

WSR 20-04-011
PERMANENT RULES
GAMBLING COMMISSION

[Filed January 24, 2020, 8:51 a.m., effective February 24, 2020]

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

Purpose: The gambling commission recently adopted rules to allow credit unions to obtain a license to conduct raffles. This change clarifies the base license fee, the gross gambling receipt rate, and the maximum annual license fee for raffle - credit union licenses.

Citation of Rules Affected by this Order: Amending WAC 230-05-160 Charitable or nonprofit organization fees.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 19-23-074 on November 18, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 23, 2020.

Ashlie Laydon
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-160 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees:

(1) Annual licenses:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Amusement games	\$65 plus \$65 per approved location	0.730%	\$1,000
Bingo	\$65	0.460%	\$11,000
Card games - House-banked	\$10,000	1.462%	\$40,000
Card games - Nonhouse-banked	\$65	0.430%	\$1,000
Combination	\$125	-	-
Fund-raising equipment distributor	\$270	1.430%	\$700
Punch board/pull-tabs	\$650	1.430%	\$10,000
Raffles	\$65	3.380%	\$2,000
<u>Raffle - Credit Union</u>	<u>\$65</u>	<u>3.380%</u>	<u>\$2,000</u>
Enhanced raffles	\$5,000	0.430%	\$32,000

(2) Event licenses or permits:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Fund-raising event	\$180	3.130%	\$1,000
Recreational gaming activity	\$65	-	-
Special property bingo/change of bingo premises	\$30	-	-

(3) Change fees:

Change of:	Fee
Name	\$100

Change of:	Fee
Location	\$100

Change of:	Fee
Fund-raising event location, date, or time	\$50

(4) Other fees:

Transaction	Fee
Add a new amusement game location	\$65
Duplicate license	\$50
Review, inspection, and/or evaluation of gambling equipment, supplies, services, games, or schemes	Deposit and cost reimbursement

**WSR 20-04-012
PERMANENT RULES
GAMBLING COMMISSION**

[Filed January 24, 2020, 8:53 a.m., effective February 24, 2020]

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

Purpose: The repeal of WAC 230-01-001 Time and place of public meetings, will allow the gambling commission more flexibility when scheduling their public meetings. Other amendments were needed to provide more accurate information to the public.

Citation of Rules Affected by this Order: Repealing WAC 230-01-001 Time and place of public meetings; and amending WAC 230-01-005 Address and hours of administrative offices, 230-01-010 Field offices and operations, and 230-01-011 Deadlines for submitting items to be included in the commission meeting agenda.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 19-23-086 on November 19, 2019.

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 the Request of a Non-governmental 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 1.

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: January 23, 2020.

Ashlie Laydon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-15-062, filed 7/16/07, effective 1/1/08)

WAC 230-01-005 Address and hours of administrative offices. (1) Our administrative office is located in Lacey, Washington.

Mailing Address	((Location)) Physical Address
Washington State Gambling Commission P.O. Box 42400 Olympia, WA 98504-2400	Washington State Gambling Commission 4565 7th Avenue S.E. Lacey, WA 98503

(2) Normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

(3) ~~((Services available are:~~

- ~~(a) Administration;~~
- ~~(b) Information;~~
- ~~(c) Licensing;~~
- ~~(d) Investigation;~~
- ~~(e) Activity report processing; and~~
- ~~(f) Public records.~~

~~(4) Address))~~ Send applications for licenses, required license materials, or requests for notices, information, or other inquiries to our mailing address. Send overnight mail and/or packages to our physical address.

AMENDATORY SECTION (Amending WSR 16-03-068, filed 1/19/16, effective 2/19/16)

WAC 230-01-010 Field offices and operations. Direct regulatory and operational questions to our field offices, located at:

City	Telephone Number
Eastern Region Office ((North)) 901 <u>North</u> Monroe ((Room)), Suite 240 Spokane, WA 99201	509-325-7900
((451 Southwest 10th Street Plaza 451 Building Suite 218 Renton, WA 98057	425-277-7014))

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-01-011 Deadlines for submitting items to be included in the commission meeting agenda. (1) To ensure that the public and the commissioners have sufficient notice of agenda items, we require that items for the commission's monthly meeting agenda be submitted in the format we require and delivered to our administrative office at least fourteen days before the regularly scheduled commission meeting.

(2) Any items submitted after the time frame set forth in subsection (1) of this section must be approved by the commissioners in order to be included on the commission meeting agenda.

(3) We publish the meeting agenda on our website (~~and with the code reviser's office as explained in WAC 230-01-010~~).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-01-001 Time and place of public meetings.

WSR 20-04-016
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 24, 2020, 2:49 p.m., effective February 24, 2020]

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

Purpose: The department is amending WAC 458-18-010, 458-18-020, and 458-18-100 to incorporate 2019 legislation, ESSB 5160, sections (4) - (8). This legislation amended the qualification requirements for the property tax deferral program under chapter 84.38 RCW.

Citation of Rules Affected by this Order: Amending WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions, 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 19-23-072 on November 18, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: January 24, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-08-031, filed 3/27/13, effective 4/27/13)

WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions. (1) Introduction. This ~~(section is intended to)~~ rule provides definitions of the terms ~~(most frequently)~~ used to administer the deferral pro-

gram in chapter 84.38 RCW and this section through WAC 458-18-100 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))~~

(2) "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))~~ (3) "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))~~ their 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))~~ individual per household ~~((is allowed))~~ may file a declaration to defer.

~~((3))~~ (4) "Cooperative housing" means any existing structure, including surrounding land and improvements, ~~((that))~~ which 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))~~ (5) "Department" means the state department of revenue.

~~((5))~~ (6) "Devisee" has the same meaning as provided in RCW 21.35.005: Any person designated in a will to receive a disposition of real or personal property.

(7) "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, 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))~~ (8) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, 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))~~ (9) "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))~~ (10) "Fire and casualty insurance" means a policy with an insurer that is authorized by the state insurance commission to insure property in this state.

~~((9))~~ (11) "Heir" has the same meaning as provided in RCW 21.35.005: Any person, including the surviving spouse,

who is entitled under the statutes of intestate succession to the property of a decedent.

(12) "Income threshold" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to forty-five thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of the income threshold for the previous year, or seventy-five percent of the county median household income, adjusted every five years beginning August 1, 2019, and by March 1st every fifth year thereafter, as provided in RCW 84.36.385.

(i) Beginning with the adjustment made by March 1, 2024, and every second adjustment thereafter, if the income threshold in a county is not adjusted based on percentage of county median income, then the income threshold must be adjusted based on the growth of the consumer price index for all urban consumers (CPI-U) for the prior twelve-month period as published by the United States Bureau of Labor Statistics.

(ii) In no case may the adjustment be greater than one percent and if the income threshold adjustment is negative, the income threshold for the prior year continues to apply. The adjusted threshold must be rounded to the nearest one dollar.

(13) "Irrevocable trust" means a trust that may not be revoked after its creation by the trustor.

((14)) (14) "Lease for life" means a lease that terminates upon the death of the lessee.

((15)) (15) "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 balances owed to local governments for special assessments.

((16)) (16) "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."

((17)) (17) "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.

((18)) (18) "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.

((19)) (19) "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.

((20)) (20) "Residence" ~~((has the same meaning given in RCW 84.36.383; it means))~~ is defined as:

(a) 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)).~~ Residence also 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 ~~((~~

~~((17)))~~; or

(b) A single-family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality of the United States, including an Indian tribe, or in the state of Washington.

(21) "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))~~ their 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.

~~((18))~~ (22) "Rooming house" means a residence where persons may rent rooms.

~~((19))~~ (23) "Special assessment" means the charge or obligation imposed by a local government upon real property specially benefited by improvements.

AMENDATORY SECTION (Amending WSR 16-06-043, filed 2/24/16, effective 3/26/16)

WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral. (1) Introduction. This rule describes the qualifications a person (claimant) must meet to qualify for a deferral of special assessments and/or real property taxes on residential housing.

(2) Qualifications for deferral. A ~~((person))~~ claimant may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of ~~((his))~~ their equity value in ~~((said property))~~ their residence if the following conditions are met:

~~((1))~~ (a) Ownership. 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))~~ rule, a residence owned by a marital community, a state registered domestic partnership, or cotenants ~~((shall))~~ will 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))~~ (b) Fire and casualty insurance. If the amount deferred ~~((is to))~~ will 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))~~ on the policy. ~~((In no case shall))~~ The deferred amount may not exceed the amount of the insured value of the improvement plus the land value.

~~((3))~~ ~~In the case of~~ (c) Installment method. For special assessment deferrals, the claimant must have opted for payment of ~~((such))~~ the special assessments on the installment method if ~~((such))~~ that 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, at or below the statutory limit amount provided in RCW 84.38.030.~~ (d) Income. The claimant must have a combined disposable income, as defined in RCW 84.36.383, equal to or less than the income threshold defined in RCW 84.38.020.

(e) Age. The claimant must be sixty years of age or older on December 31st of the year in which the deferral claim is filed, or must have been at the time of filing, retired from regular gainful employment by reason of disability as defined in RCW 84.36.383. However, any surviving spouse, surviving domestic partner, heir, or devisee of a person who was receiving a deferral at the time of the person's death qualifies if the surviving spouse, surviving domestic partner, heir, or devisee is fifty-seven years of age or older and meets the requirements of the deferral.

(f) Other requirements. The claimant must meet all requirements for an exemption for a residence under RCW 84.36.381, other than the age and 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.

AMENDATORY SECTION (Amending WSR 08-16-077, filed 7/31/08, effective 8/31/08)

WAC 458-18-100 Deferral of special assessments and/or property taxes—When payable—Collection—Partial payment. (1) ~~(Any)~~ Introduction. This rule explains the circumstances under which amounts deferred under chapter 84.38 RCW become payable.

(2) Deferral. Special assessments and/or real property taxes deferred ~~(shall)~~ become payable together with interest upon the following:

(a) ~~(Upon the)~~ Conveyance of the property ~~(which)~~ that has a deferred special assessment and/or real property tax lien ~~(upon)~~ against it.

(b) ~~(Upon the)~~ Death of the claimant except when the surviving spouse ~~(or)~~, surviving domestic partner, heir, or devisee 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)~~ If a surviving spouse ~~(or)~~, surviving domestic partner, heir, or devisee elect(s) to continue the deferment, ~~(the spouse or domestic partner then becomes)~~ they become the claimant and ~~(is)~~ will be fully subject to the conditions of WAC 458-18-010 through 458-18-100.

(c) ~~(Upon)~~ Condemnation of the property with a deferred special assessment and/or real property tax lien ~~(upon)~~ against it by a public or private body exercising the power of eminent domain~~(s)~~, provided~~(, That)~~;

(i) 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)~~; and

(ii) The amount of the lien allowed to be set over ~~(shall)~~ may not exceed eighty percent of the claimant's equity in the retained property.

(d) ~~(At such time as the)~~ Claimant ~~(ceases)~~ ceasing to reside permanently in the residence ~~(upon)~~ on which the deferral ~~(has been)~~ was granted. If the cessation occurs between filing the declaration and ~~(the date the taxes are payable)~~ December 15th of that year, the deferral ~~(shall)~~ will not be allowed. This disallowance does not apply if the claimant dies, leaving a spouse, domestic partner, heir, or devisee surviving, who is eligible for this deferral.

(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)~~ on the policy. Subsection ~~((+))~~ (2)(b) of this ~~(section shall)~~ rule takes precedence over subsection ~~((+))~~ (2)(d) of this ~~(section)~~ rule.

~~((2))~~ (3) Other deferrals. Once a deferral has been granted, the ~~(various)~~ conditions ~~(contained within)~~ in WAC 458-18-010 through 458-18-100 may prohibit the claimant from qualifying for further deferrals~~(, but any obligations resulting)~~.

(4) Payment of deferral. Amounts owing from deferrals previously granted will become due and payable ~~(only upon occurrence of)~~ when any of the conditions ~~(set forth)~~ in subsection ~~((+))~~ (2) of this ~~(section)~~ rule occurs.

~~((3) Upon occurrence of)~~ When any of the conditions requiring the payment of ~~(any)~~ deferred special assessments and/or real property taxes occur, the county treasurer ~~(shall proceed to)~~ will collect ~~(the same in the manner)~~ these amounts as provided ~~(for)~~ in chapter 84.56 RCW. For purposes of ~~(collection of)~~ collecting the deferred taxes and interest, the provisions of chapters 84.56, 84.60, and 84.64 RCW ~~(shall be applicable. When these moneys are)~~ apply. Once collected, ~~(they shall be)~~ these amounts are credited to a special account in the county treasury and ~~(shall then)~~ will be remitted to the state treasurer within thirty days from collection with remittance advice to the department ~~(of revenue)~~. The state treasurer ~~(shall)~~ will deposit the ~~(moneys in)~~ deferred taxes and interest into the state general fund.

~~((4) Any person may at any time pay a part or)~~ Payment of all or part of the deferred assessments and/or taxes, including the interest, ~~(but such payment shall)~~ does not affect the deferred tax status of the property. ~~(Any)~~ Payments made ~~(shall)~~ will be credited to the oldest deferred amount and ~~(shall)~~ will be prorated between interest and the deferred assessments and/or taxes.

WSR 20-04-017

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 24, 2020, 2:57 p.m., effective February 24, 2020]

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

Purpose: The department is amending WAC 458-16A-100, 458-16A-110, 458-16A-115, 458-16A-120, 458-16A-130, 458-16A-135, and 458-16A-150 to incorporate 2019 legislation, ESSB 5160, sections (1), (2), and (3). This legis-

lation amended the qualification requirements for the property tax exemption under chapter 84.36 RCW for senior citizens, disabled persons, and disabled veterans.

Citation of Rules Affected by this Order: Amending WAC 458-16A-100 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Definitions, 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, 458-16A-130 Senior citizen, disabled person, and disabled veteran exemption—Qualifications for exemption, 458-16A-135 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Application procedures, and 458-16A-150 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Requirements for keeping the exemption.

Statutory Authority for Adoption: RCW 84.36.865.

Adopted under notice filed as WSR 19-23-093 on November 20, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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: January 24, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-04-007, filed 1/25/18, effective 2/25/18)

WAC 458-16A-100 Senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption—Definitions. (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran property tax exemption ~~((from property taxes. The definitions apply to the senior citizen, disabled person, and one hundred percent disabled veteran exemption contained in sections RCW 84.36.381 through 84.36.389 unless the context clearly requires otherwise))~~ described in RCW 84.36.381 through 84.36.389.

(2) **Annuity.** "Annuity" means a series of long-term periodic payments, under a contract or agreement. It does not include payments for the care of dependent children. For pur-

poses of this subsection, "long-term" means a period of more than one full year from the annuity starting date.

Annuity distributions must be included in "disposable income," as that term is defined in subsection ~~((12))~~ (13) of this ~~((section,))~~ rule, regardless of whether ~~((or not they))~~ the distributions are taxable under federal law. A one-time, lump sum, total distribution is not an "annuity" for purposes of this ~~((section))~~ rule, and only the taxable portion that would be included in federal adjusted gross income should be included in disposable income.

(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))~~ are due and payable. ~~((# is always))~~ The assessment year is the year before the claimant receives ~~((a))~~ the reduction in ~~((his or her))~~ their property taxes because of the senior citizen, 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, 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 occupying the residence for the assessment year, 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;
- (c) Nursing home, boarding home, assisted living facility, 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) **County median household income.** "County median household income" means the median household

income estimates for the state of Washington by county of the legal address of the principal place of residence, as published by the office of financial management.

~~(9)~~ **Department.** "Department" means the state department of revenue.

~~((9))~~ **(10) 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))~~ **(11) 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))~~ **(12) Disabled veteran.** "Disabled veteran" means a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

(a) A combined service-connected evaluation rating of eighty percent or higher; or

(b) A total disability rating for a service-connected disability without regard to evaluation percent. ~~((RCW 84.36.381(3).))~~

~~(12))~~ **(13) 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 a service-connected disability; and

(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 ~~((-))~~;

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

~~((13))~~ **(14) Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, 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.

~~((14))~~ **(15) Domestic partnership.** "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, 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))~~ **(16) Excess levies.** "Excess levies" has the same meaning as provided in WAC 458-19-005 for "excess property tax levy."

~~((16))~~ **(17) 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 purposes 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.

~~((17))~~ **(18) 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.

~~((18))~~ **(19) 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))~~ their own home, but ~~((shall))~~ does not include improvements or repair of the home itself.

~~((19))~~ (20) Income threshold 1. "Income threshold 1" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to thirty thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 1 for the previous year or forty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(21) Income threshold 2. "Income threshold 2" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to thirty-five thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 2 for the previous year or fifty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(22) Income threshold 3. "Income threshold 3" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to forty thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 3 for the previous year or sixty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(23) Lease for life. "Lease for life" means a lease that terminates upon the ~~((demise))~~ death of the lessee.

~~((20))~~ (24) 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.

~~((21))~~ (25) 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))~~ themselves the beneficial interest directly in ~~((his or her))~~ their principal residence, or the part of the trust containing ~~((his or her))~~ their personal residence, for at least the period of ~~((his or her))~~ their 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))~~ their 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.

~~((22))~~ (26) 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.

~~((23))~~ (27) 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:))~~ For example, a person qualifying for the exemption by virtue of age, disability, or ~~((one hundred percent))~~ disabled veteran status ~~((cannot))~~ may not claim this 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-~~

(24)) in that separate estate.

(28) Pension. "Pension" generally means an arrangement providing 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. Pension distributions may be triggered by separation from service, attainment of a specific age, disability, death, or other events. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

~~((25))~~ (29) Principal residence. "Principal residence" means the claimant owns and occupies the residence as ~~((his or her))~~ their 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))~~ nine months each calendar year.

(b) Confinement of the claimant to a hospital ~~((or)),~~ nursing home, assisted living facility, adult family home, or home of a relative for the purpose of long-term care, 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, hospital, boarding home, or adult family home costs.

~~((26))~~ (c) For purposes of this subsection, "relative" means any individual related to the claimant by blood, marriage, or adoption.

~~(30)~~ **Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

~~((27))~~ **(31) Regular property tax levies.** "Regular property tax levies" has the same meaning as provided in WAC 458-19-005 for "regular property tax levy."

~~((28))~~ **(32) Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen, disabled person, and ~~(one hundred percent)~~ disabled veteran exemption and replaces the prior residence of the person receiving the exemption.

~~((29))~~ **(33) Residence.** "Residence" means a single-family dwelling unit whether ~~((such))~~ the unit ~~((be))~~ 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))~~. A residence also 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))~~ the structure in which ~~((he or she))~~ they reside~~((s))~~.

(b) A single-family dwelling situated ~~((upon))~~ on leased lands and ~~((upon))~~ on 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))~~ on land owned or rented by the owner of ~~((said))~~ the 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 ~~((at))~~ the mobile home is located if both the land and mobile home are owned by the same qualified claimant ~~((and it))~~. It also 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.

~~((30))~~ **(34) Veteran.** "Veteran" means a veteran of the armed forces of the United States.

~~((31))~~ **(35) 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.

AMENDATORY SECTION (Amending WSR 08-16-078, filed 7/31/08, effective 8/31/08)

WAC 458-16A-110 Senior citizen, 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 purposes and provides guidance to assessors on how to calculate and verify gross income. ~~((In order))~~ To meet the income requirements for the senior citizen, disabled person, and

~~(one hundred percent)~~ disabled veteran exemption ~~((program))~~, the claimant must provide supporting documents verifying combined disposable income as defined in WAC 458-16A-100. 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.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

(a) **Federal 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, and may request verification of, the disposable income for each person based ~~((upon))~~ on that person's federal income tax return and the other information supplied by the claimant.

(b) **No federal income tax return.** ~~((When))~~ If the claimant does not present federal income tax returns, the assessor must determine what constitutes gross income ~~((for the non-filer))~~ and obtain copies of income documents to determine ~~((that person's))~~, and possibly verify, the claimant, the claimant's spouse or domestic partner, and any cotenant's gross income. ~~((This rule provides the assessor with some guidance in determining the gross income for a nonfiler.~~

~~((e))~~ **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 by the assessor to determine the gross 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))~~ they should receive a W-2 form from the employer reporting those wages. ~~((This))~~ The W-2 form should have ~~((already))~~ excluded the described contributions or payments provided for the employee's benefits ~~((in the above list))~~. If there is a question ~~((arises about))~~ on whether ~~((or not))~~ an employer adjusted the employee's gross income for these ~~((exclusions))~~ employee benefits, the claimant should contact their employer and have the employer provide the ~~((county with a correct or corrected))~~ assessor with an accurate 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))~~ on 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))~~ as 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))~~. Generally, when an individual's principal residence is damaged or destroyed by fire, storm, or other casualty, or ~~((who))~~ the individual is denied access to ~~((his))~~ their 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))~~ the individual under ~~((an))~~ the insurance contract which ~~((are))~~ is paid to compensate or reimburse ~~((such))~~ the individual for living expenses incurred for ~~((himself))~~ themselves and members of ~~((his))~~ their household

resulting from the loss of use or occupancy of ~~((such))~~ the 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))~~ they have received payments from the government or had improvements made to ~~((his or her))~~ their 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 ~~((:))~~ and 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 08-16-078, filed 7/31/08, effective 8/31/08)

WAC 458-16A-115 Senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption—Adjusted gross income. (1) **Introduction.** This rule ~~((explains how an))~~ provides guidance to the assessor on how to determine ~~((s))~~ and verify 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, 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) **Federal 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 and may verify, the disposable income for each person based ~~((upon))~~ on that person's federal income tax return and other information supplied by the claimant.

(b) **No federal income tax return.** ~~((When))~~ If the claimant does not present federal income tax return(s), the assessor must determine what constitutes the adjusted gross income and the ~~((adjusted gross))~~ disposable income of the

~~((nonfiler and))~~ claimant, the claimant's spouse or domestic partner, and any cotenants. The assessor obtains copies of income documents to determine ~~((that person's))~~ and verify ~~the claimant, the claimant's spouse or domestic partner, and any cotenant'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))~~ Any claimant, a claimant's spouse(;) or 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) **Certain 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;))~~

~~(i) **Teachers.** An elementary or secondary school teacher may deduct from their gross income, up to two hundred fifty dollars of unreimbursed amounts that ~~((the teacher pays))~~ they pay for educational materials and equipment used in ~~((the teacher's))~~ their classroom. A teacher may take this deduction on a Form 1040 or a 1040A.~~

~~(ii) **Performing artists.** 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 expense(;) incurred for ~~((that))~~ their 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))~~~~

~~(iii) **State and local government officials.** A state or local government official paid on a fee basis may deduct from gross income any unreimbursed trade or business expense incurred for their 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 "FBO."

~~(iv) **No federal income tax return.** Any claimant, a claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income tax return, but claims to have unreimbursed expenses for this deduction, ~~((should))~~ must 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))~~ employee status and documentation of the unreimbursed ~~((educational materials and equipment or trade or business amounts spent))~~ expenses incurred as an employee for ~~((his or her))~~ their 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))~~ exemption, 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))~~ any claimant, the claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income 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))~~ Any claimant, a claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income tax return, but claims to have expenses from rental property or licensed property, should provide documentation of these expenses to the assessor.

(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))~~ they have a life estate or when the property is owned by a trust or estate, if ~~((he or she has))~~ they have 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))~~ Any claimant, a claimant's spouse(;) or domestic partner, or cotenant with a beneficial interest in business property owned by a trust or estate ~~((would show))~~ will document 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))~~ any claimant, a claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income 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))~~ Any self-employed claimant, the claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income tax return, but claims this deduction, should provide to the assessor documentation of the contributions made to a qualified plan by ~~((his or her))~~ their business.

(g) **Self-employed health insurance deduction.** As part of ~~((his or her))~~ their 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))~~ their health insurance. This deduction is claimed on the Form 1040 federal income tax return. ~~((A))~~ Any self-employed claimant, the claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income tax return, but claims this deduction, should provide to the assessor documentation of the payments made for ~~((his or her))~~ their health insurance by ~~((his or her))~~ their business. The assessor may request that the claimant ~~((to))~~ submit a copy of the deduction worksheet provided in the instructions for Form 1040 to calculate this deduction, regardless of whether ~~((or not))~~ the self-employed person filed a federal income tax return.

(h) **One-half of self-employment tax.** As part of ~~((his or her))~~ their 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 federal income tax 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 and 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))~~ Any claimant, a claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income tax return, but claims to have made qualifying contributions to an IRA, should provide documentation of these contributions to the assessor. 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, regardless of whether ~~((or not))~~ the person filed a federal income 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))~~ exemption, losses may not be deducted from gross income. Any deduction taken on this line must be added to adjusted gross income. An assessor may refuse documentation ~~((about))~~ regarding these penalties from ~~((a))~~ any claimant, a claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income 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 federal income tax return, but made alimony payments, should provide copies of documentation showing the 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))~~ the 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))~~ any claimant, a claimant's spouse(;) or domestic partner, or cotenant ~~((that))~~ who does not file a federal income tax return as these amortized costs are depreciation expenses. These expenses ~~((would))~~ will be added ~~((onto))~~ to adjusted gross income for purposes of this ~~((program))~~ exemption 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 tax return in one of two ways. If the repayment is made in the same year the benefits are received, the ~~((taxpayer))~~ claimant reduces the total unemployment compensation reported on the tax return by the amount of repayment. If the repayment is made in a ~~((later))~~ subsequent year, the ~~((taxpayer))~~ claimant deducts the repayment on the dotted line before the final line for determining adjusted gross income on the tax return and identifies it as "Sub-Pay TRA." A person that does not file a federal income tax return, but claims to have repaid supplemental unemployment compensation, should provide documentation of these repayments to the assessor.

(n) **Jury duty pay given to employer.** An employee may deduct from gross income jury duty pay given to ~~((his or her))~~ their employer. ~~((An))~~ The 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 federal income tax return, but claims to have given jury pay received during the year to their employer, should provide documentation ~~((of))~~ to the assessor for 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, the claimant's spouse(~~(s)~~) or domestic partner, ~~((or))~~ and any cotenant had to move a significant distance for a job or business, ~~((he or she))~~ they may deduct from gross income ~~((the))~~, in years prior to 2018, unreimbursed moving ~~((costs))~~ expenses. This deduction is claimed on the Form 1040 federal income tax return. If ~~((the))~~ any claimant, the claimant's spouse(~~(s)~~) or domestic partner, or cotenant does not file a federal income tax return, the claimant should provide documentation of the distance moved, the reason for the move, and the moving expenses. The assessor may request a copy of Form 3903, Moving Expenses, and the distance test worksheet on that form to ~~((prove))~~ show the amount of the person's adjusted gross income, regardless of whether ~~((or not))~~ the claimant, the claimant's spouse(~~(s)~~) or 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))~~ and claimed on the Form 1040 federal income tax return. If the person does not file a federal income tax return, but claims to have made a qualifying contribution to an Archer MSA, the claimant should provide copies of documentation to the assessor 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, and Archer MSAs and Long Term Care Insurance Contracts, regardless of whether ~~((or not))~~ the claimant, the claimant's spouse(~~(s)~~) or 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))~~ their student loan(s) ~~((during the first sixty months of the loan repayment period))~~. The deduction may not be claimed by a ~~((taxpayer))~~ person claimed as a dependent, a ~~((taxpayer))~~ person filing as married filing separately, or when the ~~((taxpayer))~~ individual has an adjusted gross income ~~((amount over fifty five thousand dollars (seventy five thousand dollars if married filing jointly). This))~~ over the limits established by the Internal Revenue Service. The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a federal income tax return, but claims to have paid student

loan interest, should provide copies of documentation to the assessor 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))~~ A person may deduct from gross income, some or all amounts they paid 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)))~~ for themselves, their spouse, or their dependent. The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a federal income tax return, but claims to have paid higher education expenses, should provide the assessor with copies of documentation of ~~((that person's))~~ their 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).))~~ See Internal Revenue Code, section 222.

