>100,270.00</u>	((94,980.00)) <u>105,675.00</u>
d. Chemical Pulp Mills w/o Chlorine Bleaching	((120,047.00)) <u>133,692.00</u>	((126,638.00)) <u>140,898.00</u>
e. Chemical Pulp Mills w/Chlorine Bleaching	((135,051.00)) <u>150,400.00</u>	((142,465.00)) <u>158,507.00</u>
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	((29,028.00)) <u>32,332.00</u>	((30,626.00)) <u>34,075.00</u>
b. 3 - < 8 waste streams	((50,417.00)) <u>56,147.00</u>	((53,185.00)) <u>59,173.00</u>
c. 8 waste streams and greater	((83,040.00)) <u>92,478.00</u>	((87,599.00)) <u>97,463.00</u>
RCRA Corrective Action Sites	((21,093.00)) <u>23,490.00</u>	((22,251.00)) <u>24,756.00</u>
Seafood Processing		
a. < 1,000 gpd	((1,501.00)) <u>1,671.00</u>	((1,583.00)) <u>1,761.00</u>
b. 1,000 - < 10,000 gpd	((3,824.00)) <u>4,259.00</u>	((4,034.00)) <u>4,489.00</u>
c. 10,000 - < 50,000 gpd	((6,828.00)) <u>7,604.00</u>	((7,203.00)) <u>8,014.00</u>
d. 50,000 - < 100,000 gpd	((10,729.00)) <u>11,948.00</u>	((11,318.00)) <u>12,592.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND BEYOND))*
e. 100,000 gpd and greater	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
Shipyards		
a. Per crane, travel lift, small boat lift	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,552.00</u>
b. Per drydock under 250 ft in length	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,552.00</u>
c. Per graving dock	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,552.00</u>
d. Per marine way	((4,501.00)) <u>5,012.00</u>	((4,748.00)) <u>5,282.00</u>
e. Per sycrolift	((4,501.00)) <u>5,012.00</u>	((4,748.00)) <u>5,282.00</u>
f. Per drydock over 250 ft in length	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
g. In-water vessel maintenance	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstorm water)		
a. Nonputrescible	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
b. < 50 acres	((12,003.00)) <u>13,367.00</u>	((12,662.00)) <u>14,087.00</u>
c. 50 - < 100 acres	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
d. 100 - < 250 acres	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
e. 250 acres and greater	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Textile Mills	((60,024.00)) <u>66,846.00</u>	((63,319.00)) <u>70,449.00</u>
Timber Products		
a. Log Storage	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b. Veneer	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
c. Sawmills	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
d. Hardwood, Plywood	((21,006.00)) <u>23,393.00</u>	((22,159.00)) <u>24,654.00</u>
e. Wood Preserving	((28,819.00)) <u>32,094.00</u>	((30,401.00)) <u>33,824.00</u>
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	((98.00)) <u>110.00</u>	((104.00)) <u>116.00</u>
b. 1,000 - < 5,000 gpd	((201.00)) <u>224.00</u>	((212.00)) <u>236.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) 2009 ANNUAL PERMIT FEE	FY ((2008)) 2010 ANNUAL PERMIT FEE ((AND BEYOND))*
c.	5,000 - < 10,000 gpd	((395.00)) 440.00	((417.00)) 464.00
d.	10,000 - < 20,000 gpd	((796.00)) 887.00	((840.00)) 935.00
e.	20,000 and greater	((1,315.00)) 1,464.00	((1,387.00)) 1,543.00
Vehicle Maintenance and Freight Transfer			
a.	< 0.5 acre	((3,001.00)) 3,342.00	((3,166.00)) 3,522.00
b.	0.5 - < 1.0 acre	((6,000.00)) 6,682.00	((6,329.00)) 7,042.00
c.	1.0 acre and greater	((9,005.00)) 10,028.00	((9,499.00)) 10,569.00
Water Plants - Individual Permit Coverage			
		((3,753.00)) 4,180.00	((3,959.00)) 4,405.00
Water Plants - General Permit Coverage			
		((2,627.00)) 2,925.00	((2,771.00)) 3,083.00
Wineries			
a.	< 500 gpd	((306.00)) 341.00	((323.00)) 359.00
b.	500 - < 750 gpd	((614.00)) 684.00	((648.00)) 721.00
c.	750 - < 1,000 gpd	((1,228.00)) 1,367.00	((1,295.00)) 1,441.00
d.	1,000 - < 2,500 gpd	((2,455.00)) 2,734.00	((2,590.00)) 2,881.00
e.	2,500 - < 5,000 gpd	((3,917.00)) 4,362.00	((4,132.00)) 4,597.00
f.	5,000 gpd and greater	((5,376.00)) 5,987.00	((5,671.00)) 6,310.00

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(a) Facilities other than those in the aggregate production, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Crop preparation and aggregate production permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. When required, the department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will

result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized general partner;

(C) In the case of a general partnership, by an authorized partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for crop preparers discharging only noncontact cooling water without additives shall pay the lesser of the

applicable fee in the crop preparing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating aggregate operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode must be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee ((and Beyond))*
< 250,000	\$1.80	\$1.80
> 250,000	((1-12)) 1.25	((1-18)) 1.32

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the state fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

- (i) Holds more than one permit for domestic wastewater facilities; and
- (ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility.

Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

- (i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and
- (ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee ((and Beyond))*
.1 MGD and Greater	\$(7,501.00) 8,354.00	\$(7,913.00) 8,804.00
.05 MGD to < .1 MGD	((3,001.00)) 3,342.00	((3,166.00)) 3,522.00
.0008 MGD to < .05 MGD	((1,501.00)) 1,671.00	((1,583.00)) 1,761.00
< .0008 MGD	((452.00)) 504.00	((477.00)) 531.00

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately-owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor;

or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORM WATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

5.	20 acres and greater of disturbed area	\$((1,447.00))	\$((1,526.00))
		<u>1,611.00</u>	<u>1,698.00</u>

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal storm water permit annual fee for the entities listed below will be:

Name of Entity	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee ((and Beyond))*
King County	\$((34,182.00)) <u>38,067.00</u>	\$((36,059.00)) <u>40,119.00</u>
Snohomish County	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Pierce County	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Tacoma, City of	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Seattle, City of	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Washington Department of Transportation	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Clark County	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(b) Municipal storm water general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, will be determined in the following manner: For fiscal year ((2007)) 2009, ecology will charge \$((1.00)) 1.11 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$((-50)) .53 per housing unit inside the geographic area covered by the permit. ((For fiscal year 2008)) If, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor, ecology will charge \$((1.05)) 1.17 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$((-53)) .56 per housing unit inside the geographic area covered by the permit. Fees will not exceed \$((34,182.00)) 38,067.00 for fiscal year ((2007)) 2009 and \$((36,059.00)) 40,119.00 for fiscal year ((2008 and beyond)) 2010. If ecology's request for the FY 2010 fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended. The minimum annual fee will not be lower than \$((1,500.00)) 1,584.00 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee

totaling \$((-50)) .53 per housing unit for fiscal year 2009. The fee amount for FY 2010 will be \$.56 per housing unit if, and only if, the state legislature approves ecology's request to increase fees by the fiscal growth factor. If ecology's request for a FY 2010 fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended.

(c) Other entities required to have permit coverage under a municipal storm water general permit will pay an annual fee ((beginning in fiscal year 2007. The annual fee shall be)) based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee ((and Beyond))*
Less than \$100,000	\$((100.00)) <u>111.00</u>	\$((105.00)) <u>117.00</u>
\$100,000 -< \$1,000,000	\$((400.00)) <u>446.00</u>	\$((422.00)) <u>470.00</u>
\$1,000,000 -< \$5,000,000	\$((1,000.00)) <u>1,114.00</u>	\$((1,055.00)) <u>1,174.00</u>
\$5,000,000 -< \$10,000,000	\$((1,500.00)) <u>1,670.00</u>	\$((1,582.00)) <u>1,760.00</u>
\$10,000,000 and greater	\$((2,500.00)) <u>2,784.00</u>	\$((2,637.00)) <u>2,934.00</u>

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

- (i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.
 - (ii) For ports, the annual operating budget for the port district.
 - (iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.
 - (iv) For state agencies, the annual operating budget for the site or sites subject to the permit.
 - (v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.
- (d) Municipal storm water permits written specifically for a single entity, such as a single city, county, or agency,

issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal storm water general permit as determined in (c) of this subsection, the fiscal year ~~((2007))~~ 2009 annual fee for a permit written for a specific entity shall be \$~~((7,500))~~ 7,918.00. ~~((For fiscal year 2008 and beyond))~~ If, and only if, the state legislature approves ecology's request to increase fees in FY 2010, the annual fee will be \$((7,912)) 8,345.00. However, if a fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended.

(e) Ecology will assess a single permit fee for entities which apply only as co-permittees or co-applicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the co-permittees had applied separately.