AMENDATORY SECTION (Amending WSR 13-12-047, filed 5/31/13, effective 7/1/13)

WAC 458-16A-120 Senior citizen, 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.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

(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 returns are not provided, 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~~) If the federal income tax returns are provided, ~~((the))~~ adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even ~~((when))~~ if a federal income tax 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))~~ their spouse's or domestic partner's ~~((whereabouts))~~ location 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 on behalf of the spouse or domestic partner, the 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))~~ the exemption application:

(i) The claimant's spouse or domestic partner ~~((has been))~~ was absent;

(ii) The claimant has not and does not know the ~~((whereabouts of the claimant's))~~ location of their spouse or domestic partner;

(iii) The claimant has not had any communication with ~~((the claimant's))~~ their spouse or domestic partner; and

(iv) The claimant has not received anything of value from ~~((the claimant's))~~ their spouse or domestic partner or anyone acting on behalf of ~~((the claimant's))~~ their spouse or domestic partner.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime ~~((in))~~ within the next six 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))~~ the adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts ~~((that))~~ which 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))~~ excluded capital gains from the sale of a principal residence are generally not reported on the federal income tax return, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in a 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 if 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))~~ on the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned ~~((upon))~~ on 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))~~ to 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 cotenants own state or local government bonds. If the federal income tax 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 1099-INT, the bond issuer should be able to ~~((tell the owner))~~ determine whether the interest is taxable. The bond issuer should also ~~((give))~~ provide the owner with a periodic, ~~((f))~~ or year-end ~~((+))~~, statement showing the tax treatment of the bond. If the ~~((income))~~ recipient of the bond income invested in the bond through a trust, a fund, or other organization, that organization should ~~((give))~~ provide the recipient with this information.

(ii) **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))~~ to 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 in (d)(vii) of this subsection.

(iv) **Veterans benefits.** Veterans benefits are added ~~((onto))~~ to the veteran's adjusted gross income to determine the veteran's disposable income ~~((except for))~~. The following veterans benefits are not added to a veteran's adjusted gross income:

(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 a service-connected disability ~~((RCW 84.36.383 (5)(f)(iii)))~~; and

(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 in (d)(viii) of this subsection.

(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))~~ to the adjusted gross income ~~((reported))~~, the items described below, but only 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))~~ the 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 (b)(i) of this subsection for a more complete discussion of excluded capital gain ~~((upon))~~ on 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))~~ to the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to (b)(ii) of this subsection 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))~~ between the total pension and annuity amounts reported ~~((from))~~ and 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 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 the Form 1040A federal income tax return is added ~~((onto))~~ to 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))~~ between the total Social Security benefits or equivalent railroad retirement amounts reported ~~((from))~~ and the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the federal income tax return, the assessor may use a copy of the 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 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))~~ to 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 (d)(vii) of this subsection.

(vi) **Veterans benefits.** Veterans benefits are added ~~((back onto))~~ to the veteran's adjusted gross income to determine the veteran's disposable income ~~((, except for))~~. The following veterans benefits are not added to a veteran's adjusted gross income:

(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 a service-connected disability ~~((RCW 84.36.383 (5)(f)(iii)))~~; and

(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 (d)(viii) of this subsection.

(d) **Form 1040.** If a claimant provides a copy of ~~((a))~~ the Form 1040, the assessor will calculate ~~((s))~~ the disposable income for the person or couple filing the return by adding ~~((onto))~~ to the reported adjusted gross income all of the items described below, but only 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 federal income tax 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))~~ to 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))~~ to the adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for ~~((loss))~~ losses are added ~~((onto the))~~ to adjusted gross income to determine ~~((the))~~ disposable income. Most losses are reported on the federal income tax 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))~~ or as farm losses. ~~((Add))~~ The assessor adds these amounts ~~((in parentheses onto))~~ to the adjusted gross income. ~~((In addition))~~ Additionally, 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))~~ claimant only reports the net amount of these 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 tax return to calculate adjusted gross income. The assessor adds ~~((onto))~~ to the adjusted gross

income the amount of losses used to reduce income on these other schedules and forms. The amount of losses that were used to reduce adjusted gross income must be added (~~onto that~~) to the adjusted gross income to determine disposable income.

For example, ~~(the)~~ a claimant reports a five thousand dollar capital loss 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 added the five thousand dollar ~~(s)~~ loss from the net capital loss reported on the front page of the tax return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from ~~(this)~~ the 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, ~~((t))~~ as this would result in it being added back twice ~~((t))~~;

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added (~~onto~~) to the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference between the total pension and annuity amounts reported and the taxable amounts reported. If the total pension and annuity amounts are not reported on the tax return, the assessor may use a copy of the 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 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~~) to 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 between the total Social Security benefits or equivalent railroad retirement amounts reported and the taxable amounts reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the tax return, the assessor may use a copy of the 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 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~~) to 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~~) on Form W-2. The claimant should disclose and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Federal law excludes from gross income any veterans benefit ~~((s))~~ payments ~~((t))~~ paid under any law, regulation, or administrative practice administered by the ~~((Department of Veterans Affairs (VA). To determine disposable income, allowances or payments made from the VA must be added on the veteran's adjusted gross income, except for))~~ VA. The following veterans benefits are not added to a veteran's adjusted gross income:

(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)))~~ VA;

(B) Disability compensation, defined as payments made by the ~~((Department of Veterans Affairs (VA)))~~ VA to a veteran because of a service-connected disability ~~((RCW 84.36.383 (5)(f)(iii)))~~ and

(C) Dependency and indemnity compensation, defined as payments made by the ~~((Department of Veterans Affairs (VA)))~~ 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.

(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~~) to 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))~~ them 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))~~ they have 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))~~ The tax-exempt interest is reported on the Form 1040 and added ~~((onto))~~ to the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** ~~((When))~~ Once the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor ~~((combines))~~ will add the disposable incomes ~~((of these people))~~ together. To calculate the combined disposable income for the claimant, the assessor ~~((reduces this combined income by))~~ will subtract from the sum of the disposable income, the amounts paid by the claimant or the claimant's spouse or domestic partner during that calendar year for their:

(a) Legally prescribed drugs ~~((;))~~ ;

(b) Home health care;

(c) Nursing home, assisted living facility, or adult family home expenses; and

(d) 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 18-24-108, filed 12/4/18, effective 1/4/19)

WAC 458-16A-130 Senior citizen, disabled person, and disabled veteran exemption—Qualifications for exemption. (1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen, disabled person, and disabled veteran property tax exemption. ~~((The definitions in WAC 458-16A-100 apply to this rule. In order))~~ To qualify for the exemption, the claimant must:

(a) Meet the age or disability requirements as described in subsection (2) of this rule;

(b) Have a combined disposable income below the ~~((statutory limit amount provided in RCW 84.36.384))~~ prescribed amounts in subsection (3) of this rule; and

(c) Own the property and occupy it as ~~((his or her))~~ their principal residence for more than nine months each calendar year as described in subsection (4) of this rule.

(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 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 be at the time of filing, a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

(i) A combined service-connected evaluation rating of eighty percent or higher; or

(ii) A total disability rating for a service-connected disability without regard to evaluation percent.

(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 84.36.384))~~ equal to or less than one of the three income thresholds described in RCW 84.36.383. The income thresholds, which are published by the department beginning August 1, 2019, and by March 1st every fifth year thereafter, will determine the amount of property tax the claimant is exempt from on their principal residence, as follows:

(a) Income threshold 3. A claimant's combined total disposable income that is equal to or less than income threshold 3 is exempt on their principal residence from the following:

(i) All excess property taxes;

(ii) The additional state property tax imposed under RCW 84.52.065(2); and

(iii) The portion of the regular property taxes authorized pursuant to RCW 84.55.050 to remove the property tax levy limit (lid lift) approved by the voters, if the legislative authority of the county or city imposing the additional regular property taxes identified this exemption in the ordinance placing the lid lift measure on the ballot.

(b) Income threshold 2. A claimant's combined total disposable income that is equal to or less than income threshold 2, but greater than income threshold 1, is exempt on their principal residence from the following:

(i) All property taxes listed under income threshold 3; and

(ii) All regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of their residence, but not to exceed seventy thousand dollars of the valuation of their residence.

(c) Income threshold 1. A claimant's combined total disposable income that is equal to or less than income threshold 1, is exempt on their principal residence from the following:

(i) All property taxes listed under income threshold 3; and

(ii) All regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of their residence.

(4) **Principal residence requirements.** ~~((In order))~~ To qualify for the exemption, the claimant must own the property and occupy it as ~~((his or her))~~ their principal residence for more than nine months each calendar year. The claimant must occupy the principal residence at the time of filing for

each year the exemption is claimed. WAC 458-16A-100 and 458-16A-135 provide additional information regarding the definitions of principal residence and residence, and the supporting documents required to demonstrate the property is owned and occupied as a claimant's principal residence.

AMENDATORY SECTION (Amending WSR 15-22-086, filed 11/3/15, effective 12/4/15)

WAC 458-16A-135 Senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption—Application procedures. (1) **Introduction.** This rule explains when and how a senior citizen, disabled person, or ~~((one hundred percent))~~ disabled veteran may apply for a property tax exemption on ~~((that person's))~~ their 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))~~ they meet~~((s))~~ the age, 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))~~ they meet the age, disability, or disabled veteran requirements, then ~~((he or she))~~ they may apply for the exemption in any subsequent year. The exemption may be claimed on ~~((his or her))~~ their principal residence for previous years by applying with separate applications for each year. However, refunds based ~~((upon))~~ on an exemption made in previous years may be refunded for only ~~((for))~~ up to three years after the taxes were due as provided in ~~((chapter 84.69 RCW))~~ RCW 84.69.030.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. When an application is first made, 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))~~ their 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. As an alternative, the county assessor may provide an electronic means for filing if authorized by the department.

(a) **The application form.** The county assessor designs the paper application form or adapts a master paper form obtained from the department. The county is also authorized to design an electronic form for applying. The county must obtain approval of the final form, paper or electronic, from the department before it may be distributed and used. The claimant must use ~~((an))~~ the 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))~~ on the application immediately above ~~((a))~~ the line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax 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 five 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))~~ will assess any unpaid taxes with interest~~((;))~~ for up to five years, ~~((with))~~ and will assess the one hundred percent penalty as 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 property 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))~~ in this subsection with ~~((his or her))~~ their 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 must submit~~((s))~~ 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))~~ on a 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))~~ their 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 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 entitled to and receiving compensation from the United States Department of Veterans Affairs at a combined service-connected evaluation rating of eighty percent or higher or at a total disability rating for a service-connected disability without regard to evaluation percent;

(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))~~ must 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, assisted living facility, ~~((or))~~ adult family home, or has been receiving in-home care in either their home or in the home of a relative for purposes of long-term care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed ~~((nursing home and in-home))~~ care or documentation to verify the claimant or claimant's spouse or domestic partner have been receiving care at the home of a relative;

(E) If the claimant indicates that the nonreimbursed prescription drug 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))~~ their income and the income of ~~((his or her))~~ their 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

(vii) Any other copies of documents the assessor requires in ~~((his or her))~~ their 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))~~ redacted 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 income of the claimant, the claimant's spouse or domestic partner, or any cotenant.

AMENDATORY SECTION (Amending WSR 18-04-007, filed 1/25/18, effective 2/25/18)

WAC 458-16A-150 Senior citizen, disabled person, and ~~((one hundred percent))~~ disabled veteran exemption—Requirements for keeping the exemption. (1) **Introduction.** This rule explains how and when a senior citizen, disabled person, or ~~((one hundred percent))~~ disabled veteran must file additional ~~((reports))~~ documents with the county assessor to ~~((keep the))~~ maintain their senior citizen, 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.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on ~~((the claimant's))~~ their continued qualification for the senior citizen, disabled person, or ~~((one hundred percent))~~ disabled veteran property tax exemption. The claimant keeps the assessor up to date in the following three ways~~((:))~~:

(a) First, the claimant submits a change in status form when any change affects ~~((his or her))~~ their 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~~((:))~~;

(b) Second, the claimant submits a renewal application for the exemption either ~~((upon))~~ on the assessor's request following an amendment of the income requirement, or at least once every six years~~((:))~~; and

(c) 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)~~ their qualification for the senior citizen, 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))~~ the 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))~~ on erroneous information.

(b) **Change ~~((s))~~ in status described.** ~~((Changes))~~ A change in status includes:

(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))~~ exemption; 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 disability for a disabled person's claim, or a disabled person entering into gainful employment, and in some cases, moving into a hospice, a nursing home, or any other long-term care facility).

(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))~~ their principal residence is located. The form may also be obtained electronically if available from the county assessor and electronic filing has been approved by the department.

(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))~~ on 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 five years as provided ~~((for))~~ under RCW ((84.40.380)) 84.36.385. 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 due as provided in ~~((chapter 84.69))~~ RCW 84.69.030.

(f) **Loss of the exemption.** As provided in RCW 84.40.360, if the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based ~~((upon))~~ on 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, ~~((t))~~ unless the spouse or domestic partner ~~((is))~~ also ~~((qualified))~~ qualifies. The property taxes are then recalculated ~~((to))~~ based on the full assessed ~~((amount))~~ value of the principal residence, on a pro rata basis, beginning the day following the date of the claimant's death ~~((for))~~ through the remainder of the year.

(g) **Loss of exemption on part of the property.** If ~~((the))~~ a change in status ~~((removes))~~ results in the removal of a portion of the property from the exemption, property taxes ~~((in their full amount))~~ on that portion ~~((of the property that is))~~ are no longer exempt and must be recalculated based ~~((upon))~~ on 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))~~ their one-acre lot into two parcels. The parcel that does not have the principal residence built ~~((upon))~~ on it will no longer ~~((qualifies))~~ qualify for the exemption. The property taxes are then recalculated ~~((to))~~ based on the full assessed ~~((amount))~~ value 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))~~ income 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 and the state property tax levy imposed under RCW 84.52.065(2) on the principal residence are exempt. The claimant's income is based ~~((upon))~~ on the assessment year. In the following year when the taxes are collected, the property taxes due ~~((are))~~ will be calculated with only an exemption for excess levies and an exemption for the state property tax levy imposed under RCW 84.52.065(2).

(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 and must be mailed at least three weeks in advance of the expected ~~((taxpayer))~~ claimant response date.

(b) **When to renew.** The assessor must request a renewal application at least once every six years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted.

(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 and used, and must also obtain authorization from the department if providing an option to file by electronic means. 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))~~ renewal application.** The assessor provides ~~((this))~~ the renewal application, in either paper or electronic form, to senior citizens, 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))~~ exemption. 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))~~ they must file a change in status form with the ~~((county))~~ assessor in the county where ~~((his or her))~~ their 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))~~ will apply through the closing date ~~((on))~~ of the sale of the former residence, provided ~~((the claimant lived in))~~ the former residence ~~((for most of the portion of that year))~~ was the claimant's principal residence prior to the date of closing. Property taxes ~~((in their full amount))~~ must be recalculated based ~~((upon))~~ on 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))~~ on 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))~~ receiving 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))~~ the claimant 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))~~ their former residence.

**WSR 20-04-019
PERMANENT RULES
DEPARTMENT OF**

CHILDREN, YOUTH, AND FAMILIES

[Filed January 27, 2020, 10:40 a.m., effective February 27, 2020]

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

Purpose: Make technical changes made necessary by the creation of the department of children, youth, and families and the resulting decodification of certain chapters of Titles 170 and 388 WAC and their recodification to Title 10 WAC. WAC 110-30-0380 is repealed.

Citation of Rules Affected by this Order: Repealing WAC 110-30-0380; and amending WAC 110-30-0010, 110-30-0020, 110-30-0080, 110-30-0100, 110-30-0160, 110-30-0170, 110-30-0210, 110-30-0250, 110-30-0280, 110-30-0290, 110-30-0360, 110-30-0390, 110-80-0030, 110-80-0040, 110-80-0100, 110-80-0210, 110-80-0250, 110-80-0400, 110-80-0420, 110-110-0010, 110-110-0030, 110-110-0050, 110-110-0060, 110-110-0070, 110-110-0080, 110-110-0090, 110-110-0100, 110-150-0020, 110-150-0070, 110-150-0080, and 110-150-0140.

Statutory Authority for Adoption: Chapter 6, Laws of 2017.

Adopted under notice filed as WSR 19-21-015 on October 4, 2017 [2019].

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 31, Repealed 1.

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

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

Date Adopted: January 27, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0010 What is the child protective services program? (1) Child protective services (CPS) means those services provided by the department of ~~((social and health services))~~ children, youth, and families designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports (RCW 26.44.020 (12) and ~~((+6))~~ (17)).

(2) CPS may include the following:

(a) Investigation of reports of alleged child abuse or neglect.

(b) Assessment of risk of abuse or neglect to children.

(c) Provision of and/or referral to services to remedy conditions that endanger the health, safety, and welfare of children.

(d) Referral to law enforcement when there are allegations that a crime against a child (RCW 26.44.030(4) and 74.13.031(3)) might have been committed.

(e) (~~Out of home~~) Out-of-home placement and petitions to courts when necessary to ensure the safety of children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0020 What definitions apply to these rules? The following definitions apply to this chapter.

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child as defined in RCW 26.44.020 and this chapter.

"Administrative hearing" means a hearing held before an administrative law judge and conducted according to chapter 34.05 RCW and chapter (~~388-02~~) 110-03 WAC.

"Administrative law judge (ALJ)" is an impartial decision-maker who presides at an administrative hearing. The office of administrative hearings, which is a state agency but not part of (~~DSHS~~) DCYF, employs the ALJs.

"Alleged perpetrator" means the person identified in a CPS referral as being responsible for the alleged child abuse or neglect.

"Alternative response system" means a contracted provider in a local community that responds to accepted CPS referrals that are rated low or moderately low risk at the time of intake.

"Appellant" means a person who requests an administrative hearing to appeal a CPS finding.

"Child protection team (CPT)" means a multidisciplinary group of persons with at least four persons from professions that provide services to abused or neglected children and/or parents of such children. The CPT provides confidential case staffing and consultation to (~~children's administration~~) child welfare cases.

"Child protective services (CPS)" means the section of the (~~children's administration responsible~~) department of children, youth, and families for responding to allegations of child abuse or neglect.

(~~"Children's administration (CA)" means the cluster of programs within DSHS that is responsible for the provision of child protective, child welfare, foster care licensing, group care licensing, and other services to children and their families.~~)

"Child welfare programs (CWP)" means the division in DCYF that provides child protective, child welfare, and support services to children and their families.

"Department" or (~~"DSHS"~~) **"DCYF"** means the Washington state department of (~~social and health services~~) children, youth, and families.

(~~"Department of early learning (DEL)" means the Washington state agency responsible for licensing child care homes and child care facilities.~~)

~~"Division of children and family services (DCFS)" means the division of children's administration that provides child protective, child welfare, and support services to children and their families.~~

~~"Division of licensed resources (DLR)" means the division of children's administration responsible for licensing group care and foster care facilities, and responding to allegations of abuse or neglect in such facilities.~~)

"Finding" means the final decision made by a CPS (~~social worker~~) caseworker after an investigation regarding alleged child abuse or neglect.

"Founded" means the determination following an investigation by CPS that based on available information it is more likely than not that child abuse or neglect did occur.

"Inconclusive" means the determination following an investigation by CPS, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur. Beginning October 1, 2008, the department (~~will~~) no longer makes inconclusive findings, but (~~shall~~) retains such findings made prior to that date as provided in these rules.

"Licensing division (LD)" means the division in DCYF responsible for licensing group care and foster care facilities, and responding to allegations of abuse or neglect in such facilities.

"Mandated reporter" means a person required to report alleged child abuse or neglect as defined in RCW 26.44.030.

"Preponderance of evidence" means the evidence presented in a hearing indicates more likely than not child abuse or neglect did occur.

"Screened-out report" means a report of alleged child abuse or neglect that the department had determined does not rise to the level of credible report of abuse or neglect and is not referred for investigation.

"Unfounded" means the determination following an investigation by CPS that based on available information it is more likely than not that child abuse or neglect did not occur or there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0080 What special requirements must CPS follow for Indian children? (1) These special requirements apply to children defined as Indians in WAC (~~388-70-091~~) 110-110-0010.

(2) The (~~DCFS social worker shall~~) caseworker must document in case records efforts to keep Indian families together and to avoid separating the Indian child from (~~his~~) the child's parents, relatives, tribe or cultural heritage as per RCW 26.44.010 and WAC (~~388-70-093~~) 110-110-0010.

(3) In alleged child abuse and neglect situations, the (~~DCFS social worker shall~~) caseworker must document in case records, efforts to utilize staff and services particularly capable of meeting the special needs of Indian children and their families, in consultation with the child's tribe (~~and/or~~) or local Indian child welfare advisory committee per WAC

~~((388-70-600 through 388-70-640))~~ 110-110-0060 through 110-110-0100.

(4) The ~~((DCFS social worker shall))~~ caseworker will promptly advise the tribal council and the local Indian child welfare advisory committee that a child affiliated with the tribe is the victim of substantiated child abuse or neglect. The provisions of RCW 26.44.070, WAC ~~((377-70-640))~~ 110-110-0100, limiting who has access to confidential information, ~~((shall))~~ must be followed in all cases.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0100 When will CPS involve local community resources? (1) CPS may use local community resources to respond to reports of abuse or neglect when the department's assessment of risk determines that a community response is in the best interest of the child and family.

(2) CPS may involve local community resources in the planning and provision of services to help remedy conditions that contribute to the abuse or neglect of children.

(3) CPS must have community based child protective teams (CPT) available for staffing and consultation regarding cases of child abuse or neglect. CPS must present cases for staffing with the CPT in accordance with executive order 95-04 and department procedures.

(4) There are special requirements for staffing Indian children cases with the local Indian child welfare advisory committee (WAC ~~((388-70-600))~~ 110-110-0060).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0160 What limitations does the department have on the disclosure of case information? Information obtained by CPS is confidential pursuant to federal and state law. The department may only disclose case record information as permitted by applicable statutes and the provisions of chapter ~~((388-04))~~ 110-01 WAC.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0170 What is the purpose of these rules? The purpose of these rules is to describe:

(1) The procedures for notifying the alleged perpetrator of any findings made by a CPS ~~((social worker))~~ caseworker in an investigation of suspected child abuse or neglect; and

(2) The process for challenging a founded CPS finding of child abuse or neglect (RCW 26.44.100 and 26.44.125).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0210 What happens to unfounded CPS findings? (1) Beginning October 1, 2008, the department will no longer make inconclusive findings, but ~~((shall))~~ will retain and destroy such findings made prior to that date as provided in these rules.

(2) An unfounded, screened-out, or inconclusive allegation of child abuse or neglect may not be disclosed to a child

placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

(3) At the end of three years from the receipt of a screened-out report that alleged child abuse or neglect, the department must destroy its records relating to that report.

(4) At the end of six years from the date of the completion of an investigation of a report of child abuse or neglect, the department must destroy records relating to unfounded or inconclusive reports, unless a prior or subsequent founded report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child, before records are destroyed.

(5) The department ~~((shall))~~ must retain records relating to founded reports of child abuse and neglect as required by ~~((DSHS))~~ DCYF records retention policies. If dependency is established under chapter 13.34 RCW as to a child who is subject of a report of child abuse or neglect, all records relating to the child or the child's parent, guardian, or legal custodian, including any screened-out, unfounded or inconclusive reports not destroyed prior to the establishment of dependency or received after dependency was established, ~~((shall))~~ will be retained as required by ~~((DSHS))~~ DCYF records retention policies regarding dependency records.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0250 What happens after the alleged perpetrator requests CPS to review the founded CPS finding of child abuse or neglect? (1) CPS management level staff or their designees who were not involved in the decision making process will review the founded CPS finding of child abuse or neglect. The management staff will consider the following information:

(a) CPS records;

(b) CPS summary reports; and

(c) Any written information the alleged perpetrator may have submitted regarding the founded CPS finding of abuse ~~((and/or))~~ or neglect.

(2) Management staff may also meet with the CPS ~~((social worker and/or))~~ caseworker or CPS supervisor to discuss the ~~((investigation/finding))~~ investigation finding. After review of all this information, management staff decides if the founded CPS finding is correct or if it should be changed.

(3) Management staff must complete their review of the founded CPS finding within thirty calendar days from the date CPS received the written request for review.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0280 What happens if CPS management ~~((staff))~~ does not change the founded CPS finding?

(1) If CPS management ~~((staff))~~ does not change the founded CPS finding, the alleged perpetrator has the right to further challenge that finding by requesting an administrative hearing.

(2) The request for a hearing must be in writing and sent to the office of administrative hearings. WAC ~~((388-02-0025))~~ 110-03-0070 lists the current address.

(3) The office of administrative hearings must receive the written request for a hearing within thirty days from the date that the person requesting the hearing receives the CPS management review decision.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0290 What laws and rules will control the administrative hearings held regarding the founded CPS findings? Chapter 34.05 RCW, RCW 26.44.100 and 26.44.125, chapter ~~((388-02))~~ 110-03 WAC, and the provisions of this chapter govern any administrative hearing regarding a founded CPS finding. In the event of a conflict between the provisions of this chapter and chapter ~~((388-02))~~ 110-03 WAC, the provisions of this chapter must prevail.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0360 What if the appellant or the department disagrees with the decision? If the appellant or the department disagrees with the ALJ's decision, either party may challenge this decision according to the procedures contained in chapter 34.05 RCW and chapter ~~((388-02))~~ 110-03 WAC.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-30-0390 Services to individuals released from mental hospitals or in danger of requiring commitment to such institutions. (1) These services are those services necessary to enable eligible individuals age 65 or over to remain in the community in lieu of care in a mental hospital, or upon release from a mental hospital, to return to and live in the community. Services may also be provided to recipients of AFDC who are being released from mental institutions.

(2) Necessary adult services ~~((shall))~~ will be provided to beneficiaries of SSI, recipients of Title XIX, and other individuals whose income does not exceed the standard in WAC 388-15-020 who:

- (a) Are released from a mental hospital~~((;))~~ ; or
- (b) Need alternate care to continue to live in the community.

(3) Services provided to accomplish the objective to assist the recipient to maintain or be restored to the greatest possible degree of independent functioning and self help ~~((shall be))~~ are any appropriate adult services described in WAC ~~((388-15-100 through 388-15-400))~~ 110-30-0270 through 110-30-0390.

(4) Services ~~((to be))~~ provided to accomplish this objective for recipients of AFDC age ~~((24))~~ twenty-one or under being released from mental institutions ~~((shall be))~~ are any appropriate family or children's service described in WAC ~~((388-15-100 through 388-15-400))~~ 110-30-0370 through 110-30-0390.

(5) See also chapter ~~((388-95))~~ 182-513 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 110-30-0380 Family planning.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0030 What definitions apply to the adoption support program? The following definitions apply to this chapter:

"Adoption" means the granting of an adoption decree consistent with chapter 26.33 RCW.

"Adoption support agreement" means a written contract between the adoptive ~~((parent(s)))~~ parents and the department that identifies the specific benefits available to the adoptive ~~((parent(s)))~~ parents and other terms and conditions of the agreement.

"Adoption support cash payment" means negotiated monthly cash payments paid pursuant to an adoption support agreement between the adoptive ~~((parent(s)))~~ parents and the department.

"Applicant" means a person or couple applying for adoption support on behalf of a child the person or couple plans to adopt.

"Child placing agency" means a private nonprofit agency licensed by the department under chapter 74.15 RCW to place children for adoption or foster care.

"Department" means the department of ~~((social and health services))~~ children, youth, and families.

"Extenuating circumstances" means a finding by an administrative law judge or a review judge that one or more qualifying conditions or events occurred that erroneously prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.

"Medical services" means services covered by ~~((medicaid))~~ medicaid and administered by the health care authority.

"Negotiation" means the process of working toward an agreement between the department and the adoptive parent on the terms of the adoption support agreement.

"Nonrecurring costs" means reasonable, necessary, and direct expenses related to the cost of finalizing the adoption of a special needs child.

"Placing agency" means the public or private nonprofit agency that has the legal authority to place the child for adoption.

"Program" means the department's adoption support program.

"Reconsideration" means the limited state-funded support that may be available to an eligible child whose adoption was finalized without a valid adoption support agreement in place.

"Resident state" (for purposes of the child's medicaid eligibility) means the state in which the child physically resides. In some cases this may be different from the state of the parent's legal residence.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0040 What are the eligibility criteria for the adoption support program? For a child to be eligible for participation in the adoption support program, the child must:

(1) Be less than eighteen years old when the department and the adoptive parents sign the adoption support agreement and at the time the adoption is finalized;

(2) Be legally free for adoption or eligible for a customary adoption;

(3) Be placed with a family with an approved preplacement report or home study (see RCW 26.33.190);

(4) Be a child with "special needs" as defined in WAC ((388-27-0140)) 110-80-0050; and

(5) Meet at least one of the following criteria:

(a) Is residing in a foster home or child caring institution or was determined by the department to be eligible for and likely to be so placed (For a child to be considered "eligible for and likely to be placed in foster care" the department must have opened a case and determined that removal from the home was in the child's best interest); or

(b) Is eligible for federally funded adoption assistance as defined in Title IV-E of the Social Security Act, the C.F.R., and the U.S. DHHS guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0100 What requirements apply to an application for ongoing adoption support? (1) The application must include a copy of the child's medical and family background report signed by the adoptive parent(s) ((~~DSHS 13-041~~)) (DCYF 13-041). It must also include copies of department records or medical or therapist reports that document the child's physical, mental, developmental, cognitive, or emotional disability, or risk of any such disability.

(2) The applicant must include a copy of a preplacement report or home study completed by the department, an agency, or an individual approved by the court (see RCW 26.33.190(1)).

(3) If the applicant is requesting a monthly cash payment, the applicant and the department must mutually agree to the amount of the payment according to the requirements of WAC ((388-27-0220)) 110-80-0220.

(4) If the applicant is requesting reimbursement of non-recurring costs, the applicant must include this request in the application. (See WAC ((388-27-0380 and 388-27-0385)) 110-80-0430 and 110-80-0440 for the type and amount of expenses the department may reimburse.)

(5) The applicant must furnish a copy of the applicant's most recently filed federal income tax return. If the applicant is not required to file a federal income tax return, the applicant must submit a financial statement with the applicant's adoption support application.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0210 What benefits are available to adoptive parents through the adoption support program?

The adoption support program provides:

(1) Reimbursement for nonrecurring adoption finalization costs;

(2) Monthly cash payments, as negotiated by the parties;

(3) Payment for counseling services as preauthorized which are not available from the state's medicaid mental health services (see WAC ((388-27-0255)) 110-80-0240 for conditions and terms); and

(4) Medical assistance through the department's medicaid program.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0250 If the adoptive parent requests residential placement services for their adopted child, what department requirements apply? (1) The adoption support program is not able to pay for residential treatment placements of children who are not in department custody. See RCW 74.13.080 and WAC ((388-25-0025)) 110-60-0050.

(2) If the adoptive parent is in need of residential treatment services for a child, the department will make the following referrals:

(a) For treatment of a mental illness, the department will refer the family to the local mental health treatment provider;

(b) If the child has been diagnosed with a physical, mental, developmental, cognitive, or emotional disability, the department will refer the family to the developmental disabilities administration (DDA) to determine whether the child is eligible for services; or

(c) For reasons other than treatment of mental illness or developmental disabilities, the department will refer the adoptive parent to child welfare services at the local ((~~children's administration~~)) department of children, youth, and families (DCYF) office.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0400 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues?

(1) An adoptive parent has the right to an administrative hearing to contest the following department actions:

(a) Denial of a child's initial eligibility for the adoption support program or the adoption support reconsideration program;

(b) Failure to respond with reasonable promptness to a written application or request for services;

(c) Denial of a written request to modify the level of payment or service in the agreement;

(d) Delay of more than thirty days when responding to a written request for modification of the agreement;

(e) Denial of a request for nonrecurring adoption expenses;

- (f) Suspension of adoption support benefits; or
- (g) Termination from the program.

(2) To initiate the appeal, the adoptive parent must submit a request for an administrative hearing to the office of administrative hearings within ninety days of receipt of the department's decision to deny a request, to suspend or terminate adoption support, or failure to respond to a request.

(3) The office of administrative hearings must apply the rules in ~~((WAC 388-27-0120 through 388-27-0390))~~ this chapter as they pertain to the issues being contested.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0420 Will the department reimburse an adoptive parent for nonrecurring adoption expenses? The department has authority to agree to reimburse some or all of an adoptive parent's nonrecurring adoption expenses if:

- (1) The child has a qualifying factor or condition identified in WAC ~~((388-27-0140(1)))~~ 110-80-0050(1);
- (2) Washington state has determined that the child cannot or should not be returned to the home of the child's biological parent;
- (3) Except where it would be against the best interest of the child, the department or a public or private nonprofit child placing agency has made a reasonable but unsuccessful effort to place the child with appropriate adoptive parents without the benefit of adoption assistance; and
- (4) The child has been placed for adoption according to applicable state or tribal laws.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0010 Foster care planning for Indian children—Definitions. For the purposes of ~~((WACs 388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640))~~ this section through WAC 110-110-0100, the term "Indian child" is defined as any unmarried and unemancipated Indian person who is under age eighteen and is one of the following:

- (1) A member of an Indian tribe; or
- (2) Is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0030 Foster care for Indian children—Services. Documented efforts must be made to avoid separating the Indian child from ~~((his or her))~~ the child's parents, relatives, tribe, or cultural heritage. Consequently:

- (1) When a family identifies Indian ancestry under the federal and state Indian child welfare acts, the ~~((children's administration (CA)))~~ DCYF caseworker has fifteen calendar days, or ten business days, from the date of identification to complete a family ancestry chart and begin the membership inquiry process. A copy of the family ancestry chart will be retained in the child's most current case file volume.
- (2) ~~((CA))~~ The department staff will contact all identified federally recognized tribes in the case of Indian children

being placed in foster care by the department or for whom the department has supervisory responsibility.

(3) If requested by a federally recognized tribe, or if a federally recognized tribe is unavailable the local Indian child welfare advisory committees (LICWAC) as defined under WAC ~~((388-70-600))~~ 110-110-0060 will serve as resource persons for the purposes of cooperative planning and aid in placement.

(4) The resources of the tribal government, the Indian community, and the department must be used to locate the child's parents and relatives to assist in locating possible placement resources, and to assist in the development of a plan to overcome the problem that brought the child to the attention of the authorities, or the department, or both the authorities and the department.

(5) In planning foster care placements for Indian children, ~~((CA))~~ the department will follow the federal and state Indian child welfare acts with regard to placement preference. The case record must document the reasons and circumstances of casework decisions and consideration in those regards.

(6) ~~((CA))~~ The department, in partnership with federally recognized tribes and ~~((CA))~~ its contracted agencies, will develop training for staff and caregivers designed to meet the needs of Indian children and their families. ~~((CA))~~ The department may also partner with urban Indian organizations, ~~((CA))~~ LICWAC(s), national, state and local Indian child welfare organizations, and Native American/Alaskan Native consultants.

(7) The ~~((CA))~~ department must make diligent and ongoing efforts to recruit facilities and/or homes particularly capable of meeting the needs of Indian children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0050 Adoptive planning for Indian children by department staff. (1) In planning adoptive or ~~((pre-adoptive))~~ preadoptive placements for Indian children under WAC ~~((388-70-091, CA))~~ 110-110-0010, the department will follow the federal and state Indian child welfare acts with regard to placement preference.

(2) An adoptive family must be considered Indian if one or both parents is:

- (a) A member of a federally recognized tribe; or
- (b) An Alaska Native and a member of a Regional Corporation as defined in Title 43 U.S.C. Sec. 1606.

(3) In adoptive planning for Indian children, the unique cultural, religious, and sovereignty of federally recognized tribes and communities must be recognized. The adoption of Indian children by Indian families is the primary goal.

(4) As a part of the total evaluation for approving a foster parent adoption of an Indian child, ~~((CA))~~ department staff will document the foster family's past performance and future commitment in exposing the child to their Indian heritage.

(5) When an Indian child, in the custody of an out-of-state agency, is referred for potential adoptive parents residing in Washington, ~~((CA))~~ the department will follow the interstate compact and placement of Indian children policy of Washington state.

(6) When an Indian child, in the care and custody of ~~((CA))~~ the department, is referred for adoption out of Washington, ~~((CA))~~ the department will follow the interstate compact and placement of Indian children policy of Washington state.

(7) In the event of an international adoption ~~((CA))~~, the department will follow policy and ensure that placement preferences are followed per the federal and state Indian child welfare acts.

(8) ~~((CA))~~ The department staff may consult with ~~((a local Indian child welfare advisory committee))~~ LICWAC in planning for adoptive placement of Indian children when a federally recognized tribe has chosen not to be involved.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0060 Local Indian child welfare advisory committee (LICWAC)—Purpose. The intent of WAC ~~((388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640))~~ 110-110-0010 and 110-110-0020 are to ensure protection of the Indian identity of Indian children, their rights as Indian children, and the maximum utilization of available Indian resources for Indian children. To ensure the realization of this intent, information about each current and future case involving Indian children for whom ~~((the department of social and health services))~~ DCYF has a responsibility must be referred to ~~((a local Indian child welfare advisory committee))~~ LICWAC on an ongoing basis when a federally recognized tribe has not responded, is unavailable, or requests LICWAC involvement according to procedures which recognize the privacy rights of the families.

The purposes of ~~((local Indian child welfare advisory committees))~~ LICWACs are:

(1) To promote social service planning for Indian children~~((:))~~;

(2) To encourage the preservation of the Indian family, tribe, heritage, and identity of each Indian child served by the ~~((department of social and health services.))~~ DCYF;

(3) To assist in obtaining participation by representatives of tribal governments and Indian organizations in departmental planning for Indian children for whom the department has a responsibility.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0070 Local Indian child welfare advisory committee (LICWAC)—Membership. Local Indian child welfare advisory committees must be established within each region. The number and locations of the local committees must be mutually determined by the Indian tribal governments and urban Indian organizations served by that region and the ~~((DSHS))~~ DCYF regional administrator.

(1) The committee must consist of representatives designated by tribal government and urban Indian organizations. The regional administrator must appoint committee members from among those individuals designated by Indian authorities. These members should be familiar with and knowledgeable about the needs of children in general as well as the particular needs of Indian children residing in the service area.

(2) The committee may also include bureau of Indian affairs staff, Indian health service staff, and other community members.

(3) The ~~((CA))~~ DCYF regional administrator must appoint a child welfare staff member ~~((of his or her child welfare staff))~~ as a liaison member of the committee.

(4) The ~~((local Indian child welfare advisory committee))~~ LICWAC is an ad hoc advisory committee not specifically authorized by statute. As such its members are not entitled to per diem and travel expenses for the performance of advisory committee functions.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0080 Local Indian child welfare advisory committee (LICWAC)—Functions. The functions of ~~((the local Indian child welfare advisory committee))~~ LICWAC are to:

(1) Assist ~~((DSHS))~~ DCYF staff in cooperative planning for Indian children~~((:))~~;

(2) Consult ~~((DSHS))~~ DCYF staff on behalf of Indian children, regarding the provision of the child's safety, well-being, and permanency on behalf of Indian children~~((:))~~;

(3) Assist ~~((DSHS))~~ DCYF staff in providing culturally relevant services to Indian children; and

(4) Make requests to the ~~((CA))~~ DCYF regional administrator to initiate reviews of casework decisions that the committee believes to be detrimental to the best interests of Indian children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0090 Local Indian child welfare advisory committee (LICWAC)—Meetings. Each committee and the ~~((CA local Indian child welfare advisory committee))~~ LICWAC staff liaison will mutually agree as to time, place and frequency and conduct of official committee meetings.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-110-0100 Local Indian child welfare advisory committee (LICWAC)—Confidentiality. The members of ~~((the local Indian child welfare advisory committee))~~ LICWAC must agree to abide by RCW 74.04.060 and the rules of confidentiality binding ~~((the DSHS))~~ DCYF staff.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-150-0020 What are the definitions for this chapter? The following definitions apply to this chapter:

"CA/N" means child abuse or neglect as defined in chapter 26.44 WAC.

"Department" or "DCYF" means the department of ~~((social and health services (DSHS)))~~ children, youth, and families.

"~~(DLR)~~ **LD**" means the licensing division (~~((of licensed resources)), a division of ((children's administration, department of social and health services))~~) DCYF.

"**Residential staff**" means individuals in charge of supervising the day-to-day living situation of the children in the residential portion of the school.

"**School**" means the Washington state school for the deaf.

"**Superintendent**" means the superintendent of the Washington state school for the deaf.

"**WSD**" means the Washington state school for the deaf.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-150-0070 What health and safety standards and written policies will the monitors be looking for when conducting their health and safety reviews of the school?

Reporting requirements

The health and safety standards that apply to WSD are as follows:

(1) All residential program personnel and volunteer staff at the school must comply with the mandatory reporting requirements of child abuse or neglect, RCW 26.44.020.

(2) The school must comply with all applicable fire marshal and department of health requirements.

Written policies and procedures

(3) The department will be reviewing the written policies and procedures of the school that:

(a) Promote a program aimed at providing personal safety and protection of all students residing at the school;

(b) Provide sufficient staffing levels on all shifts to meet the physical, emotional, and safety needs of all students, as required under RCW 72.40.240;

(c) Implement and maintain effective admission and retention policies that protect all students from sexual victimization, as required under RCW 72.40.270;

(d) Implement and maintain an effective communication system between educational staff and residential staff and parents and/or legal guardians;

(e) Ensure that the residential facility meets all applicable fire and health requirements and promote environmental safety against physical risk or harm to students;

(f) Minimize student-to-student conflict or harm when transporting students;

(g) Conduct and document background and CA/N checks on all staff to determine each employee's suitability for employment at the school (see chapter ~~((388-06))~~ 110-04 WAC);

(h) Provide all students with training on self-protection from abuse or neglect, as required under RCW 72.40.230 and 72.40.260;

(i) Implement and maintain effective child protection policies that include proper reporting of incidents, notification, documentation, and cooperation with the department and law enforcement;

(j) Describe what procedures staff must follow when they have reason to believe a student may have been abused or neglected, as defined under RCW 26.44.020; and

(k) Maintain adequate documentation of all abuse or neglect incidents.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-150-0080 What specific areas must be included in the comprehensive health and safety review?

(1) In conducting a comprehensive health and safety review of the school, the department must review the ~~((children's administration's))~~ DCYF's case and ~~((management information system (CAMIS)))~~ electronic records for any ~~((child abuse or neglect))~~ CA/N referrals and the disposition of the investigations.

(2) The reviewers must:

(a) Examine the residential facilities for health and safety (a specific list of elements for review are outlined in WAC ~~((388-180-0230))~~ 110-150-0140);

(b) Develop appropriate questionnaires or survey tools for interviews;

(c) Conduct interviews of staff, students, parent, teacher, and community stakeholders for concerns of student health and safety at the school((-));

(d) Review facility logs, including incident reports and daily shift logs;

(e) Review medication policies, including documentation of medicine disbursement when and by whom;

(f) Review admissions and expulsion policies for compliance with RCW 72.40.040;

(g) Review staff coverage policies for compliance with RCW 72.40.240 and 72.40.270;

(h) Review behavior management policy for compliance with RCW 72.40.220, including a description of the de-escalation techniques used with different ages or developmental levels of students;

(i) Review employee/volunteer supervision policies for compliance with RCW 72.40.250;

(j) Review policies for protecting students from abuse or neglect policies for compliance with RCW 72.40.250;

(k) Review any corrective action plans including implementing the written plan of action to assure health and safety and prevention of abuse or neglect incidents as directed in RCW 72.40.250;

(l) Review the documentation of awareness and prevention training of staff for compliance with RCW 72.40.230 and 72.40.260; and

(m) Sample criminal history and CA/N checks of school employees for compliance with the school's criminal history inquiry and FBI fingerprinting process.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-150-0140 What are the physical environment safety requirements for the residential facilities?

The school must ensure that the residential facilities comply with the applicable state fire marshal and department of health regulations, including the following:

(1) The grounds, office, living areas, kitchen, bedrooms, bathrooms, shops, recreational areas, and laundry areas are clean and free of hazardous conditions.

(2) Furnishings are clean, comfortable, durable, and safe.

(3) Cleaning products and toxic chemicals are securely stored.

(4) Medications are securely stored.

(5) First-aid supplies are readily available.

(6) Emergency lighting (~~devices~~) devices are available.

(7) Kitchen and bathrooms are ventilated.

(8) The facilities regularly conduct and document fire drills.

(9) Smoke detectors are regularly inspected and the results of the inspections are documented.

(10) Procedures for evacuation and other emergencies are posted, reviewed, and tested at regular intervals.

WSR 20-04-021
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed January 27, 2020, 11:31 a.m., effective February 27, 2020]

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

Purpose: Permanently adopting these amendments will implement the annual update to certain basic food standards for federal fiscal year 2020, in compliance with requirements of the United States Department of Agriculture Food and Nutrition Service, and incorporate a simplified shelter deduction option for basic food benefit calculations of homeless households. These changes may increase basic food benefit allotments.

Citation of Rules Affected by this Order: Amending WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-450-0195, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: The Agriculture Improvement Act of 2018 (P.L. 115-334) Section 4004.

Adopted under notice filed as WSR 20-01-068 on December 11, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 5, Repealed 0.

Date Adopted: January 27, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-02-043, filed 12/26/17, effective 1/26/18)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) **How we determine monthly allotments:**

(a) We calculate your monthly allotment for federally funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) **Maximum allotment:**

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) **Prorated benefits in the first month.** If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) **Combined allotment for first and second month's benefits.** If you apply for benefits on or after the sixteenth of the month and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) **Minimum allotment.** Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) (~~Fifteen~~) Sixteen dollars if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) (~~Fifteen~~) Sixteen dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) **Use of food assistance benefits.** Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation

under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 19-01-031, filed 12/12/18, effective 1/12/19)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or less	(\$164) <u>\$167</u>
4	(\$174) <u>\$178</u>
5	(\$204) <u>\$209</u>
6 or more	(\$234) <u>\$240</u>

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

- (i) Keep work, look for work, or accept work;
- (ii) Attend training or education to prepare for employment; or
- (iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 19-01-031, filed 12/12/18, effective 1/12/19)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of one hundred fifty-two dollars. If the homeless AU has shelter costs in excess of one hundred fifty-two dollars, the AU has the option to claim either:

- (i) The homeless shelter deduction; or
- (ii) Actual shelter costs.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of five hundred ~~((fifty-two))~~ sixty-nine dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred ~~((fifty-two))~~ sixty-nine dollars.

AMENDATORY SECTION (Amending WSR 19-01-031, filed 12/12/18, effective 1/12/19)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASH-CAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred ~~((thirty))~~ thirty-seven dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred ~~((thirty))~~ thirty-seven dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred ~~((thirty-six))~~ forty-three dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of fifty-eight dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 19-01-031, filed 12/12/18, effective 1/12/19)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section. The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE ~~((10/1/2018))~~ 10/1/2019

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	((1,316)) <u>\$1,354</u>	((1,012)) <u>\$1,041</u>	((192)) <u>\$194</u>	((1,670)) <u>\$1,718</u>
2	((1,784)) <u>1,832</u>	((1,352)) <u>1,410</u>	((353)) <u>355</u>	((2,264)) <u>2,326</u>
3	((2,252)) <u>2,311</u>	((1,732)) <u>1,778</u>	((505)) <u>509</u>	((2,858)) <u>2,933</u>
4	((2,720)) <u>2,790</u>	((2,092)) <u>2,146</u>	((642)) <u>646</u>	((3,452)) <u>3,541</u>
5	((3,188)) <u>3,269</u>	((2,452)) <u>2,515</u>	((762)) <u>768</u>	((4,046)) <u>4,149</u>
6	((3,656)) <u>3,748</u>	((2,812)) <u>2,883</u>	((914)) <u>921</u>	((4,640)) <u>4,757</u>
7	((4,124)) <u>4,227</u>	((3,172)) <u>3,251</u>	((1,011)) <u>1,018</u>	((5,234)) <u>5,364</u>
8	((4,592)) <u>4,705</u>	((3,532)) <u>3,620</u>	((1,155)) <u>1,164</u>	((5,828)) <u>5,972</u>
9	((5,060)) <u>5,184</u>	((3,892)) <u>3,989</u>	((1,299)) <u>1,310</u>	((6,422)) <u>6,580</u>
10	((5,528)) <u>5,663</u>	((4,252)) <u>4,358</u>	((1,443)) <u>1,456</u>	((7,016)) <u>7,188</u>
Each Additional Member	((+468)) <u>+479</u>	((+360)) <u>+369</u>	((+144)) <u>+146</u>	((+594)) <u>+608</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

WSR 20-04-022
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 27, 2020, 11:50 a.m., effective February 27, 2020]

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

Purpose: The department is amending WAC 458-20-179 to reflect 2019 legislation that: (1) Provides public utility tax credits to certain businesses participating in an early adoption incentive program (E3SHB 1257); and (2) exempts specified renewable natural gas sales from public utility tax (HB 1070). The department is also amending WAC 458-20-179 to reflect deimplementation of RCW 82.16.0491 because the right to earn tax credits under that statute expired.

Citation of Rules Affected by this Order: Amending WAC 458-20-179.

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

Adopted under notice filed as WSR 19-23-058 on November 14, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 27, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-21-166, filed 10/23/18, effective 11/23/18)

WAC 458-20-179 Public utility tax. Introduction.

This rule explains the public utility tax (PUT) imposed by chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within this state.

The department of revenue (department) has adopted other rules that relate to the application of PUT. Readers may want to refer to rules in the following list:

- (1) WAC 458-20-104 Small business tax relief based on income of business;
- (2) WAC 458-20-121 Sales of heat or steam—Including production by cogeneration;
- (3) WAC 458-20-13501 Timber harvest operations;
- (4) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;
- (5) WAC 458-20-180 Motor carriers;
- (6) WAC 458-20-192 Indians—Indian country;

(7) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and

(8) WAC 458-20-251 Sewerage collection and other related activities.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

Part I - General Information

(101) **Persons subject to the public utility tax.** The PUT is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, log transportation, vessels under sixty-five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

(a) **Hauling by watercraft.** Income from hauling persons or property for hire by watercraft between points in Washington is subject to one of two PUT classifications, depending on the nature of the service. Income from:

- Operating tugboats of any size, and the sale of transportation services by vessels sixty-five feet and over, is subject to tax under the "other public service business" PUT classification.

- The sale of transportation services using vessels under sixty-five feet, other than tugboats, is subject to tax under the "vessels under sixty-five feet" public utility tax classification.

These classifications do not include sightseeing tours, fishing charters, or activities that are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258, Travel agents and tour operators.

(b) **Other businesses subject to the public utility tax.** The PUT also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, unless the activity is subject to tax under chapter 82.04 RCW, Business and occupation (B&O) tax.

(i) The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered. Examples of other public service businesses include, but are not limited to: Airplane transportation, boom, dock, ferry, pipeline, toll bridge, water transportation, and wharf businesses. RCW 82.16.010.

(ii) Persons engaged in the same business activities as the businesses described above are subject to the PUT even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial. For example, an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly owned subsidiary, is subject to the PUT as a water distribution business on its sales of water.

(c) **Are amounts derived from interest and penalties taxable?** Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services. Incidental services include for example meter installation or other activities which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local improvement district assessment is not subject to public utility or B&O taxes.

(102) **Tax rates and measure of tax.** The rates of tax for each business activity subject to the PUT are imposed under RCW 82.16.020 and set forth on appropriate lines of the state public utility tax addendum for the excise tax return. The measure of the PUT is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(3).

(103) **Persons subject to public utility tax may also be subject to B&O tax.** The B&O tax does not apply to any business activities for which PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the PUT are also engaged in other business activities subject to B&O tax.

For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances. The gas distribution company is subject to the PUT on its distribution of natural gas to consumers. It is also subject to retailing B&O tax and must collect and remit retail sales tax on its retail sales of gas appliances. Repairs of customer owned appliances are also a retailing activity subject to retail sales tax.

In distinguishing gross income taxable under the PUT from gross income taxable under the B&O tax, the department is guided by the uniform system of accounts established for the specific type of utility concerned. Because of differences in the uniform systems of accounts established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(104) **Charges for service connections, line extensions, and other similar services.**

(a) For existing customers, amounts derived from services that are incidental to a public utility activity are subject to PUT. Thus, amounts received for the following are subject to PUT:

- (i) Service connection, start-up, and testing fees;
- (ii) Charges for line extensions, repairs, raisings, and/or drops;
- (iii) Meter or pole replacement;
- (iv) Meter reading or load factor charges; and
- (v) Connecting or disconnecting.

(b) For new customers, amounts received for any of the services noted above in Part (104)(a) of this rule are subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received the utility service at the location. For example, a customer of a water distribution company who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any meter installation services performed at the new residence, until the customer actually receives water at that location. It is immaterial that this customer may be receiving water at the old residence. The charge for installing the meter for this customer at the new location is subject to service and other activities B&O tax.