AMENDATORY SECTION (Amending WSR 04-15-046, filed 7/13/04, effective 8/13/04)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the year to which they apply. The department shall notify permit holders of fee charges by mailing billing statements. Permit fees must be received by the department within forty-five days after the department mails a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation for individual permits. Computation of permit fees shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the issuance date of the permit ~~((excluding permits issued for aquatic pest control. Permits issued for aquatic pest control fee category shall pay the full annual fee assessment regardless of when permit coverage is granted))~~. In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon acceptance of the application by the department. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the permit has been terminated by the department. Permits terminated during the fiscal year will have their fees prorated(~~(~~

~~excluding permits issued for aquatic pest control,))~~ as follows unless it results in an annual fee assessment of less than one hundred dollars. ~~((Aquatic pest control permits issued during the fiscal year shall pay the full annual fee assessment regardless of when the permit termination is granted.))~~ Ecology will not process refunds of one hundred dollars or less:

(a) Permit coverage for up to three months will pay twenty-five percent of the annual permit fee;

(b) Permit coverage for three to six months will pay fifty percent of the annual permit fee;

(c) Permit coverage for six to nine months will pay seventy-five percent of the annual permit fee; and

(d) Permit coverage for nine months or greater will pay one hundred percent of the annual permit fee.

(3) Permit fee computation for general permits. Computation of fees for permittees covered under a general permit ~~((excluding those general permits issued for aquatic pest control,))~~ begins on the permit coverage date. ~~((Permits issued for aquatic pest control will pay the full annual fee assessment regardless of when the permit coverage begins.))~~ Any facility that obtains permit coverage is obligated to pay the annual permit fee regardless of whether or not the facility has ever operated until the permit has been terminated by the department. Permits terminated during the fiscal year excluding permits issued for aquatic pest control will have their fees prorated as described in subsection (2)(a), (b), (c), (d) of this section unless it results in an annual fee assessment of less than one hundred dollars. ~~((Aquatic pest control permits issued during the fiscal year shall pay the annual fee assessment for that fiscal year regardless of when the permit termination is granted.))~~ Ecology will not process refunds of one hundred dollars or less.

(4) Permit fees for sand and gravel (aggregate) general permit holders will be assessed as in subsection (3) of this section and:

(a) Nonoperating aggregate sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production will be assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees will be based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, will be based on the average of the three previous calendar years production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous three calendar years or for the number of full calendar years of operation if less than three. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste

Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(d) Asphalt portable batch plants, concrete portable batch plants and portable rock crushing operations will be assessed fees as in subsection (3) of this section. Each permitted operation must commit to being shut down for a minimum of twelve calendar months before the status can be changed to nonoperating.

(5) Fees for crop preparation general permit holders will be assessed as in subsection (3) of this section and will be computed on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(d). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(6) Facilities with construction and industrial storm water general permit coverage will have their annual permit fees begin on the permit issuance date. Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

(7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction storm water general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

(8) Computation of fees shall end on the last day of the state's fiscal year, or in the case of a terminated permit, during the quarter the termination took place.

(9) The applicable permit fee shall be paid by check or money order payable to the "Department of Ecology" and mailed to the Wastewater Discharge Permit Fee Program, P.O. Box ((5128)) 47611, ((Laeeey)) Olympia, Washington ((98509-5128)) 98504-7611.

(10) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

(11) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the

delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days will be turned over for collection. In addition, a surcharge totaling twenty percent of the delinquent amount owed will also be added. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

AMENDATORY SECTION (Amending WSR 04-15-046, filed 7/13/04, effective 8/13/04)

WAC 173-224-090 Small business fee reduction.

Except as noted in subsection (6) of this section, a small business required to pay a permit fee under an industrial facility category may receive a reduction of its permit fee.

(1) To qualify for the fee reduction, a business must:

(a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge permit; and

(d) Pay an annual wastewater discharge permit fee greater than five hundred dollars.

(2) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions of subsection (1) of this section have been met. The application shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

(3) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(4) The permit fee for small businesses determined to be eligible under subsection (1) of this section shall be reduced to fifty percent of the assessed annual permit fee.

(5) If the annual gross revenue of the goods and services produced using the processes regulated by the waste discharge permit is one hundred thousand dollars or less, and the annual permit fee assessed imposes an extreme hardship to the business, the small business may request an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below ~~((one hundred dollars))~~ \$106.00 for fiscal year 2009 and \$112.00 for fiscal year 2010.

(6) Facilities covered under the industrial storm water general permit are not eligible for a small business fee reduction under this section.

AMENDATORY SECTION (Amending Order 93-08, filed 4/28/94, effective 5/29/94)

WAC 173-224-100 Administrative appeals to the department. Any person aggrieved by a determination made under this chapter by the department may file a written appeal to the department no later than each fiscal year's first billing due date for payment of fees. Such appeal shall state the reasons that the aggrieved person believes that the department's determination is contrary to the requirements of RCW 90.48.465, and specific actions that he/she is requesting that are consistent with those requirements. The department shall either issue a revised determination or a statement upholding the original determination. A revised determination shall be consistent with the requirements of RCW 90.48.465. Any person feeling aggrieved by the administrative appeals decision made by the department regarding their permit fee may obtain review thereof by filing an appeal with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903, within thirty days of receipt of the department's decision. In addition, a copy of the appeal must be served on the Department of Ecology, Attention: Water Quality Program Permit Fee Unit, P.O. Box ((47696)) 47600, Olympia, Washington 98504-7696, within thirty days of receipt. These procedures are consistent with the provisions of chapter 43.21B RCW and the rules and regulations adopted thereunder.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-224-120 Past due payments.

WSR 08-16-121

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 5, 2008, 4:05 p.m., effective September 5, 2008]

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

Purpose: 2SSB 5467, as amended by the house (chapter 283, Laws of 2007), directs the department to create the individual and family services program for persons with developmental disabilities. These proposed rules combine the previous three family support programs into one comprehensive program and include the algorithm to determine the individual and family service levels and award amount. When effective, these rules replace the emergency rules filed as WSR 08-14-014 and 08-15-115. See Reviser's note below.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Other Authority: 2SSB 5467 (chapter 283, Laws of 2007).

Adopted under notice filed as WSR 08-11-095 on May 20, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 107, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 107, Amended 0, Repealed 0.

Date Adopted: July 30, 2008.

Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-18 issue of the Register.

WSR 08-16-122

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 5, 2008, 4:07 p.m., effective September 5, 2008]

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

Purpose: The department is amending these rules to clarify who will be notified of decisions made by the division of developmental disabilities (DDD) and to specify that both notices and correspondence will be sent to the appropriate parties.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-100, 388-825-101, and 388-825-102.

Statutory Authority for Adoption: RCW 71.10.060, 71A.12.030.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 08-13-077 on June 16, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-825-100 (3)(b) has been modified to indicate that a relative may receive notices even if that relative is an employee of DDD, a contractor with DDD or an employee of a contractor with DDD. Subsection (3)(b) now reads:

"A person identified by you to receive these notices in addition to yourself if you do not have a guardian or legal representative. Unless the person identified by you is a relative of yours, he or she cannot be an employee of DDD, a contractor with DDD or an employee of a contractor with DDD."

The changes were made because many relatives of persons with developmental disabilities also provide services to the person. The exclusion of relatives to receive notices was an oversight and has been corrected.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: July 23, 2008.

Katherine Iyall Vasquez, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-15-093, filed 7/16/04, effective 8/16/04)

WAC 388-825-100 How will I be notified of (~~department~~) decisions made by DDD? (1) Whenever possible, DDD will notify all parties affected by the decision by phone or in person.

(2) If you are under the age of eighteen, written notifications will be mailed to:

(a) You; and ((at least one other person in the following priority:

~~(a))~~ (b) Your parent ((if you are under the age of eighteen)); or

~~((b))~~ (c) Your guardian or other legal representative((;

~~(e) Other relatives;~~

(d) An advocacy agency such as Washington Protection and Advocacy System;

~~(e) A person who is not an employee of the department or to a person who contracts with the department)).~~

(3) If you are ((an adult and do not have a legal guardian, the department will ask you to identify someone else)) age eighteen or older, written notifications will be mailed to you and:

(a) Your guardian or other legal representative; or

(b) A person identified by you to receive these notices in addition to yourself if you do not have a guardian or legal representative. Unless the person identified by you is a relative of yours, he or she cannot be an employee of DDD, a contractor with DDD or an employee of a contractor with DDD.

AMENDATORY SECTION (Amending WSR 04-15-093, filed 7/16/04, effective 8/16/04)

WAC 388-825-101 Why does ((the department)) DDD need to send my notices and correspondence to someone else? ((The department)) DDD sends your notices

and correspondence to someone else((, if needed,)) to ((have others)) assist you to understand the information and your appeal rights to department decisions.

AMENDATORY SECTION (Amending WSR 04-15-093, filed 7/16/04, effective 8/16/04)

WAC 388-825-102 What if I do not want my DDD notices and correspondence sent to anyone else? (1) If you are ~~((an adult))~~ age eighteen or older and do not have a legal guardian, you may request in writing that your DDD notices and correspondence be given only to you.

(2) ~~((The department))~~ DDD will review your request and comply with your request unless it determines there to be a risk of your losing rights.

(3) You ~~((will be given))~~ have the right to appeal ((rights to)) a denial of this request.