(105) **Contributions of equipment or facilities.** Contributions to a utility business in the form of equipment or facilities are not considered income to the utility business, if the contribution is a condition of receiving service.

(a) **Example 1.** An industrial customer purchases and pays sales tax on transformers it installs. The customer then provides the transformers to a public utility district as a condition of receiving future service. The public utility district is not subject to the PUT or B&O tax on the receipt of the transformers. Use tax is not owed by the utility district as the customer paid sales tax at the time of purchase.

(b) **Example 2.** For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items provided by a developer for purposes of servicing the developed area is likewise not subject to PUT or B&O tax.

Part II - Exemptions, Deductions, and Nontaxable Receipts

(201) **Exemptions.** This subsection describes PUT exemptions. Also see subsections in this rule that discuss specific utilities.

(a) **Income exemption.** Persons subject to the PUT are exempt from the payment of the tax if their taxable income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed information about this exemption, refer to WAC 458-20-104, Small business tax relief based on income of business.

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261, Commute trip reduction incentives.

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(202) **Deductions.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050 provides for limited deductions. This subsection describes a number of those deductions. The deductible amounts should be included in the gross income reported on the state public utility tax addendum for the excise tax return and then deducted on the deduction detail page to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page may be disal-

lowed. Also see Parts III and IV of this rule, which identify additional deductions available to power and light, gas distribution, and water distribution businesses.

(a) **Cash discounts.** The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) **Credit losses.** The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050(5). For additional information regarding credit losses see WAC 458-20-196, Bad debts.

(c) **Taxes.** Amounts derived by municipally owned or operated public service businesses directly from taxes levied for their support are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) **Prohibitions imposed by federal law or the state or federal constitutions.** Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6).

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale within this state, are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example, income from the sale of natural gas by a gas distributing company to natural gas companies located in Washington, who resell the gas to their customers, is deductible from the gas distributing company's gross income.

(f) **Services furnished jointly.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050(3) allows a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. The services must be furnished jointly by both the taxpayer and another person taxable under the PUT.

Example 1. Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and

XYZ. See WAC 458-20-180 for additional information on motor carriers.

Example 2. Dakota Electricity Generator (DEG) sells electricity to Mod Industrial Firm (MIF). DEG hires Wheeler #1 to transmit the electricity from DEG to MIF. Wheeler #1 subcontracts a portion of the transmission service to Wheeler #2.

- Wheeler #1 and Wheeler #2 are jointly furnishing transmission services to DEG. Assuming all other requirements of the deduction are met, Wheeler #1 may claim a "services jointly provided" deduction in the amount paid to Wheeler #2.

- DEG may not claim a "services jointly provided" deduction for the amount DEG paid Wheeler #1. DEG and Wheeler #1 are *not* jointly furnishing a service to MIF. DEG is selling electricity to MIF, and Wheeler #1 is selling transmission services to DEG.

Example 3. City A's water department purchases water from City B's water department. City A sells the water to its customers. City A may not take a deduction for its payment to City B's water department as "services jointly provided." The sale of water by City A to its customers is not a service jointly provided to City A's customers by both City A and City B.

City B, however, may take a deduction under RCW 82.16.050(2) for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state.

(203) **Nontaxable amounts.** The following amounts are not considered taxable income.

(a) **Insurance claim amounts.** Amounts received from insurance companies in payment of losses, which are distinguishable from amounts received to settle contract payment disagreements.

(b) **Payment of damages.** Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(c) **Amounts from eminent domain proceedings or governmental action.** Amounts received as compensation for compensatory or involuntary taking of facilities of a public utility, by the exercise of eminent domain or governmental action, are considered liquidated damages.

Part III - Light and Power Business

(301) **Light and power business.** Public utility tax is imposed by RCW 82.16.020 on gross income from providing light and power services. Light and power business means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale. RCW 82.16.010.

(302) **Requirements for light and power businesses.** RCW 82.16.090 requires that customer billings issued by light and power businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This

does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(303) **Wheeling of electricity.** "Wheeling of electricity" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Income from wheeling electricity is subject to the PUT.

(304) **Exchanges of electricity by light and power businesses.** There is no specific exemption that applies to an "exchange" of electrical energy or its rights. However, exchanges of electrical energy between light and power businesses qualify for deduction in computing the PUT as sales of power to another light and power business for resale. RCW 82.16.050(11). An exchange is a transaction that is considered to be a sale and involves a delivery or transfer of energy or its rights by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the BPA pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. Sec. 839c. In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. These subsidies are considered a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(305) **Exemptions.** The following exemptions are available for sales of electricity, and are in addition to the general exemptions found in Part II of this rule.

(a) **Sales of electricity to an electrolytic processor.** RCW 82.16.0421 provides an exemption for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process. This exemption, which is scheduled to expire June 30, 2029, applies to sales of electricity made by December 31, 2028.

The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(i) **Exemption certificate required.** To claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. RCW 82.16.0421. A certificate can be obtained from the department's website at: dor.wa.gov.

(ii) **Annual tax performance report requirement.** RCW 82.16.0421 requires taxpayers receiving the benefit of this tax preference to file an annual tax performance report by May 31st of the year following any calendar year in which a taxpayer becomes eligible to claim the tax preference. See RCW 82.32.534 for more information on the annual tax performance report requirement for tax preferences.

(iii) **Qualification requirements.** To qualify all the following requirements must be met:

(A) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(B) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(C) Disallowance of all or part of the exemption is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business is the amount of the tax exemption disallowed.

(b) **Sales of electricity to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity to an aluminum smelter specifies that the price charged for the electricity will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(c) **BPA credits or funds.** Effective June 10, 2010, through June 30, 2015, RCW 82.04.310 exempted from the B&O tax credits or payments received by persons from the BPA, for the purpose of implementing energy conservation programs or demand-side management programs. This exemption expired June 30, 2015, and credits or payments received on or after July 1, 2015, are subject to the B&O tax under the service and other activities classification.

(306) **Deductions.** The following deductions are available for sales of electricity, and are in addition to the general deductions found in Part II of this rule.

(a) **Sales of electricity for resale or for consumption outside Washington.** Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(11). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(b) **Low density light and power businesses.** RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate. The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction can be found on the department's website at: dor.wa.gov.

(c) **Conservation - Electrical energy and gas.** RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable

resources, and for measures to improve the efficiency of energy end-use.

(i) **Restrictions.** Use of the deductions is subject to the following restrictions:

(A) They apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end-use on which construction or installation was begun after June 12, 1980, and before January 1, 1990;

(B) The measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources that utilize nuclear energy or fossil fuels and that the gas or electric utility could acquire to meet energy demand in the same time period; and

(C) They may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project that originally authorized the deduction under RCW 82.16.055.

(ii) **What can be deducted.** The following may be deducted from a taxpayer's gross income:

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.08.02565;

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat;

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer;

(D) Amounts received by a utility as a contribution for the installation of service, and later refunded to the customer, are deductible from gross income at the time the amounts are refunded;

(E) Production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility.

(307) **Credits.** Credit is available to light and power businesses that make ~~((contributions to an electric utility rural economic development revolving fund. The credit is equal to fifty percent of contributions made during a fiscal year to an electric utility rural economic development revolving fund.~~

~~(a) Light and power businesses may take a credit up to twenty-five thousand dollars, not to exceed the PUT that would normally be due, against their public utility tax liability each fiscal year for contributions made.~~

~~(b) Expenditures from the electric utility rural economic development revolving fund must be made solely on qualify-~~

~~ing projects, in a designated qualifying rural area. For additional information see RCW 82.16.0491.~~

~~(e) The total amount of credits available statewide on a fiscal year basis for all qualified businesses is three hundred fifty thousand dollars. The department will allow earned credits on a first come, first served basis. The right to earn these tax credits expired June 30, 2011. Unused earned credits may be carried forward to subsequent years provided the department has given prior approval)) incentive payments to eligible customers under the state energy performance standard early adoption incentive program. The credit is equal to the amount of incentive payments made under RCW 19.27A.220 in any calendar year, plus documented administrative costs not to exceed eight percent of the incentive payments.~~

~~(a) A light and power business may take the credit against its PUT liability, but the credit may not exceed the PUT that would normally be due. The credit may be claimed during the same calendar year that the light and power business made incentive payments and incurred administrative expenses, or carried forward for the following two calendar years. A light and power business may not carry the credit backward or receive a refund in the place of a credit.~~

~~(b) A business that claims credit in excess of the amount actually earned must repay the excess amount, in addition to interest accruing from the date the credit was claimed to the date of repayment. The department must provide written notice of the amount of any excess credit and interest due. The amount due must be paid within thirty days of the date of notice. The interest rate for excess credit claimed is equal to the rate for delinquent excise taxes under chapter 82.32 RCW. However, businesses do not need to repay excess credits claimed based on amounts reported to the business by the department of commerce under RCW 19.27A.220, if the amounts are later found abnormal or inaccurate through no fault of the business.~~

~~(c) The right to earn credits under this early adoption incentive program expires June 30, 2032.~~

Part IV - Gas and Water Distribution Businesses

(401) **Gas distribution.** Gross income received for the distribution of gas is taxable under PUT as provided by RCW 82.16.020. Gas distribution business means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural. RCW 82.16.010. See Part II for general exemptions and deductions that may apply to gas distribution.

(402) **Requirements for gas distribution businesses.** RCW 82.16.090 requires that customer billings issued by gas distribution businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(c) In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(i) **Sales of natural or manufactured gas to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit for sales of natural or manufactured gas to aluminum smelters. The credit is allowed if the contract for sale of gas to an aluminum smelter specifies that the price charged for the gas will be reduced by an amount equal to the credit. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(ii) **Conservation - Energy from gas.** RCW 82.16.055 provides deductions for the production or generation of energy from cogeneration or renewable resources and for measures to improve the efficiency of energy end-use. See subsection (306)(c) of this rule.

(iii) **Compressed natural gas and liquefied natural gas used as transportation fuel.**

(A) Effective July 1, 2015, RCW 82.16.310 provides an exemption for sales by a gas distribution business of natural gas, compressed natural gas, and liquefied natural gas if the:

(I) Compressed natural gas or liquefied natural gas is sold or used as transportation fuel; or

(II) Buyer uses natural gas to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(B) Effective July 28, 2019, RCW 82.16.310 provides an exemption for sales by a gas distribution business of renewable natural gas.

(C) The buyer must provide and the seller must retain an exemption certificate. See the department's website at: dor.wa.gov for the "Purchases of Natural Gas for Use as Transportation Fuel" form. RCW 82.16.310.

~~((C))~~ (D) Although sales of natural gas, compressed natural gas, ~~(and)~~ liquefied natural gas, and renewable natural gas may be exempt under RCW 82.16.310, the income from such sales may be subject to other taxes such as business and occupation tax and retail sales tax.

~~((D))~~ (E) For the purpose of this subsection, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car. "Renewable natural gas" is defined in RCW 54.04.190 to mean a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

(403) **Credits for gas distribution businesses.** Credit is available to gas distribution businesses that make incentive payments to eligible customers under the state energy performance standard early adoption incentive program. The credit is equal to the amount of incentive payments made under RCW 19.27A.220 in any calendar year, plus documented administrative costs not to exceed eight percent of the incentive payments.

(a) A gas distribution business may take the credit against its PUT liability, but the credit may not exceed the PUT that would normally be due. The credit may be claimed during the same calendar year that the gas distribution business made incentive payments and incurred administrative

expenses, or carried forward for the following two calendar years. A gas distribution business may not carry the credit backward or receive a refund in the place of a credit.

(b) A business that claims credit in excess of the amount actually earned must repay the excess amount, in addition to interest accruing from the date the credit was claimed to the date of repayment. The department must provide written notice of the amount of any excess credit and interest due. The amount due must be paid within thirty days of the date of notice. The interest rate for excess credit claimed is equal to the rate for delinquent excise taxes under chapter 82.32 RCW. However, businesses do not need to repay excess credits claimed based on amounts reported to the business by the department of commerce under RCW 19.27A.220, if the amounts are later found abnormal or inaccurate through no fault of the business.

(c) The right to earn credits under this early adoption incentive program expires June 30, 2032.

(404) **Water distribution.** PUT is imposed on amounts derived from the distribution of water under RCW 82.16.020. Water distribution business means the business of operating a plant or system for the distribution of water for hire or sale. RCW 82.16.010. In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(a) **Water distribution by a nonprofit water association.** Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(12).

(b) **Distribution of irrigation water.** Amounts derived from the distribution of water through an irrigation system, for irrigation purposes, are deductible under RCW 82.16.050 (7). The phrase "for irrigation purposes" means water used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied irrigation water may be deducted from gross income subject to PUT.

To meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.

WSR 20-04-023

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 27, 2020, 11:50 a.m., effective February 27, 2020]

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

Purpose: The department is amending WAC 458-20-189 to reflect 2019 legislation that expands a sales and use tax exemption for personal property sold between political subdi-

visions to include sales or uses of personal property as a result of a merger, and creates a new sales and use tax exemption for sales or uses of personal property made under contractual consolidations of political subdivisions in which the taxpayer that originally paid the sales or use tax continues to benefit from the personal property.

Citation of Rules Affected by this Order: Amending WAC 458-20-189.

Statutory Authority for Adoption: RCW 82.32.200 and 82.01.060(2).

Adopted under notice filed as WSR 19-23-001 on November 6, 2019.

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 the Request of a Non-governmental 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: January 27, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-08-076, filed 4/3/17, effective 5/4/17)

WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts. (1) **Introduction.** This rule discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington and municipal corporations including, but not limited to, counties, cities, towns, school districts, fire districts, and other special districts.

(a) **Other rules that may apply.** Readers may also want to refer to other rules for additional information, including the following:

(i) WAC 458-20-106 Casual or isolated sales—Business reorganizations.

(ii) WAC 458-20-118 Sale or rental of real estate, license to use real estate.

(iii) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools.

(iv) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

(v) WAC 458-20-179 Public utility tax.

(vi) WAC 458-20-180 Motor carriers.

(vii) WAC 458-20-201 Interdepartmental charges.

(viii) WAC 458-20-250 Solid waste collection tax.

(ix) WAC 458-20-251 Sewerage collection and other related activities.

(b) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Enterprise activity"** means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

(b) **"Municipal corporations"** means counties, cities, towns, school districts, fire districts, and other special districts including, but not limited to, park and recreation districts, water and sewer districts, and library districts of the state of Washington.

(c) **"Public service business"** means any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, but is not limited to, water distribution, light and power, public transportation, and sewer collection.

(d) **"Subject to control by the state,"** as used in (c) of this subsection, means control by the utilities and transportation commission or any other state department required by law to regulate a business of a public service nature as to rates charged or services rendered.

(e) **"User fee"** as used in this rule, means a charge imposed on individuals or entities to access facilities, receive services, or participate in activities.

(3) **Application of the business and occupation tax.**

(a) **Sales to the state of Washington and municipal corporations.** Sellers are subject to the B&O tax on sales to the state of Washington, its departments and institutions, or to municipal corporations.

(b) **Sales by the state of Washington.** The state of Washington and its departments and institutions are not subject to the provisions of the B&O tax under RCW 82.04.030.

(c) **Sales by municipal corporations.**

(i) Governmental activities. Municipal corporations are not subject to the B&O tax on amounts received from activities that are exclusively governmental under RCW 82.04.-419. Income from activities that are exclusively governmental include, but are not limited to, license and permit fees; inspection fees; fees for copies of public records, reports, and studies; pet adoption and license fees; processing fees for fingerprinting and environmental impact statements; and fees for on-street metered parking and on-street parking permits. Income received from taxes, fines, penalties, and interest imposed on exclusively governmental activities is also exempt from the B&O tax.

(ii) Interdepartmental charges. Charges between departments of a particular municipal corporation are interdepartmental charges and are not subject to the B&O tax.

(iii) **Grant income.** Municipal corporations are exempt from the B&O tax on grants received from the state of Washington, or the United States government under RCW 82.04.-418.

(iv) **Public service business activities.** Municipal corporations engaging in public service business activities should refer to the rules mentioned in subsection (1)(a) of this rule to determine their B&O tax liability.

(v) **Enterprise activities.** Municipal corporations receiving income, however designated, from any enterprise activity for which a specific charge is made are subject to the B&O tax.

(A) When determining whether an activity is an enterprise activity, user fees received from the activity must be measured against total costs attributable to providing the activity, including direct and indirect overhead. This review should be performed at the budget level for all activities included in the budget, and on the fiscal or calendar year basis used by the entity in maintaining its books of account.

Example 1. A city determines that its community center, which is operated under a single budget, generated two hundred fifty thousand dollars in user fees for the fiscal year. The total cost to operate the facility was four hundred thousand dollars, which includes direct operating costs, direct and indirect overhead, asset depreciation, and interest payments for the retirement of bonds issued to fund the facility's construction. The principal payments for the retirement of the bonds are not included because these costs are a part of the asset depreciation costs. The facility's operation is an enterprise activity because it is more than fifty percent ($\$250,000 / \$400,000 = 63\%$) funded by user fees.

(B) An enterprise activity that is operated as part of a governmental or nonenterprise activity is subject to the B&O tax.

Example 2. A city owns a large community center and three smaller neighborhood centers. The community center operates with its own budget, and the three neighborhood centers operate under a single separate budget. The community center and the neighborhood centers are operated as a part of the overall parks and recreation department, which is not more than fifty percent funded by user fees.

Each budget must be independently reviewed to determine whether these facilities are operated as enterprise activities. The operation of the community center is an enterprise activity only if the user fees account for more than fifty percent of the community center's operating budget. The total user fees generated by the three neighborhood centers are compared to the total costs of operating the three centers to determine whether they, as a whole, are an enterprise activity. Had each neighborhood center operated under individual budgets, the user fees generated by each neighborhood center would be compared to the costs of operating that center.

(4) Business and occupation tax classifications for enterprise activities.

(a) Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other activities tax.** Amounts received from, but not limited to, event admission fees for concerts and exhibits, admission charges to a zoo or wildlife park, fees charged for the use of lockers at a facility not considered an

"athletic or fitness facility" as defined in RCW 82.04.050, charges for moorage (less than thirty days), and the granting of a license to use real property are subject to the service and other activities B&O tax under RCW 82.04.290(2).

(ii) **Extracting tax.** The extracting of natural products for sale or for commercial use is subject to the extracting B&O tax under RCW 82.04.230. The measure of tax is the value of products. (See WAC 458-20-135 on extracting.) Counties and cities are not, however, subject to the extracting B&O tax on the cost of labor and services performed in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned by or leased to the county or city when these products are either stockpiled for placement or are placed on a street, road, place, or highway of the county or city by the county or city itself. In addition, the extracting B&O tax does not apply to the cost of or charges for such labor and services if the sand, gravel, or rock is sold by the county or city to another county or city at actual cost for placement on a publicly owned street, road, place, or highway under RCW 82.04.415.

(iii) **Manufacturing tax.** The manufacturing of products for sale or for commercial use is subject to the manufacturing B&O tax under RCW 82.04.240. The measure of tax is the value of products. (See WAC 458-20-136 on manufacturing.) The manufacturing B&O tax does not apply to the value of materials printed by counties, cities, towns, school districts, educational districts, or library or library district facilities solely for their own use under RCW 82.04.600.

(iv) **Wholesaling tax.** The wholesaling B&O tax applies to the gross proceeds received from sales or rentals of tangible personal property to persons who resell the same without intervening use under RCW 82.04.270. The wholesaling tax does not, however, apply to casual sales. Sellers must obtain a reseller permit from their customer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Reseller permits).

(v) **Retailing tax.** Amounts received from, but not limited to, user fees for off-street parking and garages, charges for the sale or rental of tangible personal property to consumers, fees for providing recreational services and activities, charges for operating an athletic or fitness facility, and other retail services and activities as provided in RCW 82.04.050, are taxable under the retailing B&O tax under RCW 82.04.-250. The retailing B&O tax does not, however, apply to casual sales.

(b) Persons selling products that they have extracted or manufactured must report, unless exempt by law, under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. See WAC 458-20-19301 on multiple activities tax credits.

(5) Application of the retail sales tax.

(a) **Sales to the state of Washington and municipal corporations.** The retail sales tax applies to retail sales made to the state of Washington, including its departments and institutions, and to municipal corporations unless a specific exemption applies.

(b) **Sales by the state of Washington and municipal corporations.** The state of Washington, including its depart-

ments and institutions, and all municipal corporations must collect retail sales tax on all retail sales of tangible personal property or retail services unless a specific exemption applies. Retail sales tax must be collected and remitted even if the sale is exempt from the retailing B&O tax.

Example 3. A city police department must collect retail sales tax on casual sales of unclaimed property to consumers, even though this activity is not subject to the B&O tax because these sales are considered casual sales.

Example 4. A city owns and operates a zoo. One budget is maintained for the care and maintenance of the wildlife and facilities, and a separate budget is maintained for the gift shop and concessions. The wildlife and facilities budget is less than fifty percent funded by admission fees, while the gift shop and concessions budget is almost entirely funded by the proceeds from sales. The admission fees are not subject to the B&O tax, but the income from the gift shop and concession sales are subject to the retailing B&O tax and the city must collect retail sales tax. In this example, had the entire zoo been operated under a single budget and less than fifty percent of the budget was funded by user fees, then no part of the zoo would be considered an enterprise activity. If the zoo is not an enterprise activity, then B&O tax would not apply to the admission fees, the gift shop sales, or the concession sales. However, retail sales tax must still be collected on the gift shop and concession sales.

(c) **Sales between the state of Washington and a municipal corporation.** Sales between a department or institution of the state and a municipal corporation are retail sales and are subject to the retail sales tax.

Example 5. State Agency sells office equipment to County. State Agency is making a retail sale and must collect and remit retail sales tax upon the amount charged, even though the B&O tax does not apply to this sale. The amount of retail sales tax must be separately itemized on the sales invoice under RCW 82.08.050. State Agency may claim a tax paid at source deduction for any retail sales or use tax previously paid on the purchase of the office equipment provided there was no intervening use of the office equipment by State Agency. If intervening use occurred, State Agency may not claim the tax paid at source deduction, as described in WAC 458-20-102 (Reseller permits), for any retail sales or use tax it previously paid when purchasing the office equipment.

(d) **Sales between municipal corporations.** Sales between municipal corporations are retail sales subject to the retail sales tax.

(e) **Sales between departments or institutions of the state of Washington.** Departments or institutions of the state of Washington are not considered sellers when making sales to other departments or institutions of the state because the state is considered to be a single entity under RCW 82.08.010 (2). Therefore, the "selling" department or institution is not required to collect the retail sales tax on these sales.

All departments or institutions of the state of Washington are, however, considered "consumers" under RCW 82.08.010(3). A department or institution of the state purchasing tangible personal property from another department or institution is required to remit to the department of revenue the retail sales or use tax upon that purchase, unless it can

document that the "selling" institution previously paid retail sales or use tax on that item.

(6) **Retail sales tax exemptions.** The retail sales tax does not apply to the following:

(a) Sales to city or county housing authorities created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. However, prime contractors and subcontractors working for city or county housing authorities should refer to WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property) to determine their tax liability.

(b) Charges to the state of Washington and municipal corporations for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended, under RCW 82.08.0271.

(c) Sales of an entire or complete integral section of operating property of a publicly or privately owned public utility to the state of Washington or to a municipal corporation for use in conducting any public service business, except a tugboat business, under RCW 82.08.0256.

(d) Sales of or charges made for labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned or leased to a county or city, when the materials are either stockpiled in the pit or quarry, placed on the public road by the county or city itself, or sold at cost to another county or city for use on public roads under RCW 82.08.-0275.

(e) Sales to one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation, merger, or incorporation of any part of the territory of one municipal corporation by another under RCW 82.08.0278.

(f) Sales to one municipal corporation by another municipal corporation according to the terms of a contractual consolidation under which the taxpayers that originally paid a sales or use tax continue to benefit from the use of the personal property.

(g) Sales to the state of Washington or a municipal corporation of ferry vessels and component parts thereof, and charges for labor and services in respect to construction or improvement of such vessels under RCW 82.08.0285.

~~((g))~~ (h) Sales to the United States. Sales to federal employees, however, are subject to the retail sales tax even if the federal employee will be reimbursed for the cost by the federal government. (See WAC 458-20-190 on sales to the United States.)

~~((h))~~ (i) Charges for physical fitness classes, such as aerobics classes, provided by local governments under RCW 82.08.0291. For more information on charges for physical fitness classes provided by local governments, refer to the department's website at dor.wa.gov.

(7) **Application of the use tax.**

(a) The state of Washington, including its departments and institutions, and municipal corporations are required to pay the use tax directly to the department of revenue if the retail sales tax was not paid on the value of the item or service at the time of purchase. Refer to WAC 458-20-178 (Use tax

and the use of tangible personal property) for more information.

(b) Purchases of cigarette stamps, vehicle license plates, license plate tabs, disability decals, or other items to evidence payment of a license, tax, or fee are purchases for consumption by the state or municipal corporation and subject to the retail sales or use tax.

(c) If the state of Washington or its departments and institutions purchase tangible personal property or retail services to resell to any other department or institution of the state of Washington, or to consume as an ingredient or component part in manufacturing or producing for use, a new article for resale to any other department or institution of the state of Washington, the transaction is a retail purchase and subject to retail sales or use tax.

(d) The state of Washington or a municipal corporation that produces or manufactures products for commercial or industrial use are required to remit use tax upon the value of those products under RCW 82.12.020, unless a specific use tax exemption applies. This value must correspond as nearly as possible to the gross proceeds from retail sales of similar products. (See WAC 458-20-112 and 458-20-134 on value of products and commercial or industrial use, respectively.)

Example 6. A municipal corporation that operates a print shop and produces forms or other documents for its own use must remit use tax upon the value of those products, even though a B&O tax exemption is provided by RCW 82.04.-600. The value of the products subject to use tax may be reduced by any retail sales tax previously paid on materials, such as paper or ink, which are incorporated into the manufactured product.

(i) Counties and cities are not subject to use tax on the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads under RCW 82.12.0269.

(ii) If a department or institution of the state of Washington manufactures or produces tangible personal property for use or resale to any other department or institution of the state, use tax must be remitted on the value of that article even though the state is not subject to the B&O tax.

Example 7. State Agency manufactures office furniture to resell to other departments or institutions of the state of Washington. State Agency sometimes uses office furniture it has manufactured for its own offices. Use tax is due on the office furniture sold to the other departments or institutions, and on the office furniture State Agency puts to its own use. The taxable value of the office furniture sold to the other departments or institutions is the selling price. The taxable value for the office furniture State Agency puts to its own use is the selling price at which State Agency sells comparable furniture to other departments or institutions. When computing and remitting use tax upon the value of manufactured furniture, State Agency may reduce the value by any retail sales or use taxes it previously remitted on materials incorporated into that furniture. A department or institution purchasing office furniture from State Agency must remit use tax on the value of that furniture, unless it can document that State

Agency paid use tax upon the appropriate value of the furniture. (See also subsection (5)(e) of this rule.)

(e) A use tax exemption applies to the use by the state or local governments of donated personal property under RCW 82.12.02595. The donor, however, remains liable for the retail sales or use tax on the donated property.

(f) A use tax exemption applies to the use of personal property of one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation, merger, or incorporation of any part of the territory of one municipal corporation by another.

(g) A use tax exemption applies to the use of the personal property of one municipal corporation by another municipal corporation according to the terms of a contractual consolidation under which the taxpayers that originally paid a sales or use tax continue to benefit from the use of the personal property.

(8) Application of the public utility tax.

(a) Persons receiving income subject to the public utility tax may not claim a deduction for amounts received as compensation for services rendered to the state of Washington, its departments and institutions, or to municipal corporations thereof.

(b) The public utility tax does not apply to income received by the state of Washington or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses should refer to the rules mentioned in subsection (1)(a) of this rule to determine their public utility tax liability.

WSR 20-04-026

PERMANENT RULES

DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed January 28, 2020, 9:29 a.m., effective February 28, 2020]

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

Purpose: WAC 246-919-865 (physicians) Patient notification, secure storage, and disposal and 246-918-815 (physician assistants) Patient notification, secure storage, and disposal. The Washington medical commission (commission) adopted amendments to establish patient notification, documentation, counseling requirements, and right to refuse an opioid prescription or order for any reason, when prescribing opioid drugs, as directed by sections 8 and 9, codified as RCW 18.71.810, 18.71A.810, and section 17, codified as RCW 69.50.317, of SSB 5380 (chapter 314, Laws of 2019). The commission also adopted clarifications of when notification is not required.

Citation of Rules Affected by this Order: Amending WAC 246-919-865 and 246-918-815.

Statutory Authority for Adoption: RCW 18.71.017, 18.71.810, 18.71A.810.

Other Authority: RCW 69.50.317.

Adopted under notice filed as WSR 19-21-143 on October 22, 2019.

A final cost-benefit analysis is available by contacting Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866,

phone 360-236-2727, TTY 360-833-6388 or 711, email amelia.boyd@wmc.wa.gov, website wmc.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 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: December 12, 2019.

Melanie de Leon
Executive Director

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-815 Patient notification, secure storage, and disposal. (1) The physician assistant shall ~~((ensure the patient is provided))~~ discuss with the patient the following information at the first issuance of a prescription for opioids and at the transition from acute to subacute, and subacute to chronic:

(a) Risks associated with the use of opioids, including the risk of dependence and overdose, as appropriate to the medical condition, the type of patient, and the phase of treatment;

(b) Pain management alternatives to opioids, including nonopioid pharmacological and nonpharmacological treatments, whenever reasonable, clinically appropriate, evidence-based alternatives exist;

(c) The safe and secure storage of opioid prescriptions; ~~((and~~

~~((and~~ ~~((and~~ (d) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs~~(-~~

~~(-))~~; and

(e) That the patient has the right to refuse an opioid prescription or order for any reason. If a patient indicates a desire to not receive an opioid, the physician assistant must document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(2) The requirements in subsection (1) of this section do not apply to the administration of an opioid including, but not limited to, the following situations as documented in the patient record:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the administration of anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(3) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or the person identified in RCW 7.70.065, unless otherwise provided by law.

(4) The physician assistant shall document completion of the requirements in subsection (1) of this section in the patient's health care record.

(5) The information in subsection (1) of this section must also be provided in writing. This requirement may be satisfied with a document provided by the department of health.

(6) To fulfill the requirements of subsection (1) of this section, a physician assistant may designate any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-919-865 Patient notification, secure storage, and disposal. (1) The physician shall ~~((ensure the patient is provided))~~ discuss with the patient the following information at the first issuance of a prescription for opioids and at the transition from acute to subacute, and subacute to chronic:

(a) Risks associated with the use of opioids, including the risk of dependence and overdose, as appropriate to the medical condition, the type of patient, and the phase of treatment;

(b) Pain management alternatives to opioids, including nonopioid pharmacological and nonpharmacological treatments, whenever reasonable, clinically appropriate, evidence-based alternatives exist;

(c) The safe and secure storage of opioid prescriptions; ~~((and~~

~~((and~~ ~~((and~~ (d) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs~~(-~~

~~(-))~~; and

(e) That the patient has the right to refuse an opioid prescription or order for any reason. If a patient indicates a desire to not receive an opioid, the physician must document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(2) The requirements in subsection (1) of this section do not apply to the administration of an opioid including, but not limited to, the following situations as documented in the patient record:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the administration of anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(3) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or the person identified in RCW 7.70.065, unless otherwise provided by law.

(4) The physician shall document completion of the requirements in subsection (1) of this section in the patient's health care record.

(5) The information in subsection (1) of this section must also be provided in writing. This requirement may be satisfied with a document provided by the department of health.

(6) To fulfill the requirements of subsection (1) of this section, a physician may designate any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.

WSR 20-04-027

PERMANENT RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed January 28, 2020, 9:37 a.m., effective February 28, 2020]

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

Purpose: WAC 246-935-270 through 246-935-310, veterinary board of governors (board) veterinary technician continuing education rules. The board adopted the rules to modernize veterinary continuing education rules and streamline requirements. Changes to the rule include decreasing the reporting period from three years to two years; reducing the total number of hours from thirty hours to twenty hours, which maintains the intent of completing an average of ten hours per year; clarifying expectations when a veterinary technician is audited; setting a minimum requirement of fourteen scientific or clinical hours; allowing a maximum of six hours to be obtained through teaching; designating live, web-based coursework to be equivalent to in-person coursework; and expanding the approved provider list.

Citation of Rules Affected by this Order: New WAC 246-935-285 and 246-935-295; repealing WAC 246-935-300; and amending WAC 246-935-270, 246-935-280, 246-935-290, and 246-935-310.

Statutory Authority for Adoption: RCW 18.92.030.

Adopted under notice filed as WSR 19-21-134 on October 21, 2019.

A final cost-benefit analysis is available by contacting Lorelei Walker, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4947, fax 360-236-2901, TTY 360-833-6388 or 711, email loralei.walker@doh.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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 4, Repealed 1.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 4, Repealed 1.

Date Adopted: December 9, 2019.

Liz Davies, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 08-20-126, filed 10/1/08, effective 11/1/08)

WAC 246-935-270 Purpose. The standards established in WAC 246-935-270 through 246-935-310 may be cited as the "veterinary technician continuing education rules." The purpose of these rules is to establish standards of continuing education for licensed veterinary technicians. The rules ~~((designate approved))~~ provide for qualifying training methods, ~~((identify))~~ designating approved continuing education providers and ~~((set))~~ setting minimum continuing education credit requirements.

AMENDATORY SECTION (Amending WSR 08-20-126, filed 10/1/08, effective 11/1/08)

WAC 246-935-280 ~~((Basic requirement—Amount.))~~ Continuing education requirement. ~~((Continuing education consists of programs of learning which contribute directly to the advancement or enhancement of the skills of licensed veterinary technicians. Beginning with license renewals on or after July 23, 2007, licensed veterinary technicians must complete thirty hours of continuing education every three years. No more than ten hours can be earned in practice management courses in any three-year reporting period. Licensed veterinary technicians must comply with chapter 246-12 WAC relating to continuing education requirements.))~~ (1) Beginning January 1, 2020, a licensed veterinary technician shall complete twenty hours of continuing education every two years. Licensed veterinary technicians shall comply with chapter 246-12 WAC, Part 7 relating to continuing education requirements.

(2) A veterinary technician shall complete the continuing education requirements as follows:

<u>If continuing education is due on the veterinary technician's renewal date in:</u>	<u>The next continuing education due date is on the veterinary technician's renewal date in the year below and every two years thereafter:</u>
<u>2020</u>	<u>2022</u>
<u>2021</u>	<u>2023</u>
<u>2022</u>	<u>2024</u>

(3) The board may audit up to twenty-five percent of veterinary technicians after the license is renewed and may audit a veterinary technician for cause.

(a) Upon request by the board, the veterinary technician is responsible for submitting documentation of completed continuing education. Documentation must include, at a minimum:

(i) The name and credentials or qualifications of the continuing education provider;

(ii) The date of attendance or completion;

(iii) Course title or subject; and

(iv) The number of hours earned.

(b) Documentation for continuing education earned pursuant to WAC 246-935-295 (2)(b) must include, in addition to (a)(i) through (iv) of this subsection, a list of attendees, and materials that sufficiently describe the content of the presentation.

(c) Failure by a veterinary technician to cooperate with an audit or provide the requested proof of continuing education to the board is grounds for disciplinary action.

NEW SECTION

WAC 246-935-285 Approval of courses. The board will not authorize or approve specific continuing education courses or materials. All continuing education courses must be provided by organizations, institutions, or individuals in WAC 246-935-290 and contribute to the professional knowledge and development of the practitioner, enhance services provided to patients, and contribute to the practitioner's ability to deliver current standards of care. The board will accept continuing education that reasonably falls within these criteria, and relies upon the integrity of each individual practitioner, as well as that of program sponsors, in complying with this requirement. Courses cannot be exclusively for product promotion. The board reserves the right to not accept credits from any area for any practitioner if, upon auditing, the board determines that a course or material did not provide appropriate information or training.

AMENDATORY SECTION (Amending WSR 16-16-070, filed 7/28/16, effective 8/28/16)

WAC 246-935-290 ~~((Qualified organizations approved by the veterinary board of governors.))~~ **Organizations, institutions, or individuals approved by the veterinary board to provide continuing education courses.**

~~((Courses offered by the following organizations qualify as continuing education courses for veterinary technicians.~~

~~(1) The Washington State Association of Veterinary Technicians.~~

~~(2) National Association of Veterinary Technicians in America.~~

~~(3) All veterinary technician specialty academies recognized by the National Association of Veterinary Technicians in America.~~

~~(4) The American Association of Veterinary State Boards (AAVSB).~~

~~(5) The American Veterinary Medical Association (AVMA).~~

~~(6) The Washington State Veterinary Medical Association.~~

~~(7) Any board approved college or school of veterinary medical technology.~~

~~(8) Any board approved college or school of veterinary medicine.~~

~~(9) Any state or regional veterinary association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.~~

~~(10) The American Animal Hospital Association.~~

~~(11) Veterinary specialty boards recognized by the American Veterinary Medical Association.~~

~~(12) Regional veterinary conferences and allied organizations recognized by AAVSB.~~

~~(13) The Registry of Approved Continuing Education (RACE).~~

~~(14) Other courses as approved by the board.))~~ **The board approves veterinary technician continuing education courses provided by organizations, institutions, or individuals (providers) including, but not limited to, the following:**

(1) Any board approved college or school of veterinary medical technology.

(2) Any international, national, state, provincial, regional or local veterinary technician association.

(3) National Association of Veterinary Technicians in America (NAVTA).

(4) A veterinary technician specialist who is certified by a veterinary technician specialty (VTS) academy recognized by NAVTA when teaching a course within his or her area of specialty.

(5) All veterinary technician specialty academies recognized by NAVTA.

(6) The Washington state association of veterinary technicians (WSAVT).

(7) Organizations, institutions, or individuals approved for veterinarians in WAC 246-933-460.

NEW SECTION

WAC 246-935-295 Categories and methods of continuing education activities. (1) Categories of continuing education:

(a) Scientific or clinical. A minimum of fourteen scientific or clinical credit hours must be earned in any two-year reporting period. Credits must be obtained through education offered by an approved provider listed in WAC 246-935-290.

(b) Practice management or professional development. A maximum of six practice management or professional development credit hours may be claimed in any two-year reporting period.

(2) Methods by which continuing education may be obtained:

(a) Live attended courses. There is no limit for credit hours earned through live courses attended remotely, provided that attendees have the documented opportunity to question the instructor, hear the questions of other attendees, and receive responses in real time. The course must be obtained through education offered by an approved provider listed in WAC 246-935-290.

(b) Teaching. A maximum of six teaching credit hours may be claimed in any two-year reporting period. Qualifying courses must either meet the criteria under WAC 246-935-290 or must be presented through an accredited health care learning institution. Courses must be presented to veterinary

technicians, other credentialed health care providers, or students of health care professions. Three credit hours will be granted for each course hour taught. Credit will be granted for only the first time a course is taught.

(c) Preprogrammed materials. Preprogrammed educational materials are noninteractive and may be presented in any form of printed or electronic media. A maximum of six credit hours may be claimed in any two-year reporting period for completion of preprogrammed educational materials. The materials must be obtained through education offered by an approved provider listed in WAC 246-935-290, and must require successful completion of an examination or assessment.

AMENDATORY SECTION (Amending WSR 08-20-126, filed 10/1/08, effective 11/1/08)

WAC 246-935-310 Exceptions. The board may excuse from or grant an extension of continuing education requirements to a licensed veterinary technician due to illness or other extenuating circumstances.

Licensees seeking an extension must petition the board, in writing, at least ~~((forty-five))~~ thirty days prior to the end of the reporting period.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-935-300 Self-study continuing veterinary technician education activities.

WSR 20-04-028

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Denture Technology)

[Filed January 28, 2020, 9:43 a.m., effective February 28, 2020]

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

Purpose: Chapter 246-812 WAC, Board of denturists, the board of denturists (board) adopted amendments to continuing competency requirements and expired license requirements. The board also added new rules to address: (1) Use of a professional title; (2) approval for online schools or programs; (3) denial and other rights for denturist programs; and (4) hand hygiene, respiratory hygiene and cough etiquette.

Citation of Rules Affected by this Order: New WAC 246-812-159, 246-812-175, 246-812-225, 246-812-232, 246-812-234, 246-812-236, 246-812-245, 246-812-305, 246-812-515 and 246-812-517; repealing WAC 246-812-020, 246-812-101 and 246-812-301; and amending WAC 246-812-010, 246-812-120, 246-812-125, 246-812-135, 246-812-150, 246-812-155, 246-812-158, 246-812-160, 246-812-161, 246-812-165, 246-812-200, 246-812-220, 246-812-230, 246-812-240, 246-812-250, 246-812-310, 246-812-320, 246-812-340, 246-812-350, 246-812-360, 246-812-390, 246-812-470, 246-

812-480, 246-812-510, 246-812-520, 246-812-601, 246-812-610, 246-812-620, and 246-812-630.

Statutory Authority for Adoption: RCW 18.30.065.

Adopted under notice filed as WSR 19-19-077 on September 17, 2019.

A final cost-benefit analysis is available by contacting Vicki Brown, Program Manager, Office of Health Professions, Board of Denturists, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4865, fax 360-236-2901, TTY 360-833-6388 or 711, email vicki.brown@doh.wa.gov, website www.doh.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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 10, Amended 29, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, Amended 29, Repealed 3.

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 10, Amended 29, Repealed 3.

Date Adopted: October 25, 2019.

J. Eric Hansen, Chairperson
Board of Denturists

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(2) "Approval" and "accreditation" are used interchangeably with reference to sanctioning of courses.

(3) ~~((**"Board"** means the Washington state board of denturists.~~

~~((4))~~ "Bruxism" means the excessive grinding of the teeth ~~((and/or))~~ or excessive clenching of the jaw.

~~((5))~~ ~~**"Department"** means the department of health.~~

~~((6))~~ ~~**"Office on AIDS"** means that section within the department of health with jurisdiction over public health matters as defined in chapter 70.24 RCW.)~~

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-120 Denturist licensure—~~((Initial))~~ Eligibility and application requirements. An applicant for a denturist license ~~((must))~~ shall submit to the board:

(1) A completed application;

(2) The application fee required under WAC 246-812-990;

(3) Verification of passing both a board-approved written examination and a practical examination which includes a practical demonstration of skills;

(4) Verification of having passed the online jurisprudence examination;

(5) An official transcript from an educational institution approved by the board; and

~~((4))~~ (6) Verification of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-125 Denturist licensure—Endorsement. ~~((1) For the purposes of endorsement as provided in RCW 18.30.090 (1)(a) licensing standards are determined to be substantially equivalent that meet the following criteria:~~

~~(a) A written examination which includes:~~

~~(i) Testing in the areas of:~~

~~(A) Oral pathology;~~

~~(B) Head and oral anatomy and physiology; and~~

~~(C) Dental laboratory technology;~~

~~(ii) Testing in four of the following test categories:~~

~~(A) Partial denture construction and design;~~

~~(B) Microbiology;~~

~~(C) Clinical dental technology;~~

~~(D) Clinical jurisprudence;~~

~~(E) Asepsis;~~

~~(F) Medical emergencies;~~

~~(G) Cardiopulmonary resuscitation.~~

~~(b) A practical examination which includes a clinical examination.~~

~~(2)) An applicant for licensure ((as a denturist)) who is currently licensed to practice denturism in another state, territory of the United States, District of Columbia, or Puerto Rico ((must file an application with the board and submit:~~

~~(a) Documentation verifying that the applicant has successfully completed the testing requirements in subsection (1) of this section; and~~

~~(b) The application fee required in WAC 246-812-990)), that the board has determined has substantially equivalent licensing standards including written and clinical examinations, shall submit to the board:~~

~~(1) A completed application;~~

~~(2) The application fee required in WAC 246-812-990;~~

~~(3) An official transcript from an educational program approved by the board;~~

~~(4) Verification of successful completion of board-approved examinations that include:~~

~~(a) A written examination that contains the topics listed in RCW 18.30.100(4);~~

~~(b) A practical examination that includes a practical demonstration of skills; and~~

~~(c) The online jurisprudence examination;~~

~~(5) Current licensure in a jurisdiction approved by the board under RCW 18.30.090(1); and~~

~~(6) Seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-135 ((Background check—))Temporary practice permit—Background check. The board conducts background checks on all applicants to ensure safe patient care. Since completion of a national criminal background check may require additional time((-)), the board may issue a temporary practice permit when the applicant has met all other licensure requirements((-, except the national criminal background check requirement)). The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active denturist license in another state, territory of the United States, District of Columbia, or Puerto Rico that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington.

(2) A temporary practice permit grants the individual the full denturist scope of practice.

(3) A temporary practice permit will not be renewed, reissued, or extended, unless related to a notice of decision as described in (b) of this subsection. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant ~~((must))~~ shall:

(a) Submit the necessary application, fee(s), and documentation for the license as required in WAC 246-812-120;

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required;

(c) Provide verification of having an active unrestricted denturist license from another state, territory of the United States, District of Columbia or Puerto Rico that has substantially equivalent licensing standards to those in Washington state; and

(d) ~~((Submit the fingerprint card))~~ Provide fingerprints, payment, and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-150 Examination—Content and scores. An applicant for licensure as a denturist by examination must successfully complete a written and practical examination as specified in RCW 18.30.100. In order to be licensed, an applicant is required to obtain ~~((at least))~~ an overall passing score of at least seventy percent on ((both)) the written examination and ~~((on the))~~ practical examination.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-155 Denturist examination (~~(scores)~~ retakes. An applicant must pass both the written examination and the practical demonstration of skills within three attempts. The three attempts include any combination of board-approved exams. After three failures on either exam, the applicant must petition the board for permission to take any further examination. The board shall have complete discretion regarding such petition and the conditions under which further examination permission may be granted.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-158 Examination review procedures. This section only applies to the written or practical examinations administered by the board.

(1) ~~((A candidate who does not))~~ An applicant who fails to pass the written or clinical examination may request informal review of their examination results by the board of denturists.

(a) The request must be in writing and must be received by the department within thirty calendar days of the postmark date of the examination results letter(-);

(b) The board will not ~~((set aside))~~ reverse its prior determination unless the ~~((candidate shows))~~ applicant can demonstrate error in examination content or procedure, or bias, prejudice, or discrimination in the examination process(-); and

(c) The board will ~~((not))~~ only consider any challenges to examination scores ~~((unless))~~ if the total revised score on any examination section would result in a passing score on that section of the examination.

(2) ~~((The))~~ Procedure for filing an informal review ~~((is as follows))~~:

(a) The ~~((candidate must))~~ applicant shall contact the denturist program at the department ~~((of health))~~ for an appointment to appear personally to review incorrect answers on the written portion of failed examination, and score sheets on the failed clinical portion of the examination(-);

(b) During the appointment, the ~~((candidate will be))~~ applicant is provided a standardized form to defend their examination answers(-);

(c) The ~~((candidate must))~~ applicant shall specifically identify the challenged portion(s) of the examination and ~~((must))~~ state the specific reason(s) as to why the ~~((candidate))~~ applicant feels the results of the examination should be changed(-);

(d) The ~~((candidate may not take more than))~~ applicant is limited to two hours to complete the form for the written portion and two hours to complete the form for the clinical portion(-);

(e) The ~~((candidate))~~ applicant may bring in notes, texts, or appropriate documentation to the appointment ~~((The candidate may not be accompanied by another person-))~~;

(f) The ~~((candidate may))~~ applicant must not bring any electronic or other equipment to the review appointment that records audio, records visual images, allows two-way com-

munication, or otherwise retains or transmits information(-);

(g) The applicant may not be accompanied by another person;

(h) The ~~((candidate))~~ applicant is not allowed to retain a copy of the examination, examination results, or the standardized form ~~((Nor may the candidate)), nor~~ take written notes or pictures ~~((away))~~ from the appointment ~~((h))~~;

(i) Following the informal review, should the ~~((candidate can))~~ applicant decide not to challenge the examination results ~~((The candidate)), the applicant~~ must sign a statement on department forms indicating that the request for informal review is withdrawn. Withdrawal will not affect the right of the ~~((candidate))~~ applicant to retake the examination at a later date.

(3) The board will only review and consider ~~((the))~~ an applicant's standardized form ~~((completed by the candidate. The consideration will take place))~~ in open session at the board's next regularly scheduled meeting. The board will notify the ~~((candidate))~~ applicant in writing, within thirty working days of the meeting, of its decision.

(4) ~~((A candidate's))~~ An applicant's failure to follow the informal review process may result in the loss of the right to formal ~~((review))~~ hearing.

(5) Any ~~((candidate))~~ applicant who has completed the informal review process and is not satisfied with the result may submit a request for a formal hearing to be held before the board of denturists.

(a) The request must be made in writing and must be received by the department within thirty calendar days of the postmark date of the results of the board's informal examination review.

(b) The written request must specifically identify the challenged portion(s) of the examination and must state the specific reason(s) why the candidate feels the results of the examination should be changed.

(c) The board will ~~((not set aside))~~ only reverse its prior determination ~~((unless the candidate))~~ if the applicant shows error in examination content or procedure, or bias, prejudice, or discrimination in the examination process.

(d) The board will ~~((not))~~ only consider any challenges to the written examination score ~~((unless))~~ if the total revised score would result in a passing score.

(6) The formal hearing will be held pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the model procedural rules for adjudicative proceeding of the department, chapter 246-11 WAC.

NEW SECTION

WAC 246-812-159 Continuing competency requirements. The goal of continuing competency is to encourage the lifetime professional development of the licensed denturist, and to enhance the clinical and overall skills needed to protect the health and safety of all patients.

(1) A licensed denturist shall:

(a) Complete and attest to the completion of a minimum of fifteen clock hours of continuing competency every year as a part of their annual license renewal requirement; and

(b) Comply with the requirements of chapter 246-12 WAC, Part 7.

(2) The board:

(a) May randomly audit up to twenty-five percent of licensed denturists annually for compliance.

(b) Does not authorize or approve specific continuing competency courses.

(3) Continuing competency must contribute to the professional knowledge and development of the licensed dentist or enhance services provided to patients.

(4) A dentist shall complete continuing competency in one or more of the following categories:

(a) Education courses relating to the practice of denturism;

(b) Emergency management or advanced cardiac life support (ACLS);

(c) Health care provider basic life support (BLS);

(d) Infection control and federal and state safety standards;

(e) Ethics;

(f) Patient care education including risk management, methods of health delivery, multicultural, and suicide prevention education;

(g) Patient communication;

(h) Implantology (restoring implants);

(i) Partial denture construction and design;

(j) Washington state dentist jurisprudence exam, for a maximum of two hours every three years;

(k) Practice management and billing practices, for a maximum of five hours yearly.

(5) A dentist shall use the following activities to complete continuing competency hours:

(a) Attendance at a local, state, national, or international continuing competency courses, live interactive webinar and dentist study clubs, for a maximum of eight hours yearly;

(b) Self-study by various means, relevant to denturism, without an instructor present:

(i) Self-study can be continuing education provided online or through the mail provided by a continuing competency provider, up to a maximum of five hours yearly;

(ii) Self-study can be reading a book that contributes to the professional knowledge and development of the licensed dentist, or enhance services provided to patients. A two-page synopsis of what was learned written by the licensed dentist is required to be granted two hours of continuing competency for each book and synopsis, up to a maximum of four hours yearly.

(c) Teaching, presenting, or lecturing in a course, only if the presentation or lecture is created or authored by the dentist claiming the continuing competency hours, up to a maximum of five hours yearly;

(d) Direct clinical supervision of dentist students up to a maximum of five hours yearly;

(e) Dentist licensure examinations, examination standardization and calibration workshops, clinical examination administration, or serving on a dentist professional board or association up to a maximum of ten hours yearly;

(f) Publishing a paper in a peer review journal up to a maximum of five hours yearly the year the paper is published; and

(g) Provision of clinical dentist patient care services in a documented volunteer capacity, up to a maximum of five hours yearly.

(6) The board may not accept any claim of credit for a continuing competency course that does not meet the requirements of subsection (4) or (5) of this section.

(7) Proof of continuing competency is a certificate of completion, letter, transcripts, or other documentation verifying or confirming attendance or completion of continuing competency hours. Documentation must be from the organization that provided the activity, except in subsection (5)(b)(ii) of this section, and must contain at least the following:

(a) Date of attendance or completion;

(b) Name of licensed dentist;

(c) Hours earned; and

(d) Course title or subject.

(8) Upon showing good cause by the dentist in writing, the board may waive the dentist from any, all, or part of the continuing competency requirements in this chapter or may grant additional time for the dentist to complete the requirements. Good cause includes, but is not limited to:

(a) Illness;

(b) Medical necessity or family emergency;

(c) Hardship to practice; or

(d) Other extenuating circumstances.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-160 Expired license. ~~((A dentist with an expired license may return his or her license to active license.))~~ If a dentist's license is expired, to return to active status the dentist shall meet the requirements in chapter 246-12 WAC, Part 2 and comply with the following:

(1) If a dentist's license ~~((has))~~ is expired for ~~((three))~~ one year ~~((s))~~ or less, the dentist ~~((must meet the requirements of chapter 246-12 WAC, Part 2.~~

~~((2)))~~ shall:

(a) Pay the late renewal penalty fee;

(b) Pay the current renewal fee; and

(c) Comply with the current continuing competency requirements.

(2) If a dentist's license ~~((has))~~ is expired for more than one year but less than three years, the dentist ~~((must))~~ shall:

(a) Complete an abbreviated application form;

(b) Pay the late renewal penalty fee;

(c) Pay the current renewal fee;

(d) Pay the expired credential reissuance fee;

(e) Provide a written declaration that no action has been taken by a state or federal jurisdiction that would prevent or restrict the licensed dentist's practice of denturism;

(f) Provide a written declaration that the dentist has not voluntarily given up any credential or privilege or has not been restricted in the practice of denturism in lieu of or to avoid formal action; and

(g) Provide a written declaration that the continuing competency requirements for the two most recent years have been met.

(3) If a dentist's license is expired for three years or more and the dentist has been actively practicing in a

board-approved state, territory of the United States, District of Columbia, or Puerto Rico, the dentist shall:

(a) Complete an abbreviated application form;

(b) Pay the late renewal penalty fee;

(c) Pay the current renewal fee;

(d) Pay the expired credential reissuance fee;

(e) Provide to the board primary source verification of the active dentist license submitted directly from another licensing entity that includes:

(i) License number;

(ii) Issue date;

(iii) Expiration date; and

(iv) Whether the dentist is or has been the subject of final or pending disciplinary action.

(f) Provide to the board verification of active practice from a board-approved state, territory of the United States, District of Columbia, or Puerto Rico for the last three years; and

(g) Provide a written declaration that the continuing competency requirements for the two most recent years have been met according to WAC 246-812-159.

(4) If a dentist's license is expired for three years or more and the dentist has not been actively practicing in a board-approved state, territory of the United States, District of Columbia, or Puerto Rico, the dentist shall:

(a) Complete an abbreviated application form;

(b) Pay the late renewal penalty fee;

(c) Pay the current renewal fee;

(d) Pay the expired credential reissuance fee;

(e) Provide to the board primary source verification of the dentist license submitted directly from another licensing entity that includes:

(i) License number;

(ii) Issue date;

(iii) Expiration date; and

(iv) Whether the dentist is or has been the subject of final or pending disciplinary action.

(f) Provide a written declaration that continuing competency requirements for the two most recent years have been met according to WAC 246-812-159;

(g) Provide proof of successful completion of the approved online jurisprudence examination within the past year;

(h) Pay the examination fee; and

(i) Successfully pass the board administered examinations as provided in RCW 18.30.100(~~and~~

(b) Meet the requirements of chapter 246-12 WAC, Part 2).

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-161 Inactive license. (1) A licensed dentist may obtain an inactive license by meeting the requirements of WAC 246-12-090.

(2) An inactive license must be renewed every year on the dentist's birthday according to WAC 246-12-100 and pay the applicable fees according to WAC 246-812-990.

(3) A dentist with an inactive license may return to active status.

(a) If a license is inactive for three years or less, to return to active status the dentist (~~(must)~~) shall meet the requirements of WAC 246-12-110 and pay the applicable fees in WAC 246-812-990(2);

(b) If a license is inactive for more than three years and the dentist has been actively practicing in a (~~jurisdiction approved by board under RCW 18.30.090(1), to return to active status~~) board-approved state, territory of the United States, District of Columbia, or Puerto Rico the dentist (~~(must)~~) shall:

(i) (~~(Submit)~~) Provide to the board primary source verification of the active dentist license, submitted directly from another licensing entity (~~(The verification must)~~) that includes:

(A) (~~The~~) License number;

(B) Issue date;

(C) Expiration date; and

(D) Whether the dentist is or has been the subject of final or pending disciplinary action(~~(2)~~).

(ii) (~~(Submit)~~) Provide to the board verification of current active practice in a (~~jurisdiction approved by the board under RCW 18.30.090(1)~~) board-approved state, territory of the United States, District of Columbia, or Puerto Rico for the last three years; and

(iii) Meet the requirements of WAC 246-12-110 and pay the applicable fees in WAC 246-812-990.

(c) If a license is inactive for more than three years, and the dentist has not been actively practicing in a (~~jurisdiction approved by the board under RCW 18.30.090(1), to return to active status~~) board-approved state, territory of the United States, District of Columbia, or Puerto Rico the dentist (~~(must submit)~~) shall provide to the board:

(i) A written request to change inactive licensure status to active status;

(ii) The applicable fees according to WAC 246-812-990;

(iii) Documentation of successful completion of the examinations as required in RCW 18.30.100;

(iv) Primary source verification of all dentist or health care licenses held, submitted directly from the licensing agency (~~(The certification must)~~) that includes:

(A) (~~The~~) License number;

(B) Issue date;

(C) Expiration date; and

(D) Whether the practitioner is or has been the subject of final or pending disciplinary action(~~(2)~~).

(v) Written declaration that continuing competency requirements for the two most recent years have been met according to WAC (~~(246-812-090)~~) 246-812-159;

(vi) Proof of successful completion of the approved written jurisprudence examination within the past year; and

(vii) Proof of AIDS education according to WAC 246-817-120.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-165 Retired active license. (1) A licensed dentist may place their credential in "retired active" status by meeting the requirements of this section.

(2) A licensed dentist who holds a retired active license may only practice in intermittent or emergent circumstances. As defined for this purpose:

(a) "Intermittent" means the licensed dentist will practice no more than ninety days a year~~(-); and~~

(b) "Emergent" means the licensed dentist will practice only in emergency circumstances such as earthquakes, floods, times of declared war, or other states of emergency.

(3) To obtain a retired active license a licensed dentist ~~((must))~~ shall:

(a) Meet the requirements of WAC 246-12-120; and

(b) Pay the appropriate fee in WAC 246-812-990.

(4) To renew a retired active license the licensed dentist ~~((must))~~ shall:

(a) Meet the requirements in WAC 246-12-130~~((The retired active license fee is));~~

(b) Pay the appropriate fee in WAC 246-812-990~~((- (b)));~~

(c) Have completed fifteen hours of continuing competency every year in compliance with WAC ~~((246-812-020-~~

~~((e)))~~ 246-812-159; and

(d) Renew their retired active license every year on their birthday.

(5) To return to active status, the licensed dentist ~~((must))~~ shall:

(a) Meet the requirements in WAC 246-12-140~~((The active));~~

(b) Pay the renewal fee ~~((is in))~~ according to WAC 246-812-990~~((-~~

~~((b)))~~; and

(c) Meet the continuing competency requirements in WAC ~~((246-812-020))~~ 246-812-159.

(6) A licensed dentist who holds a retired active license is subject to a continuing competency audit.

NEW SECTION

WAC 246-812-175 Professional title. (1) A person may not represent themselves as a licensed dentist or use any title or description of services without being licensed by the board.

(2) A person represents themselves as a dentist when they adopt or use a title or description of services that incorporates one or more of the terms or designations:

(a) Denturist;

(b) Licensed denturist;

(c) LD; or

(d) DD.

(3) It is false or misleading for a denturist to use the title "doctor" or "Dr."

(4) A licensed denturist shall not engage in false, deceptive, or misleading advertising including, but not limited to:

(a) Advertising that misrepresents the potential of denturism; and

(b) Advertising of any service, technique, or procedure that is outside the scope of practice for a licensed denturist.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-200 Approval of a denturist program.

At the board's discretion, the board may accept proof of a national professional association's approval of a program based on standards and requirements ~~((which))~~ that are substantially equivalent to those identified in this chapter, in lieu of the requirements contained in this chapter. Approval in this manner must be on a form provided by the board. The board will consider for approval any program ~~((which))~~ that meets the requirements as outlined in this chapter.

(1) To request board approval of a denturist education program, the authorized representative ~~((must))~~ shall submit to the board ~~((an))~~ a completed application provided by the board.

(2) The authorized representative may request approval of the program as of the date of the application or retroactively to a specified date. The board approval is valid for five years. The approved program must reapply for renewed approval not less than one hundred eighty calendar days prior to the expiration date.

(3) The application for approval of a program must include, but is not ~~((be))~~ limited to, the standards identified in WAC 246-812-220.

(4) The board may conduct a site inspection of the program prior to granting approval.

(5) After completing the evaluation of the application, the board may grant or deny approval, or grant approval conditioned upon appropriate modification to the application.

(6) If the board denies an application or grants conditional approval, the authorized representative of the applicant program may request a review within ninety calendar days of the board's decision. After ninety calendar days, the applicant program may only obtain review by submitting a new application.

(7) The authorized representative must notify the board within thirty calendar days of any significant changes including, but not limited to, educational administration, instructor qualifications, facilities, financial solvency, or content of training.

(8) The board may inspect an approved program at reasonable intervals for compliance. Approval may be withdrawn if the board finds failure to comply with the requirements of law, this chapter, or representations in the program's application under this chapter.

(9) The authorized representative must correct deficiencies ~~((which resulted))~~ that result in withdrawal of the board's approval, and present its correction plan and evidence of actions taken to the board for approval, within timelines specified by the board. ~~((The program must present its correction plan and evidence of actions taken to the board for approval.))~~

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-220 Standards required for approval of schools or programs of denturism. The following standards are used by the board in considering a denturism program application for approval:

(1) Curriculum. The curriculum must consist of a list of courses offered and the number of course hours or credits. Courses offered must include:

- (a) Head and oral anatomy and physiology;
- (b) Oral pathology;
- (c) Partial denture construction and design;
- (d) Microbiology;
- (e) Dental laboratory technology;
- (f) Clinical jurisprudence;
- (g) Asepsis;
- (h) Medical emergencies; ~~(and)~~
- (i) Dental implantology; and
- (j) Cardiopulmonary resuscitation.

(2) Academic standards. The program must have policies and procedures on:

- (a) Minimum standards for measuring student progress;
- (b) Admission;
- (c) Progression;
- (d) Graduation;
- (e) Withdrawal;
- (f) Dismissal; and
- (g) Transfer of credits, both in and out of the program.

(3) Faculty. Faculty members shall be qualified by training and experience to give effective instruction in the subjects taught. The program must have:

(a) A policy on minimum competency standards for instructors;

(b) A statement or policy on faculty members' participation in curriculum development and evaluation; and

(c) Professional resumes for each instructor or trainer.

(4) Clinical and laboratory instruction. The program must have the following policies and forms:

(a) Policies pertaining to clinical and laboratory instruction, including:

- (i) Supervision of students; and
- (ii) Treatment decision making.
- (b) Disclosure statement to provide to clients;
- (c) Client intake and screen form; and
- (d) Client feedback form.

(5) Facilities. The facilities must effectively accommodate the number of students, faculty, and staff and include appropriate provisions for safety. The program must have:

(a) A floor plan of the facility, including classrooms, clinic, and laboratory;

- (b) A list of equipment in each classroom;
- (c) A list of the equipment in the clinic;
- (d) A list of the equipment in the laboratory; and
- (e) A list of contents of the library.

(6) Records. The program shall maintain a system of records for each student beginning with application credentials through the entire period of attendance ~~(-The program must have)~~ including:

- (a) A transcript;
- (b) A completion certificate; and
- (c) A policy on release of student records.

(7) Other information ~~(-Any other information)~~ about the program as required by the board.

NEW SECTION

WAC 246-812-225 Standards required for approval of online schools or programs of denturism. (1) An online school or program must meet the requirements of WAC 246-812-220 (1) through (4), (6), and (7).

(2) Supervision of students. Students enrolled in a board-approved online program may perform denturism duties in the course of their training under supervision.

(a) A denturist student must be supervised by a denturist licensed and in good standing in Oregon or Washington, depending upon where the clinical training is taking place.

(b) Students shall only perform those duties within the scope of practice for which they are adequately trained.

(c) The student shall at all times wear an identification badge readily visible to the public that identifies them as a student.

(d) The licensed denturist who is supervising denturist students shall cosign all treatment records.

(e) A supervising denturist may only supervise up to three students at any one time.

(f) The licensed denturist who is supervising denturist students shall submit written reports, summaries, or other information as is required by the approved online school or program.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-230 Site review procedures for approval of programs of denturism. (1) The board, at its discretion, may send a representative or evaluation committee to inspect any program requesting approval or renewed approval as an approved denturist program.

(2) Such inspections may be at any reasonable time during the normal operating hours of the program.

(3) The report of the representative or evaluation committee and the program's response shall be submitted as part of the documentation necessary for the board's action on the program's application for approval.

NEW SECTION

WAC 246-812-232 Denial or withdrawal of a denturist program. (1) When the board determines that a denturist program fails to meet the standards for training as contained in this chapter, the board shall:

- (a) Deny approval to a new program; or
- (b) Withdraw approval from an existing program.

(2) The board may conduct a review or a site visit to investigate any allegation that a program has not met, or has failed to maintain, the standards set forth in this chapter including, but not limited to:

(a) Requiring students to attend the classes listed on the transcript;

(b) Requiring students to complete the hours listed on the transcript;

(c) Not violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of any rule for the denturist program;

(d) Creating or maintaining accurate records including, but not limited to, student attendance records and student transcripts;

(e) Being found by a state or local agency, or a private certifying, permitting, or accreditation agency related to denturism, that a denturist program has engaged in any of the conduct identified in this subsection;

(f) Notifying the board of any changes in the overall curriculum, plan or major content changes prior to implementation; and

(g) Notifying the board of changes in the authorized representative or instructor.

(3) Board approval is automatically terminated if the program does not renew.

NEW SECTION

WAC 246-812-234 Reinstatement of approval for a denturist program. The board may consider reinstatement of a denturist program upon submission of satisfactory evidence that the program meets the standards and requirements contained in this chapter.

NEW SECTION

WAC 246-812-236 Appeal right. A denturist program that has been denied or had approval withdrawn shall have the right to a hearing to appeal the board's decision, according to the provisions of chapter 34.05 RCW, Administrative Procedure Act, Parts IV and V.

AMENDATORY SECTION (Amending WSR 14-13-102, filed 6/17/14, effective 7/18/14)

WAC 246-812-240 Nonorthodontic removable oral devices. (1) A licensed denturist may provide nonorthodontic removable oral devices after receiving an endorsement to ~~((his or her))~~ their denturist license. These devices must be accompanied by written encouragement to have regular dental checkups with a licensed dentist.

(2) Nonorthodontic removable oral devices are limited to:

(a) Bruxism devices also known as occlusal splints, occlusal bite guard, bruxism appliance, bite plate, and night guard;

(b) Sports mouth guards;

(c) Removable cosmetic appliances, regardless of whether the patient is missing teeth; and

(d) Snoring devices, but only after a physician has ruled out snoring associated with sleep breathing disorders to include obstructive sleep apnea.

(3) The practice of denturism does not include the making, placing, constructing, altering, reproducing, or repairing of nonorthodontic removable oral devices intended to treat obstructive sleep apnea or to treat temporomandibular joint dysfunction.

(4) To qualify for an endorsement, a denturist ~~((must))~~ shall complete the following education and training in nonorthodontic removable oral devices:

(a) A minimum of four hours of instruction in snore guards and sleep apnea; and

(b) A minimum of two hours in bruxism devices, sports mouth guards, and removable cosmetic appliances.

(5) Education and training in nonorthodontic removable oral devices ~~((education and training))~~ must be obtained through a board-approved program or course.

(a) The program or course curriculum must include training on each subject listed under subsection (2)(a) through (d) of this section.

(b) A presenter ~~((must))~~ shall submit the training curriculum to the board for review and approval prior to providing the training.

(c) The board may review previously approved curriculums as necessary or as determined by the board.

(6) To receive a nonorthodontic removable oral devices endorsement, the denturist must provide evidence of successfully completing the education and training requirements in this section by submitting to the board:

(a) A declaration on a form approved by the board that verifies proof of completion of education and training signed and dated by ~~((both))~~ the presenter and the denturist; or

(b) A declaration on a form approved by the board that verifies the education and training was included in a board-approved educational program, signed and dated by ~~((both))~~ the instructor and the student.

NEW SECTION

WAC 246-812-245 Continuing education for nonorthodontic removable oral devices. (1) A denturist who has an endorsement to provide nonorthodontic removable oral devices shall complete two hours of continuing competency in three years that:

(a) Must include the making, placing, constructing, altering, reproducing, or repairing of devices for bruxism and snoring; and

(b) May be used towards the continuing competency requirements in WAC 246-812-159 in order to renew the denturist license.

(2) The two hours of continuing competency in nonorthodontic removable oral devices will no longer be required once a denturist has maintained the endorsement for a total of six consecutive years.

AMENDATORY SECTION (Amending WSR 14-13-102, filed 6/17/14, effective 7/18/14)

WAC 246-812-250 Teeth whitening services. (1) A licensed denturist may provide teeth whitening services after receiving an endorsement to ~~((his or her))~~ their denturist license.

(2) Teeth whitening services include:

(a) Fabricating whitening trays;

(b) Providing nonprescription strength whitening solutions with over-the-counter equivalent concentrations; and

(c) Providing required follow-up care and instructions for use of the trays and solutions at home.

(3) To qualify for an endorsement, a denturist ~~((must))~~ shall complete a minimum of two hours of instruction in teeth whitening services.

(4) Education and training in teeth whitening services must be obtained through a board-approved program or course curriculum.

(a) A presenter must submit the training curriculum to the board for review and approval prior to providing the training.

(b) The board may review previously approved curriculums as necessary or as determined by the board.

(5) To receive an endorsement for teeth whitening services, the dentist ~~((must))~~ shall provide evidence of successfully completing the education and training requirement in this section by submitting to the board:

(a) A declaration on a form approved by the board that verifies proof of completion of education and training signed and dated by ~~((both))~~ the presenter and the dentist; or

(b) A declaration on a form approved by the board that verifies the education and training was included in a board-approved educational program, signed and dated by ~~((both))~~ the instructor and the student.

(6) A dentist providing teeth whitening services to patients shall provide the patient with written and verbal information and answer any questions related to teeth whitening trays and teeth whitening solutions including:

- (a) Procedure;
- (b) Alternatives; and
- (c) Risks.

(7) The dentist shall obtain written patient consent on a form approved by the board for the procedure(s) and retain the signed form in the patient record.

NEW SECTION

WAC 246-812-305 Definitions. The following definitions apply to WAC 246-812-305 through 246-812-320 unless the context requires otherwise:

(1) "Clinical record" means the portion of the patient file that contains information regarding the patient exams, diagnosis, treatment discussion, treatment performed, patient progress notes, referrals, studies, tests, all imaging, and other information related to the diagnosis or treatment of the patient.

(2) "Notation" means the entire patient file maintained by a practitioner that includes all information related to the patient.

(3) "Patient record" means the portion of the record that contains information regarding the financial aspects of a patient's treatment including, but not limited to, billing, treatment plan costs, payment agreements, payments, insurance information; or payment discussions held with a patient, insurance company, or person responsible for account payments.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-310 Patient record content. (1) A licensed dentist who treats patients shall maintain legible, complete, and accurate patient records.

(2) The patient record must ~~((reflect diagnosis, treatment performed,))~~ contain clinical records and financial records.

~~((The patient record))~~ Each clinical record entry must include at least the following information:

~~((a))~~ ~~((For each record entry, documented verification or signature by the responsible dentist;~~

~~((b))~~ Signature, initials, or electronic verification of the individual making the entry note;

~~((c))~~ Identity of practitioner who provided treatment, if treatment was provided;

~~((d))~~ Date of each patient record entry, document, radiograph, or model;

~~((e))~~ Up-to-date treatment plan;

~~((f))~~ Physical examination findings documented by subjective complaints, objective findings, ~~((and))~~ an assessment or diagnosis of the patient's condition, and treatment plan;

~~((g))~~ Treatment plan based on the assessment or diagnosis of the patient's condition;

~~((h))~~ Up-to-date dental and medical history that may affect treatment;

~~((i))~~ Any diagnostic aid used including, but not limited to, images, radiographs, ~~((and recommended tests))~~ and test results ~~((Retention of molds or study models for full mouth reconstruction is at the discretion of the dentist;~~

~~((j))~~ which shall be retained as listed in WAC 246-812-320;

~~((k))~~ Complete description of all ~~((treatment/procedures administered))~~ treatment or procedures, or both, provided at each visit;

~~((l))~~ Referrals and ~~((any))~~ communication to and from ~~((any))~~ health care providers; ~~((and~~

~~((m))~~

~~((n))~~ Notation of communication to or from patients or ~~((patient guardians, including))~~ patient's parent or guardian, regarding;

~~((o))~~ Notation ~~((or documentation of the discussion))~~ of the informed consent discussion indicating potential risk(s) and benefit(s) of proposed treatment, recommended tests, and alternatives to treatment, including no treatment or tests;

~~((p))~~ Notation of post-treatment instructions or reference to an instruction pamphlet given to the patient;

~~((q))~~ Notation regarding patient complaints ~~((and resolutions))~~ or concerns associated with treatment including complaints or concerns obtained in person or by phone, email, or text; and

~~((r))~~ Termination of the dentist-patient relationship.

~~((s))~~ A patient record may contain manual or electronic treatment notes:

~~((t))~~ Complete manual treatment notes) Clinical record entries must not be erased or deleted from the record.

~~((u))~~ Mistaken ~~((manual))~~ handwritten entries must be corrected with a single line drawn through the incorrect information ~~((~~

~~((v))~~ New or corrected information must be initialed and dated;

~~((w))~~ Complete electronic treatment notes must include deletions, edits, and corrections) and must be initialed and dated. New or corrected information must be initialed and dated.

~~((x))~~ If an electronic record, a record audit trail must be maintained that includes a time and date history of deletions,

edits, or corrections, or all the above, to electronically signed records.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-320 Patient record retention and accessibility requirements. A licensed dentist shall comply with state medical records and health care information access and disclosure requirements in chapter 70.02 RCW and the Health Insurance Portability and Accountability Act, 45 C.F.R. Sections 160, 162 and 164 destruction and privacy regulations.

A licensed dentist:

(1) ~~((A licensed dentist))~~ Who treats patients eighteen years old and older shall keep readily accessible patient records for at least six years from the date of the last treatment(~~(-~~

~~(2) A licensed dentist);~~

(2) Who treats patients under the age of eighteen years old shall keep readily accessible patient records for at least six years after the patient reaches eighteen years old(~~(-~~

~~(3) A licensed dentist); and~~

(3) Shall respond to a written request from a patient to examine or copy ~~((#))~~ that patient's record within fifteen working days after receipt of the request. ~~((A licensed dentist shall comply with chapter 70.02 RCW for all patient requests.~~

~~(4) A licensed dentist shall comply with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act, 45 C.F.R. destruction and privacy regulations.))~~

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-340 Patient abandonment. (1) A dentist may accept or reject a patient, but shall respond to any reasonable request for services in the interest of public health and welfare.

(2) The attending dentist, without reasonable cause, shall not neglect, ignore, abandon, or refuse to complete the current procedure for a patient.

(3) If the dentist chooses to withdraw responsibility for a patient of record, the dentist shall:

~~((1))~~ (a) Advise the patient in writing that termination of treatment is contemplated and that another dentist should be sought to complete the current procedure and for future care; and

~~((2))~~ (b) Advise the patient that the dentist shall remain reasonably available under the circumstances, for up to fifteen calendar days from the date of such notice, to render emergency care related to that current procedure.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-350 License display—Notification of address. ~~((Every person who engages in the practice of dentistry in this state must))~~ A licensed dentist shall:

(1) Display their license, at all times, in a place plainly visible to individuals receiving services on the premises and

be readily available for inspection by any designee of the board~~((Every licensee shall)); and~~

(2) Notify the board of the physical business address or addresses, including changes, where the licensee shall engage in the practice of dentistry.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-360 Identification of new dentures. ~~((Every))~~ (1) Each complete upper and lower denture and removable partial denture fabricated by a dentist licensed under the provisions of chapter 18.30 RCW, or fabricated pursuant to the dentist's work order or under the dentist's direction or supervision, must be marked with the name of the patient for whom the denture is intended.

(2) The markings must be done during fabrication and must be permanent, legible, and cosmetically acceptable.

(3) The exact location of the markings and the methods used to apply or implant them must be determined by the dentist fabricating the denture.

(4) If, in the professional judgment of the dentist, this identification is not practical, identification must be provided as follows:

~~((1))~~ (a) Only the initials of the patient may be ~~((shown alone))~~ used, if use of the patient's first and last name is impracticable; or

~~((2))~~ (b) The identification marks may be omitted in their entirety if none of the forms of identification specified in subsection (1) of this section is practicable, clinically safe, or the patient declines.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-390 Improper billing practices. The board may take disciplinary action for billing practices including, but not limited to~~((the following))~~:

(1) Rebating or offering to rebate to ~~((an))~~ the insured any payment to the licensee by the third-party payor of the insured for services or treatments rendered under the insured's policy~~((;))~~; and

(2) Submitting to any third-party payor a claim for a service or treatment at a greater or an inflated fee or charge other than the usual fee the licensee charges for that service or treatment when rendered without third-party reimbursement.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-470 Definitions. The definitions in this section apply throughout this section and WAC 246-812-480, unless the context requires otherwise.

(1) "Dentist" means an individual applying for a credential or credentialed ~~((specifically))~~ as defined in chapter 18.30 RCW.

(2) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to, the health care of a patient.

(3) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decisions of the patient.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of a patient((s)), including palliative care, as consistent with community standards of practice for the dentist profession(~~(-The activity must be)~~) within the scope of practice of the dentist.

(5) "Patient" means an individual who receives health care services from a dentist. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors((;)) including the nature, extent, and context of the professional relationship between the dentist and ((the)) a person. ((The)) A person that is not receiving treatment or professional services is not the sole determining factor.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-480 Sexual misconduct. (1) A dentist shall not engage, or attempt to engage, in sexual misconduct with a current patient, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus, or any sexualized body part, except as consistent with accepted community standards of practice for examination, diagnosis, and treatment ((and)) within ((the)) a dentist's scope of practice;
- (c) Rubbing against a patient or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling, or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient privacy to dress or undress, except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient a gown or draping except as may be necessary in emergencies;
- (i) Dressing or undressing in the presence of the patient or key party;
- (j) Removing ((patient or client's)) patient's clothing, ((or)) gown, or draping without consent, emergent medical necessity, or being in a custodial setting;
- (k) Encouraging masturbation or other sex act in the presence of the dentist;
- (l) Masturbation or other sex act by the dentist in the presence of the patient or key party;
- (m) Suggesting or discussing the possibility of a dating, sexual, or romantic relationship after the professional relationship ends;

(n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(o) Soliciting a date with a patient or key party;

(p) Discussing the sexual history, preferences, or fantasies of the dentist;

(q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(r) Making statements regarding the patient or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening, or harming a patient or key party;

(t) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes; or for the educational or marketing purposes with the consent of the patient or key party; and

(u) Showing a patient or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense listed in RCW 9.94A.030.

(3) A dentist shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct; or

(c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

(4) A dentist shall not engage or attempt to engage in the activities listed in subsection (1) of this section with a former patient or key party within two years after the ((~~provider-patient/provider-client~~)) provider-patient or provider-client relationship ends.

(5) After the two-year period of time described in subsection (3) of this section, a dentist shall not engage or attempt to engage in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient or key party will seek or require additional services from the dentist; or

(b) There is an imbalance of power, influence, opportunity ((and/or)), or special knowledge of the professional relationship.

(6) When evaluating whether a dentist has engaged or has attempted to engage in sexual misconduct, the board will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another dentist;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient ((or client));

(e) Communication between the dentist and the patient ((or client)) between the last health care services rendered and commencement of the personal relationship;

- (f) Extent to which the patient's (~~or client's~~) personal or private information was shared with the dentist;
- (g) Nature of the (~~patient or client's~~) patient's health condition during and since the professional relationship;
- (h) The (~~patient or client's~~) patient's emotional dependence and vulnerability; and
- (i) Normal revisit cycle for the profession and service.
- (7) Patient or key party initiation or consent does not excuse or negate the dentist's responsibility.
- (8) These rules do not prohibit:
- (a) Providing health care services in case of emergency where the services cannot or will not be provided by another dentist;
- (b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the dentist profession; or
- (c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the dentist, and where there is no evidence of, or potential for, exploiting the patient (~~or client~~).

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-510 Definitions—Barriers and sterilization. The definitions in this section apply throughout WAC 246-812-501 through 246-812-520, unless the context clearly requires otherwise.

(1) "Communicable disease(~~s~~)" means an illness caused by an infectious agent (~~which~~) that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host (~~or~~), vector, food, water, or air.

(2) "Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

(3) "Direct care staff" (~~are the~~) means dentist staff who directly provide dentist care to patients.

(4) "Disinfection" means the use of a chemical agent on inanimate objects to destroy recognized pathogenic microorganisms, but not necessarily all microbial forms.

(5) "(Sterilize) Sterilization" means the use of a physical or chemical procedure to destroy all (~~microbial life including highly~~) microorganisms including substantial numbers of resistant bacterial (~~endospores~~) spores.

NEW SECTION

WAC 246-812-515 Hand hygiene. (1) As used in this section, "hand hygiene" means the use of soap and water when hands are visibly soiled, otherwise an alcohol-based hand solution may be used.

- (2) A licensed dentist shall perform hand hygiene:
- (a) When hands are visibly soiled;
- (b) After barehanded touching of instruments, equipment, materials, and other objects likely to be contaminated by blood, saliva, or respiratory secretions;
- (c) Before and after treating each patient; and

- (d) Before putting on and immediately after removing gloves.

NEW SECTION

WAC 246-812-517 Respiratory hygiene and cough etiquette. (1) A licensed dentist shall post signs at entrances with instructions to patients with symptoms of respiratory infection to:

- (a) Cover their mouth and nose when coughing or sneezing;
- (b) Use and dispose of tissues; and
- (c) Perform hand hygiene after hands have been in contact with respiratory secretions.
- (2) A licensed dentist must provide tissues and no-touch receptacles for disposal of tissues.
- (3) A licensed dentist must offer masks to coughing patients and accompanying individuals.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-520 Use of barriers and sterilization techniques. The use of barriers and sterilization techniques is the primary means of assuring (~~that there is~~) the least possible chance of (~~the~~) transmission of communicable diseases from dentist and staff to patients, from patient to patient, and from patient to dentist and staff. To prevent patient to patient cross contamination, instruments and supplies contaminated, or likely to be contaminated, with blood or saliva and touched during treatment must be sterilized between patients or discarded, except as otherwise (~~set forth below~~) listed in this section. Surfaces and equipment (~~which~~) that are likely to be contaminated with blood or saliva and touched during treatment must be decontaminated or covered with a barrier (~~which~~) that is discarded and replaced between patients, except as otherwise set forth below:

(1) Denturists shall comply with the following barrier techniques:

(a) Gloves must be used by the dentist and direct care staff during treatment (~~which~~) that involves intraoral procedures or contact with items potentially contaminated with the patient's bodily fluids. Fresh gloves must be used for every intraoral patient contact. Gloves must not be washed or reused for any purpose. The same pair of gloves must not be used, removed, washed, and reused for the same patient at the same visit or for any other denturist or nondenturist purpose. (~~Gloves that have been used for denturist treatment must not be reused for any nondenturist purpose.~~)

(b) Masks must be worn by the dentist and direct care staff when splatter or aerosol is likely.

(c) Unless effective surface decontamination methods are used, protective barriers must be placed over areas (~~which~~) that are likely to be touched during treatment, not removable (~~to be sterilized~~) for sterilization, and likely to be contaminated by blood or saliva. These procedures must be followed between each patient (~~These include but are~~) including, but not limited to:

- (i) Delivery unit;
- (ii) Chair controls (not including foot controls);
- (iii) Light handles;

- (iv) Head rests;
- (v) Instrument trays;
- (vi) Treatment areas and laboratory ~~((countertops/benches))~~ countertops and benches.

(d) Protective eyewear shields must be worn by the dentist and direct care staff and provided to all patients during times when splatter or aerosol is expected.

(2) Denturists shall comply with the following sterilization requirements:

(a) ~~((Every))~~ Each dentist office must have the capability to ultrasonically clean and sterilize contaminated items by autoclave, dry heat, unsaturated formaldehyde/alcohol vapor (such as MDT Chemiclave®) or ethylene oxide, where adequate ventilation is provided. Sterilizers must be tested ~~((by))~~ with a biological spore test ~~((on at least a)), on a minimum~~ weekly basis. In the event of a positive biological spore test, the dentist shall take immediate remedial action to ensure the objectives of (a) of this subsection are accomplished. Documentation must be maintained either in the form of a log reflecting dates and person(s) conducting the testing or copies of reports from an independent testing entity. The documentation must be maintained for a period of ~~((at least))~~ a minimum of five years.

(b) The following items must be sterilized by an appropriate autoclave, dry heat, unsaturated formaldehyde/alcohol vapor (such as MDT Chemiclave®) or ethylene oxide sterilization method between patients:

- (i) Hand instruments;
- (ii) Air-water syringe tips;
- (iii) High volume evacuator tips;
- (iv) Nose cone sleeves;
- (v) Metal impression trays.

(c) Gross debris must be removed from items prior to sterilization. Ultrasonic solution cleaning must be used whenever possible.

(d) Nondisposable items used in patient care ~~((which))~~ that cannot be ~~((autoclaved))~~ sterilized by autoclave, dry heat, unsaturated formaldehyde/alcohol vapor (such as MDT Chemiclave®) or ethylene oxide ~~((sterilized))~~ must be immersed in a chemical sterilant. If such a technique is used, the solution must be approved by the Environmental Protection Agency and used in accordance with the manufacturer's directions for sterilization.

(e) Items such as impressions contaminated with blood or saliva must be thoroughly rinsed, appropriately disinfected, and placed in and transported to ~~((the))~~ a dentist laboratory in an appropriate case containment device that is properly sealed and separately labeled.

- (f) In the laboratory:
 - (i) Ragwheels must be sterilized or disinfected;
 - (ii) Patient pumice must be discarded after each use; ~~((;))~~
 - (iii) Patient burrs and stones must be sterilized or disinfected.

SUBSTANCE ~~((ABUSE))~~ USE DISORDER MONITORING

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-601 Purpose. The board recognizes the need to establish a means of proactively providing early recognition and treatment options for denturists whose competency may be impaired due to ~~((the abuse of))~~ drug~~((s))~~ or alcohol use. The board ~~((intends that))~~ declares such denturists be treated and ~~((their treatment))~~ monitored so ~~((that))~~ they can return to, or continue to, practice their profession in a way ~~((which))~~ that safeguards the public. ~~((To accomplish this the board shall approve voluntary substance abuse monitoring programs and shall))~~ The Washington recovery and monitoring program (WRAMP) is the board's approved substance use disorder monitoring program under RCW 18.130.-175. The board may refer denturists impaired by substance ~~((abuse to approved programs))~~ use disorder to WRAMP as an alternative to instituting, or in connection with, disciplinary proceedings as defined in RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-610 Definitions. The definitions in this section apply throughout WAC 246-812-601 through 246-812-630 unless the context clearly requires otherwise.

(1) "Aftercare" ~~((is that))~~ means a period of time after intensive treatment that provides the dentist and the dentist's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment or monitoring program staff.

(2) ~~(("Approved substance abuse monitoring program" or "approved monitoring program" is a program the board has determined meets the requirements of the law and the criteria established by the board in WAC 246-812-620 which enters into a contract with denturists who have substance abuse problems regarding the required components of the dentist's recovery activity and oversees the dentist's compliance with these requirements. Substance abuse monitoring programs do not provide evaluation or treatment to participating denturists.~~

~~((3))~~ "Approved treatment facility" ((is)) means a facility ~~((approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 70.96A.020(3) to provide intensive alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out of state must be equivalent to the standards required for approval under RCW 70.96A.020 (3).~~

(4) ~~((Contract))~~ "Contract" is a comprehensive, structured agreement between the recovering dentist and the approved monitoring program stipulating the dentist's consent to comply with the monitoring program and its required components of the dentist's recovery activity.

~~(5)) certified by the department under chapter 246-341 WAC. Drug and alcohol treatment facilities located out-of-state must have substantially equivalent standards.~~

~~(3) "Health care professional" ((is)) means an individual who is licensed, certified, or registered in Washington to engage in the delivery of health care to patients.~~

~~((6)) (4) "Monitoring contract" means a comprehensive, structured agreement between a recovering dentist and WRAMP that defines the requirements of a dentist's program participation.~~

~~(5) "Random drug screen((s))" ((are)) means laboratory tests to detect the presence of specific drugs ((of abuse)) in body fluids and other biologic specimens, which are performed at irregular intervals not known in advance by the person being tested.~~

~~((7) "Substance abuse" means the impairment, as determined by the board, of a dentist's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.)~~

~~(6) "Recovery-oriented group" means a group such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.~~

~~(7) "Substance use disorder" means a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the dentist, as manifested by health, family, job (professional services), legal, financial, or emotional problems, or all or any combination of the above.~~

~~(8) "Support group" ((is)) means a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which dentists may safely discuss drug diversion, licensure ((issues)), return to work, and other professional issues related to recovery.~~

~~(9) ("Twelve step groups" are groups such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.) "Washington recovery and monitoring program (WRAMP)" means the approved substance use disorder monitoring program as described in RCW 18.130.175 that meets criteria established by the board. WRAMP does not provide evaluation or treatment services.~~

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-620 Approval of substance ((abuse)) use disorder monitoring programs. ~~((The board shall approve the monitoring program(s) which shall participate in the substance abuse monitoring program. A monitoring program approved by the board may be contracted with an entity outside the department but within the state, out-of-state, or a separate structure within the department.~~

~~(1) The approved monitoring program shall not provide evaluation or treatment to the participating dentists.~~

~~(2) The approved monitoring program staff must have)~~

~~(1) WRAMP is the board-approved monitoring program that~~

~~employs staff with the qualifications and knowledge of both substance abuse and the practice of dentistry as defined in this chapter to be able to evaluate:~~

~~(a) Clinical laboratories;~~

~~(b) Laboratory results;~~

~~(c) Providers of substance abuse treatment, both individuals and facilities;~~

~~(d) Support groups;~~

~~(e) The dentist work environment; and~~

~~(f) The ability of the dentist to practice with reasonable skill and safety.~~

~~((3) The approved monitoring program)) (2) WRAMP shall enter into a monitoring contract with ((the)) a dentist and the board to oversee ((the)) a dentist's ((compliance with the requirements of the program)) required recovery activities.~~

~~((4) The approved monitoring program)) (3) WRAMP may make exceptions to individual components of the contract made on an individual basis, as needed.~~

~~((5) The approved monitoring program staff shall)) (4) WRAMP determines, on an individual basis, whether a dentist ((shall)) must be prohibited from engaging in the practice of dentistry for a period of time and restrictions, if any, on the dentist's access to controlled substances in the work place.~~

~~((6) The approved monitoring program)) (5) WRAMP shall maintain records on participants.~~

~~((7) The approved monitoring program is)) (6) WRAMP must be responsible for providing feedback to the dentist as to whether treatment progress is acceptable.~~

~~((8) The approved monitoring program)) (7) WRAMP shall report to the board any dentist who fails to comply with the requirements of the monitoring program.~~

~~((9) The approved monitoring program shall receive from the board guidelines)) (8) The board shall approve WRAMP's procedures on treatment, monitoring, and limitations on the practice of dentistry for those participating in the program.~~

AMENDATORY SECTION (Amending WSR 14-24-033, filed 11/24/14, effective 12/25/14)

WAC 246-812-630 Participation in approved substance ((abuse)) use disorder monitoring program. (1) ~~((In lieu of disciplinary action, the dentist may accept board referral into)) Any dentist participating in the approved substance ((abuse)) use disorder monitoring program((-~~

~~(a) The dentist)) shall:~~

~~(a) Undergo a complete ((physical and)) psychosocial evaluation by a health care professional(s) with expertise in substance use disorder before entering the approved monitoring program. ((This evaluation must be performed by health care professional(s) with expertise in chemical dependency.)) The person(s) performing the evaluation ((shall not also)) must not be the provider of the recommended treatment.~~

~~(b) ((The dentist shall)) Enter into a contract with ((the board and the approved substance abuse monitoring program to comply with the requirements of the program which)) WRAMP that must include, but not be limited to, the following terms, which require dentists to:~~

~~(i) ((The dentist shall undergo intensive substance abuse))~~ Undergo the recommended level of treatment in an approved treatment facility, including aftercare.

~~(ii) ((The dentist shall agree to remain free of))~~ Abstain from all mind-altering substances including alcohol and cannabis, except for medications prescribed by an authorized prescriber, as defined in ((RCW 69.41.030 and 69.50.101-

~~(iii) The dentist must complete the))~~ chapter 69.41 RCW, Legend drugs—Prescription drugs and chapter 69.50 RCW, Uniform Controlled Substances Act.

~~(iii) Complete any prescribed aftercare program of the intensive treatment facility, which may include individual ((and/or)) or group psychotherapy.~~

~~(iv) Cause the treatment counselor(s) ((shall)) to provide reports to the approved monitoring program at specified intervals((-Reports must)) that include treatment, prognosis, and goals.~~

~~(v) ((The dentist shall submit to))~~ Complete random or for cause drug screening as specified by ((the approved monitoring program)) WRAMP.

~~(vi) ((The dentist shall))~~ Attend support groups facilitated by a health care professional ((and/or twelve-step)) or recovery-oriented group meetings as specified by the monitoring contract.

~~(vii) ((The dentist shall))~~ Comply with specified employment conditions and restrictions as defined by the monitoring contract.

~~(viii) ((The dentist shall sign a waiver allowing the approved monitoring program))~~ Agree in writing to allow WRAMP to release information to the board if the dentist does not comply with the requirements of ((this)) the monitoring contract or is unable to practice with reasonable skill and safety.

~~((e) The dentist is responsible for paying the costs of the physical and psychosocial evaluation, substance abuse treatment, and random drug screens.~~

~~(d) The dentist may be subject to disciplinary action under RCW 18.130.160, if the dentist does not consent to be referred to the approved monitoring program, does not comply with specified employment restrictions, or does not successfully complete the program.~~

~~(2) A dentist who is not being investigated by the board or subject to current disciplinary action or currently being monitored by the board for substance abuse may voluntarily participate in the approved substance abuse monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the board if they meet the requirements of the approved monitoring program as defined in subsection (1) of this section.~~

~~(3) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in subsection (1) of this section. Records held by the board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall~~

~~not be subject to discovery by subpoena except by the license holder.))~~ ((ix) Pay the costs of the substance use disorder evaluation, substance use treatment, and random drug screens.

((x) Sign a requested release of information authorization.

(2) When referred to WRAMP in lieu of discipline, the dentist shall enter into a referral contract with the board. The board may take disciplinary action against the license of the dentist under RCW 18.130.160, based on a dentist's violation of the referral contract.

(3) A dentist may voluntarily participate in WRAMP in accordance with RCW 18.130.175(2) without first being referred to WRAMP by the board.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-812-020 Continuing competency requirements.

WAC 246-812-101 Purpose.

WAC 246-812-301 Purpose.

WSR 20-04-031

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 28, 2020, 12:21 p.m., effective February 28, 2020]

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

Purpose: The department of social and health services (DSHS) division of child support (DCS) files this CR-103P, Rule-making order, to adopt permanent rules amending WAC 388-14A-2200 and 388-14A-2205 to implement section 4 of ESHB 1916 (chapter 275, Laws of 2019). ESHB 1916 took effect on July 28, 2019, but this section of the bill took effect on October 1, 2019.

Citation of Rules Affected by this Order: Amending WAC 388-14A-2200 and 388-14A-2205.

Statutory Authority for Adoption: Section 4 of ESHB 1916 (chapter 275, Laws of 2019), RCW 26.09.170, 74.20A.-059, 26.09.105, 26.18.170, 74.04.055, 74.08.090, 74.20.040 (9), and 74.20A.310.

Adopted under notice filed as WSR 20-01-046 on December 9, 2019.

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 the Request of a Non-governmental 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: January 28, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-2200 When does DCS charge a ~~((twenty-five))~~ thirty-five dollar annual fee on a child support case? (1) Under RCW 74.20.040, the division of child support (DCS) must impose an annual fee of ~~((twenty-five))~~ thirty-five dollars for each case in which:

(a) The custodial parent (CP) has never received TANF, Tribal TANF or AFDC as the custodian of minor children; and

(b) DCS has collected and disbursed to the CP at least five hundred and fifty dollars on the case during that federal fiscal year. The federal fiscal year runs from October 1 through September 30.

(2) A custodial parent who has children with more than one noncustodial parent (NCP) may be assessed a separate ~~((twenty-five))~~ thirty-five dollar fee for each case in which DCS collects at least five hundred and fifty dollars in a federal fiscal year.

(3) If DCS has already collected the ~~((twenty-five))~~ thirty-five dollar annual fee on a Washington state case and the CP begins receiving TANF or Tribal TANF during the same federal fiscal year, DCS is not required to refund or cancel the fee.

(4) If the CP with a Washington case has paid a fee to another state during the same federal fiscal year, the CP is still subject to the fee in Washington if the Washington case qualifies for a fee under subsection (1) above.

(5) A CP has the burden of proving prior receipt of TANF, Tribal TANF or AFDC in any jurisdiction, which would exempt the CP from paying the annual fee.

(a) DCS may impose the fee until the CP provides proof of prior receipt of TANF, Tribal TANF or AFDC.

(b) DCS does not refund any fee which has been retained by the state, but stops charging the fee immediately when the CP provides proof that the CP is not subject to the fee.

(6) The fee is retained from support payments collected, which means that the NCP gets credit against the child support obligation for the total amount of the payment.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-2205 How can a custodial parent be excused from payment of the annual fee? (1) WAC 388-14A-2200 describes the cases that qualify for the ~~((twenty-five))~~ thirty-five dollar annual fee.

(2) A custodial parent (CP) seeking to be excused from payment of the fee may provide proof that he or she is exempt from the fee because he or she received TANF, Tribal TANF or AFDC from another state or tribe.

(3) A CP may request a conference board under WAC 388-14A-6400 to request a waiver of the fee for hardship reasons. The CP must provide proof that hardship in the CP's household justifies waiver of the fee.

(4) Payment of the annual fee in another state does not excuse the CP from the annual fee charged for a Washington case.

(5) If the CP seeks a waiver from payment of the annual fee during a year when the fee has already been collected, the fee for that year is not refunded, but DCS waives collection of the fee for future years unless the waiver is overturned at a later time.

WSR 20-04-032

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 28, 2020, 12:32 p.m., effective February 28, 2020]

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

Purpose: Sections 2 and 3 of ESHB 1916 (chapter 275, Laws of 2019), which took effect on July 28, 2019, amended the criteria used by the division of child support (DCS) for modification or adjustment of child support orders in RCW 26.09.170 and 74.20A.059. This change potentially allows more families to benefit from modification of their child support orders by reducing the requirement that the child support amount change as a result of the review by twenty-five percent to fifteen percent. Another change, adopted due to federal requirements, provides that incarceration of the noncustodial parent in and of itself can serve as a reason for modification review of the child support order at any time, without a showing of a substantial change in circumstances or a fifteen percent change in the order amount.

Citation of Rules Affected by this Order: Amending WAC 388-14A-3903.

Statutory Authority for Adoption: Sections 2 and 3 of ESHB 1916 (chapter 275, Laws of 2019), which took effect on July 28, 2019, and amended RCW 26.09.170, 74.20A.059, 26.09.105, 26.18.170, 74.04.055, 74.08.090, 74.20.040(9), and 74.20A.310.

Adopted under notice filed as WSR 20-01-045 on December 9, 2019.

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 the Request of a Non-governmental 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: January 28, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3903 How does DCS decide whether to petition for modification of a support order? (1) The division of child support (DCS) petitions to modify a support order when DCS finds during the review that each of the following conditions are present:

(a) The proposed change in child support based on the Washington state child support schedule:

(i) Is at least ~~((twenty-five))~~ fifteen percent above or below the current support obligation;

(ii) Is at least one hundred dollars per month above or below the current support obligation; and

(iii) Is at least a two thousand four hundred dollar change over the remaining life of the support order; or

(iv) Will provide enough income to:

(A) Make the family ineligible for public assistance if the noncustodial parent (NCP) pays the full amount due under the proposed order; or

(B) Allow a family, otherwise eligible for public assistance, to remain off of assistance.

(b) The case meets the legal requirements for modification under RCW 26.09.170, 74.20A.059, or WAC 388-14A-3925.

(2) DCS may petition to modify the order without regard to subsection (1)(a)(i) of this section if the reason DCS reviewed the order is the noncustodial parent's incarceration.

(3) DCS may petition to modify the order without regard to subsection (1)(a) of this section when:

(a) The order does not require the NCP to provide health insurance coverage for the children; and

(b) Health insurance coverage is available through the NCP's employer or union at a reasonable cost; or

(c) Both parties agree to an order modifying the support amount.

WSR 20-04-052

PERMANENT RULES

BATES TECHNICAL COLLEGE

[Filed January 30, 2020, 8:53 a.m., effective March 1, 2020]

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

Purpose: Repealing chapter 495A-131 WAC, Scholarships, for Bates Technical College.

Citation of Rules Affected by this Order: Repealing chapter 495A-131 WAC, Scholarships.

Adopted under notice filed as WSR 19-23-069 on November 18, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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: January 30, 2020.

Dr. Jean Hernandez
Special Assistant to the President

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495A-131-010 Scholarships.

WSR 20-04-053

PERMANENT RULES

BATES TECHNICAL COLLEGE

[Filed January 30, 2020, 8:55 a.m., effective March 1, 2020]

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

Purpose: Repealing chapter 495A-132 WAC, Financial aid, for Bates Technical College.

Citation of Rules Affected by this Order: Repealing chapter 495A-132 WAC, Financial aid.

Adopted under notice filed as WSR 19-23-070 on November 18, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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: January 30, 2020.

Dr. Jean Hernandez
Special Assistant to the President

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495A-132-010 Financial aid.

WSR 20-04-058
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-19—Filed January 30, 2020, 3:32 p.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

Purpose: The department makes adjustments to recreational fishing rules to maximize conservation and recreational fishing opportunity. This proposal includes largely clerical changes to shellfish, marine fish, and forage fish recreational fishing regulations, focusing on clarification and simplification.

Citation of Rules Affected by this Order: Repealing WAC 220-330-030 Personal-use crab pot gear requirements, 220-330-050 Crab—Unlawful acts—Personal use, 220-330-060 Personal-use shrimp pot gear requirements, 220-330-080 Shrimp containers, 220-330-100 Personal-use crab, shrimp, crawfish—Unlawful acts, 220-330-130 Oysters and scallops—Gear, 220-330-180 Squid, octopus, 220-300-300 Geographical definitions—District 1 and 220-300-310 Geographical definitions—District 2; and amending WAC 220-315-010 Forage fish—Lawful gear, 220-315-030 Smelt—Areas and seasons, 220-310-160 Daily limits forage fish and other food fish not otherwise provided for, 220-300-040 Definitions—Bottomfish, 220-300-130 Definition—Forage fish, 220-300-370 Food fish—Classification, 220-330-010 Shellfish—Daily limits, 220-330-020 Personal-use shellfish gear—Unlawful acts, 220-330-040 Crab—Areas and seasons—Personal use, 220-330-070 Shrimp—Areas and seasons, 220-330-090 Crawfish, sea urchins, sea cucumbers, goose barnacles—Areas and seasons, personal-use fishery, 220-330-120 Clams, oysters, mussels—Unlawful acts, 220-330-150 Oysters and clams on private tidelands—Personal use, 220-320-060 General provisions—Shellfish, 220-314-020 Possession limits—Bottomfish, 220-314-030 Halibut—Seasons—Daily and possession limits, and 220-314-040 Lingcod—Areas and seasons.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055.

Adopted under notice filed as WSR 19-18-070 on September 3, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 17, Repealed 9.

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: December 13, 2019.

Larry M. Carpenter, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-300-040 Definitions—Bottomfish. The term "bottomfish," unless otherwise provided, is defined as including Pacific cod, Pacific tomcod, Pacific hake, walleye pollock (~~((all species of dabs, sole and flounders (except Pacific halibut)))~~), lingcod (~~((and all other species of greenling))~~), ratfish, sablefish, cabezon, buffalo sculpin, great sculpin, red Irish lord, brown Irish lord, Pacific staghorn sculpin, wolf-eel, giant wry mouth, plainfin midshipman, North Pacific spiny dogfish, (~~((six gill))~~) sixgill shark, (~~((southern shark and all other species of))~~) tope shark, and all species of skate, dab, sole, flounder (except Pacific halibut), greenling, shark, rockfish, rattail((s)), and ((surfperches)) surfperch (except shiner perch).

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-300-130 Definition—Forage fish. "Forage fish" is defined as anchovy, herring, sand lance, sardine, and all species of smelt.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-300-300 Geographical definitions—District 1.

WAC 220-300-310 Geographical definitions—District 2.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-300-370 Food fish—Classification. The following species are classified as food fish under RCW 77.12.047 and are subject to the provisions of this title:

Barracuda

Pacific barracuda *Sphyrna argentea*

Cyprinids

Carp *Cyprinus carpio*

~~((Cods and hake))~~ Codfishes

Pacific hake or whiting *Merluccius productus*

Walleye pollock *Gadus chalcogrammus*

Pacific Tomcod *Microgadus proximus*

Pacific Cod or true cod	<i>Gadus macrocephalus</i>
((Flounder, sole and halibut)) Flatfishes	
Butter sole or Bellingham sole	<i>Isopsetta isolepis</i>
C-O sole	((Pleuronichthys)) <i>Pleuronichthys coenosus</i>
Dover sole	<i>Microstomus pacificus</i>
English sole	<i>Parophrys vetulus</i>
Flathead sole	<i>Hippoglossoides elassodon</i>
Pacific halibut	<i>Hippoglossus stenolepis</i>
Petrale sole	<i>Eopsetta jordani</i>
Rex sole	<i>Glyptocephalus zachirus</i>
Northern rock sole	<i>Lepidopsetta polyxystra</i>
Southern rock sole	<i>Lepidopsetta bilineata</i>
Pacific sand dab	<i>Citharichthys sordidus</i>
Sand sole	<i>Psettichthys melanostictus</i>
Slender sole	<i>Lyopsetta exilis</i>
Speckled sand dab	<i>Citharichthys stigmaeus</i>
Starry flounder	<i>Platichthys stellatus</i>
Turbot or Arrowtooth flounder	<i>Atheresthes stomias</i>
All other species of sole and flounder	(Pleuronectiformes)
((Giant wrymouth	<i>Delolepsis gigantea</i>
Greenling	
Lingcod	<i>Ophiodon elongatus</i>
Rock greenling	<i>Hexagrammos superciliosus</i>
Kelp greenling	<i>Hexagrammos decagrammus</i>
All other species of greenling	(Hexagrammidae)
Herring and ((herring-like)) other forage fishes	
Northern anchovy	<i>Engraulis mordax</i>
Pacific sand lance ((or eandlefish))	<i>Ammodytes personatus</i>
Pacific herring	<i>Clupea pallasii</i>
Pacific sardine or pilchard	<i>Sardinops sagax</i>
American shad	<i>Alosa sapidissima</i>
Mackerels, tunas, and jacks	
((carangids))	
Pacific bonito	<i>Sarda chiliensis</i>
Pacific mackerel	<i>Scomber japonicus</i>
Jack mackerel	<i>Trachurus symmetricus</i>
Monterey Spanish mackerel	<i>Scomberomorus concolor</i>
Spanish mackerel	<i>Scomberomorus maculatus</i>

Yellowtail	<i>Seriola dorsalis</i>
Albacore	<i>Thunnus alalunga</i>
Bluefin tuna	<i>Thunnus thynnus</i>
Skipjack tuna	<i>Euthynnus pelamis</i>
Yellowfin tuna	<i>Thunnus albacares</i>
All other species of tunas and mackerels	(Scombridae)
((Pacific pomfret	<i>Brama japonica</i>
Pacific pompano	<i>Peprilus simillimus</i>
Plainfin midshipman	<i>Parichthys notatus</i>
Rattfish	<i>Hydrolagus colliei</i>
Rattails, all species	(Coryphaenoididae)
Skates	
Longnose skate	<i>Raja rhina</i>
Big skate	<i>Raja binoculata</i>
All other species of skates	(Rajiformes))
Rockfish	
Bocaccio	<i>Sebastes paucispinis</i>
Black rockfish	<i>Sebastes melanops</i>
Brown rockfish	<i>Sebastes auriculatus</i>
Copper rockfish	<i>Sebastes caurinus</i>
Greenstriped rockfish	<i>Sebastes elongatus</i>
Canary rockfish	<i>Sebastes pinniger</i>
Pacific Ocean perch	<i>Sebastes alutus</i>
Yelloweye ((or rasphead)) rockfish	<i>Sebastes ruberrimus</i>
((Rosefish or)) Splitnose rockfish	<i>Sebastes diploproa</i>
	((Sebastes brevispinis))
Silvergray rockfish	((Sebastes maliger))
	<i>Sebastes brevispinis</i>
Quillback rockfish	((Sebastes flavidus))
	<i>Sebastes maliger</i>
Yellowtail rockfish	((Scorpaenidae))
	<i>Sebastes flavidus</i>
All other species of rockfish ((Sablefish	<i>Anoplopoma fimbria</i>
	(Scorpaenidae)
Salmon	
Chinook or King salmon (except in its landlocked form as defined in WAC 232-12-018)	<i>Oncorhynchus tshawytscha</i>
Chum or dog salmon	<i>Oncorhynchus keta</i>
Pink or humpback	<i>Oncorhynchus gorbuscha</i>
Coho or silver (except in its landlocked form as defined in WAC 232-12-018)	<i>Oncorhynchus kisutch</i>

Sockeye or blue back	<i>Oncorhynchus nerka</i>
Masu	<i>Oncorhynchus masu</i>
Atlantic salmon (except in its landlocked form)	<i>Salmo salar</i>
Sculpins	
Brown Irish lord	<i>Hemilepidotus spinosus</i>
Buffalo sculpin	<i>Enophrys bison</i>
Cabezon	<i>Scorpaenichthys marmoratus</i>
Great sculpin	<i>Myoxocephalus polyacanthocephalus</i>
Pacific Staghorn sculpin	<i>Leptocottus armatus</i>
Red Irish lord	<i>Hemilepidotus hemilepidotus</i>
Seabass and drums	
White seabass	<i>Cynoscion nobilis</i>
All other seabass and drums	(Sciaenidae and Serranidae)
Sharks	
Sixgill shark	<i>Hexanchus griseus</i>
((Southern or)) Topo shark	<i>Galeorhinus galeus</i>
((Dogfish or)) <u>North Pacific spiny dogfish</u>	<i>Squalus suckleyi</i>
All other species of sharks	(Selachimorpha)
Skates	
<u>Longnose skate</u>	<i>Raja rhina</i>
<u>Big skate</u>	<i>Beringraja Binocularata</i>
<u>All other species of skate</u>	(Rajiformes)
Smelts	
Eulachon or Columbia River smelt	<i>Thaleichthys pacificus</i>
Longfin smelt	<i>Spirinchus thaleichthys</i>
Surf smelt	<i>Hypomesus pretiosus</i>
All other species of smelt	(Osmeridae)
Sturgeons	
Green sturgeon	<i>Acipenser medirostris</i>
White sturgeon	<i>Acipenser transmontanus</i>
Surfperches	
Blue perch or striped sea-perch	<i>Embiotoca lateralis</i>
Kelp perch	<i>Brachyistius frenatus</i>
Redtail surfperch	<i>Amphistichus rhodoterus</i>
Shiner perch	<i>Cymatogaster aggregata</i>
Pile perch	<i>Rhacochilus vacca</i>
Walleye surfperch	<i>Hyperprosopon argenteum</i>
White seaperch	<i>Phanerodon furcatus</i>

All other species of perch	(Embiotocidae)
((Wolf-eel	<i>Anarrhichthys ocellatus</i>))
Hagfishes	
Pacific hagfish	<i>Eptatretus stouti</i>
Black hagfish	<i>Eptatretus deani</i>
Other	
Opah	<i>Lampris guttatus</i>
Swordfish	<i>Xiphias gladius</i>
Striped marlin	<i>Kajikia audax</i>
Dolphinfish	<i>Coryphaena hippurus</i>
<u>Giant wrymouth</u>	<i>Delolepsis gigantea</i>
<u>Pacific pomfret</u>	<i>Brama japonica</i>
<u>Pacific pompano</u>	<i>Peprius simillimus</i>
<u>Plainfin midshipman</u>	<i>Parichthys notatus</i>
<u>Ratfish</u>	<i>Hydrolagus colliei</i>
<u>Rattails, all species</u>	(Coryphaenoididae)
<u>Sablefish</u>	<i>Anoplopoma fimbria</i>
<u>Wolf-eel</u>	<i>Anarrhichthys ocellatus</i>

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-310-160 Daily limits ~~((forage fish and))~~ other food fish not otherwise provided for. It is unlawful for any person to retain more than the following quantities ~~((and sizes of food fish))~~ taken for personal use. Unless otherwise provided, other food fish fishing is open the entire year:

- ~~((1))~~ ~~((Forage fish:~~
 - ~~((a))~~ ~~Catch Record Card Areas 5 through 13: 10 pounds total. The possession limit is two daily limits in fresh form. Additional forage fish may be possessed in frozen or processed form;~~
 - ~~((b))~~ ~~Catch Record Card Areas 1 through 4, 2.1 (Willapa Bay) and 2.2 (Grays Harbor), excluding sardines and anchovies: 10 pounds total;~~
 - ~~((c))~~ ~~Catch Record Card Areas 1 through 4, 2.1 (Willapa Bay) and 2.2 (Grays Harbor), sardines and anchovies: 25 pounds total;~~
 - ~~((d))~~ ~~The possession limit is two daily limits in fresh form. Additional forage fish may be possessed in frozen or processed form.~~
- ~~((2))~~ ~~Shiner perch: Daily limit 15 fish.~~
- ~~((3))~~ ~~(2) All other marine food fish not otherwise provided for in this chapter except albacore tuna and all mackerel: Daily limit two fish.~~

AMENDATORY SECTION (Amending WSR 19-16-001, filed 7/24/19, effective 8/24/19)

WAC 220-314-020 Possession limits—Bottomfish. It is unlawful for any person to fish for or take bottomfish for personal use except within the seasons, daily quantities, and possession limits prescribed as follows:

(1) Coastal areas (~~((Catch Record Card))~~) Marine Areas 1 through 3 and 4 west of the Bonilla-Tatoosh line:

(a) Bottomfish fishing is open the second Saturday in March through the third Saturday in October, except fishing for surfperch from the shore is allowed year-round.

(b) Limit of surfperch is 12 per person per day. For all other bottomfish, limit is 9 fish total per person per day, which may include no more than:

(i) Lingcod: 2 fish, no minimum length.

(ii) Rockfish: 7 fish in aggregate. The possession limit for yelloweye rockfish is 0.

(iii) Wolf-eel: 0 fish from Catch Record Card Area 4.

(iv) Cabezon: Marine Areas 1 through 4: 1 fish, no minimum size.

(c) Additional flatfish: In addition to the bottomfish limit in (b) of this subsection, anglers may take 3 flatfish per person, per day, not to be counted towards the bottomfish limit but in addition to it.

(2) Inner Puget Sound (~~((Catch Record Card))~~) Marine Areas 4 east of the Bonilla-Tatoosh line, and 5 through 13):

(a) (~~((Catch Record Card))~~) Marine Area 4 east of the Bonilla-Tatoosh line: Limit ~~((+0))~~ of surfperch is 12 per person per day. For all other bottomfish, 9 fish total, which may include no more than:

(i) Lingcod: 2 fish, no minimum length ~~((of 22 inches))~~.

(ii) Rockfish: ~~((6))~~ 7 fish. Only black ~~((or))~~, blue/deacon, yellowtail, and widow rockfish may be retained.

(iii) Wolf-eel: 0 fish.

(iv) Cabezon: 1 fish ~~((; the))~~, no minimum size ~~((limit is 18 inches))~~.

(b) (~~((Catch Record Card))~~) Marine Areas 5 and 6: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except 1 fish May 1 through September 30. Only black or blue/deacon rockfish may be retained.

in Marine Area 5 west of Slip Point 3 fish. Only black or blue/deacon rockfish may be retained.

in Marine Area 6. 0 fish

Surfperch 10 fish

Pacific cod 2 fish

Pollock 2 fish

Flatfish (except halibut) 15 fish

Lingcod 1 fish

Wolf-eel 0 fish

Cabezon 1 fish

Pacific hake 2 fish

(c) (~~((Catch Record Card))~~) Marine Area 7: 15 fish total for all species of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pollock	2 fish
Pacific hake	2 fish

(d) (~~((Catch Record Card))~~) Marine Areas 8-1 through 11, and 13: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	0 fish

(e) (~~((Catch Record Card))~~) Marine Area 12: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	0 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut) <u>only in Dabob Bay north of Turner Creek</u>	15 fish
Lingcod	0 fish
Wolf-eel	0 fish
Cabezon	0 fish
Pacific hake	0 fish

(f) The possession limit for lingcod taken by angling gear is 26 to 36 inches in length. For spear fishing, lingcod may not be possessed that exceed 36 inches in length but there is no minimum size limit.

(g) In Marine Areas 5 through 11, and 13, the minimum size limit for cabezon is 18 inches. All cabezon must be released in (~~((Catch Record Card))~~) Marine Areas 5 through 11, and 13, from December 1 through April 30.

(h) In (~~((Catch Record Card))~~) Marine Area 5, the daily limit for rockfish is the first legal rockfish caught, except that west of Slip Point, the daily limit for rockfish is the first three

legal rockfish caught. Only black or blue/deacon rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(i) In (~~Catch Record Card~~) Marine Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

(3) The possession limit at any time may not exceed the equivalent of two daily limits in fresh, frozen or processed form.

(4) Unless otherwise provided, bottomfish fishing is open the entire year.

(5) Daily limits include bottomfish caught in adjacent areas bordering other states, such as Oregon.

(6) It is unlawful to fish for, retain, or possess sixgill, sevengill, or thresher sharks.

AMENDATORY SECTION (Amending WSR 19-16-001, filed 7/24/19, effective 8/24/19)

WAC 220-314-030 Halibut—Seasons—Daily and possession limits. (1) It is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) (~~Catch Record Card~~) Marine Area 1: Closed except as provided by emergency rule. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish, except flatfish, sablefish, Pacific cod, and lingcod north of the Washington-Oregon border if the vessel has brought halibut into port or landed halibut.

(b) (~~Catch Record Card~~) Marine Area 2:

(i) The northern near shore fishery takes place in those waters from 47°31.70'N. lat. south to 46°58.00'N. lat. and east of a boundary line approximating the 30 fathom depth contour as defined by the following coordinates:

47°31.70'N. lat., 124°37.03'W. long.
47°25.67'N. lat., 124°34.79'W. long.
47°12.82'N. lat., 124°29.12'W. long.
46°58.00'N. lat., 124°24.24'W. long.

Closed except as provided by emergency rule.

(ii) All other waters in Area 2 - Closed except as provided by emergency rule.

(iii) From the second Saturday in March through May 31, it is unlawful to fish for or possess lingcod, seaward of line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain lingcod on days open during the primary halibut season as described in (b)(ii) of this subsection, seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below:

47°31.70'N. lat., 124°37.03'W. long.
47°25.67'N. lat., 124°34.79'W. long.
47°12.82'N. lat., 124°29.12'W. long.
46°52.94'N. lat., 124°22.58'W. long.
46°44.18'N. lat., 124°18.00'W. long.
46°38.17'N. lat., 124°15.88'W. long.

(c) (~~Catch Record Card~~) Marine Areas 3 and 4 west of Bonilla-Tatoosh line - Closed except as provided by emer-

gency rule. The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within an eastward-facing C-shaped closed area defined as: Beginning at 48°18'N. lat., 125°18'W. long.; thence to 48°18'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 125°18'W. long.; thence to the point of origin.

It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates, from June 1 through Labor Day except, on days and times open to halibut fishing, it is permissible to retain lingcod, sablefish, and Pacific cod. The retention of yellowtail rockfish and widow rockfish is permitted seaward of the line approximating 20 fathoms on days open to the recreational salmon fishery during the months of July and August:

48°23.9'N. lat., 124°44.2'W. long.
48°23.6'N. lat., 124°44.9'W. long.
48°18.6'N. lat., 124°43.6'W. long.
48°18.6'N. lat., 124°48.2'W. long.
48°10.0'N. lat., 124°48.8'W. long.
48°02.4'N. lat., 124°49.3'W. long.
47°37.6'N. lat., 124°34.3'W. long.
47°31.7'N. lat., 124°32.4'W. long.

(d) (~~Catch Record Card~~) Marine Area 4 east of the Bonilla-Tatoosh line, closed except as provided by emergency rule. It is unlawful to fish for or possess bottomfish seaward of a line approximating 120 feet except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of 120 feet as defined by WAC 220-314-010. The retention of yellowtail rockfish and widow rockfish is permitted seaward of the line approximating 120 feet on days open to the recreational salmon fishery during the months of July and August.

(e) (~~Catch Record Card~~) Marine Areas 5 through 11, and 13 - On days that the halibut fishery is open, it is lawful to fish for, retain, and possess lingcod and Pacific cod seaward of 120 feet in (~~Catch Record Card~~) Marine Area 5. Closed except as provided by emergency rule.

(2) Daily limit is one halibut taken from state or offshore waters. This does not include Canadian waters; see WAC 220-310-210 for limits on Canadian-origin halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(4) The annual limit is four halibut taken from state or offshore waters. This does not include Canadian waters; see WAC 220-310-210 for limits on Canadian-origin halibut.

(5) It is unlawful to fish for, retain, possess, or land halibut into a port located within an area that is closed to halibut fishing. This does not include halibut caught in Canadian waters. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(6) A violation of this section is punishable under RCW 77.15.370 or 77.15.380, depending on the violation.

AMENDATORY SECTION (Amending WSR 19-16-001, filed 7/24/19, effective 8/24/19)

WAC 220-314-040 Lingcod—Areas and seasons. It is unlawful to take, fish for, or possess lingcod for personal use except during the following seasons and areas:

(1) Coastal area:

(a) ~~((Catch Record Card))~~ Marine Areas 1 through ~~((3 and 4 west of the Bonilla Tatoosh line))~~ 4: From the second Saturday in March, through the third Saturday in October~~((; and))~~.

(b) ~~((Catch Record Card Area 4 east of the Bonilla Tatoosh line: April 16 through October 15.~~

~~((e))~~) It is unlawful to fish for, retain, or possess lingcod in ~~((Catch Record Card))~~ Marine Area 1 seaward of a line extending from 46°38.17'N. lat., 124°21.00'W. long. to 46°33.00'N. lat., 124°21.00'W. long. when lingcod is open.

~~((d))~~ ~~((c))~~ It is unlawful to fish for, retain, or possess lingcod in ~~((Catch Record Card))~~ Marine Area 2 seaward of a line extending from 47°31.70'N. lat., 124°45.00'W. long. south to 46°38.17'N. lat., 124°30.00'W. long. when lingcod is open, except that lingcod may be taken, retained and possessed seaward of the line on days open during the primary halibut season and from June 1 through June 15 and September 1 through September 15.

(2) ~~((Catch Record Card))~~ Marine Areas 5 through 11, and 13: May 1 through June 15 by angling, and May 21 through June 15 by spear fishing.

(3) Marine Area 12: Closed year-round.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-315-010 Forage fish—Lawful gear and limits. (1) It is unlawful to take, fish for, or possess herring, ~~((eandlefish))~~ and lance~~((;))~~, sardines, anchovies or smelt species for personal use unless an angler takes those species with the following gear:

(a) ~~((Hand))~~ Forage fish dip net gear not exceeding 36 inches across the bag frame with a maximum mesh size of 5/8 inch stretched mesh ~~((size))~~;

(b) Forage fish ~~((jigger))~~ jigging gear with not more than 3 treble or 9 single hooks; or

(c) In Marine Areas 1 through 4, 2.1 (Willapa Bay), and 2.2 (Grays Harbor) it is permissible to take anchovies or sardines using dip net, cast net, ~~((jigger))~~ jigging gear, or by angling.

(2) ~~((It is unlawful to take, fish for, or possess eulachon smelt.~~

~~((3))~~) It is unlawful to use a dip ~~((bag))~~ net to take forage fish unless the operator of the net holds the handle at all times the netting is in the water.

~~((4))~~ (3) It is unlawful to operate a dip ~~((bag))~~ net to harvest forage fish from a vessel under power, or to use more than one forage fish dip net at a time.

~~((5))~~ (4) Only persons with WDFW disability status and a designated harvest companion card may use a hand-operated gate on a dip net while fishing for forage fish.

~~((6))~~ (5) Forage fish ~~((jigger))~~ jigging gear hooks may not have a gap between the shank and the point exceeding 3/8 inch.

~~((7))~~ (6) It is unlawful for a fisher to operate cast net gear unless the gear is in ~~((his or her))~~ their immediate control. The fisher must have the retrieval cord in ~~((his or her))~~ their hand at all times when the cast net is deployed. Mesh size for cast nets is limited to 1 inch stretched mesh maximum, and cast nets may be no larger than 10 feet in diameter.

~~((8))~~ (7) Use of gear in violation of this section is an infraction, punishable under RCW 77.15.160.

~~((9))~~ (8) It is unlawful to possess forage fish taken with gear in violation of the provisions of this section. Possession of forage fish while using gear in violation of the provisions of this section is a rebuttable presumption that the forage fish were taken with such gear. Violation of this subsection is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the forage fish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

(9) Forage fish limit.

(a) Catch Record Card Areas 5 through 13 and freshwater: 10 pounds total. The possession limit is two daily limits in fresh form. Additional forage fish may be possessed in frozen or processed form:

(b) Catch Record Card Areas 1 through 4, 2.1 (Willapa Bay) and 2.2 (Grays Harbor), excluding sardines and anchovies: 10 pounds total;

(c) Catch Record Card Areas 1 through 4, 2.1 (Willapa Bay) and 2.2 (Grays Harbor), sardines and anchovies: 25 pounds total;

(d) The possession limit is two daily limits in fresh form. Additional forage fish may be possessed in frozen or processed form.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-315-030 Smelt—Areas and seasons. (1) It is unlawful to take, fish for or possess ~~((Columbia River smelt or))~~ eulachon (*Thaleichthys pacificus*).

(2) Fishing for smelt species other than ~~((Columbia River smelt or))~~ eulachon (*Thaleichthys pacificus*) is permissible year-round on Pacific Ocean beaches ~~((and in all rivers concurrent with a salmon or gamefish opening, except it is unlawful to fish for smelt in the Columbia River and its tributaries))~~.

(3) Fishing for smelt other than ~~((Columbia River smelt or))~~ eulachon (*Thaleichthys pacificus*) is open in all rivers, concurrent with a salmon or game fish opening, and year-round in Puget Sound, and the Strait of Juan de Fuca ~~((year-round))~~ except:

(a) ~~((Closed weekly from 10:00 p.m. Tuesday to 6:00 a.m. Friday for all gear types except forage fish jig gear; and))~~ Forage fish dip net is closed from 10:00 p.m. to 6:00 a.m. daily, and closed Wednesdays and Thursdays.

(b) Closed year-round in Catch Record Card Area 12 for all gear types.

(c) Closed year-round in Columbia River and its tributaries for all gear types.

(d) Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(4) It is unlawful to possess smelt species taken with gear in violation of the provisions of this section. Possession of smelt species while using gear in violation of the provisions of this section is a rebuttable presumption that the smelt species were taken with such gear. Possession of such smelt species is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the smelt species are taken in an amount or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-320-060 General provisions—Shellfish. (1)

It is unlawful to drive or operate any motor-propelled vehicle, land any airplane or ride or lead any horse on the razor clam beds of the state of Washington, as defined in WAC 220-320-030. A violation of this subsection shall be punished as an infraction.

(2) It is unlawful to possess soft-shelled crab for any commercial purpose.

(3) It is unlawful to possess in the field any crab (~~from which the back shell has been removed~~) or crab parts without also retaining the back shell (carapace) of each crab.

(4) It is unlawful to willfully damage crab or other shellfish. Any crab taken incidentally to a net fishery must be immediately returned to the water with the least possible damage to the crab.

(5) "Shellfish" includes all bodily parts but does not include five pounds or less of relic shells of classified shellfish or relic shells of unclassified freshwater and marine invertebrates. A relic (dead) shell is defined as one which (~~apparently~~) died of natural causes and contains no meat or soft parts; it readily exhibits noticeable sediment, vegetation, algal or mineral stains, discolorations, soiling, weathering or other visual evidence on its interior surface which clearly and unambiguously shows the shell has not been cooked-out or freshly cleaned. (~~No license or permit is required to take or possess up to five pounds of relic shells per day. It is unlawful to take or possess more than five pounds of relic shells without first obtaining a scientific collection permit. Notwithstanding the provisions of this section, it is unlawful to remove relic oyster shells from tidelands.~~)

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-330-010 Shellfish—Daily limits, size restrictions, and unlawful acts. It is unlawful for any one person to possess at any time more than one daily limit of fresh shellfish. Additional shellfish may be possessed in a frozen or processed form. It is unlawful for any one person to take more than the following quantities (~~and sizes of shellfish for personal use in any one day:~~

(1) Cockles, borers and clams in the shell, other than) shellfish in any one day for personal use, or take or possess shellfish that measure less than the caliper measurement described in this section. Caliper measurement is defined as a linear measurement when both points of a movable caliper are touching the shell of the shellfish. A fixed caliper gauge

is the linear distance between points of the caliper gauge or the diameter of a circular gauge.

(1) Marine clams:

(a) Clams (not including razor clams, geoduck clams and horse clams(;;)):

(i) Daily limit is 40 clams total, ((or 10 pounds, whichever is achieved first)) not to exceed 10 pounds in the shell.

((2) Razor clams: 15 clams.

(3) Geoduck clams: 3 clams.

(4) Horse clams: 7 clams.

(5) Oysters: 18 oysters. Minimum size before shucking two and one-half inches along the longest dimension of the shell.

(6) Rock scallops: 6 scallops.

(7) Weathervane scallops: 12 scallops (over 4 inches).

(8) Spiny and pink scallops: 10 pounds or 5 quarts in the shell, in the aggregate.

(9)) (ii) Minimum size for Manila, native littleneck, butter clams, and cockles is 1 1/2 inches across the widest dimension of the shell.

(b) Geoduck clams:

(i) Daily limit is first 3 clams dug, regardless of size or condition. Broken clams count towards daily limit. No minimum size limit.

(ii) It is unlawful to maim, injure or attempt to capture a geoduck by thrusting any instrument through its siphon or to possess only the siphon or neck portion of a geoduck.

(c) Horse clams: Daily limit is first 7 clams dug, regardless of size or condition. Broken clams count towards daily limit. No minimum size limit.

(d) Razor clams: Daily limit is 15 clams. No minimum size limit.

(e) It is unlawful for any person digging clams (other than razor clam) for personal use to fail to refill holes created during the digging operation. Beach terrain must be returned to its approximate original condition by the clam diggers before leaving immediate site of harvest. Violation of provisions of this subsection is an infraction punishable under RCW 77.15.160.

(f) Relic shells: No license or permit is required to take or possess up to 5 pounds of relic shells per day. It is unlawful to take or possess more than 5 pounds of relic shells from public tidelands without first obtaining a scientific collection permit. Notwithstanding the provisions of this section, it is unlawful to remove relic oyster shells from public tidelands.

(2) Crab:

(a) General provisions:

(i) All crab measurements must be made at the widest part of the shell (carapace) immediately in front of the points (tips) on the carapace.

(ii) It is unlawful to possess in the field any crab or crab parts without also retaining the back shell of each crab.

(iii) It is unlawful for any person to take or possess any female Dungeness crab.

(iv) It is unlawful to possess soft-shelled crab for any purpose. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) Dungeness crab:

(i)(A) In Marine Area 1 (except when fishing from the north jetty of the Columbia River), Marine Areas 2, 3, and 4

west of the Bonilla-Tatoosh line (Coastal waters): Daily limit is 6 male crab.

(B) Minimum size limit is 6 inches.

(ii)(A) In the Columbia River upstream of a line from the outermost end of the north jetty to the exposed end of the south jetty, and when fishing from the north jetty of the Columbia River: Daily limit is 12 male crab.

(B) Minimum size limit is 5 3/4 inches.

(iii)(A) In Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5, 6, 7, 8, 9, 10, 11, 12, and 13 (Puget Sound): Daily limit is 5 male crab.

(B) Minimum size limit is 6 1/4 inches.

(c) Red rock crab:

(i) Daily limit is 6 crab. Either sex may be retained.

(ii) Minimum size limit is 5 inches.

(d) King and box crab: Closed in all waters.

(e) Tanner crab:

(i) Daily limit is 6 crab. Either sex may be retained.

(ii) Minimum size limit is 4 1/2 inches.

(3) Crawfish:

(a) Daily limit is 10 pounds, whole crawfish in the shell.

(b) Minimum size limit 3 1/4 inches from tip of rostrum to tip of tail.

(c) Female crawfish with eggs or young attached to the abdomen must be released immediately.

(d) Take or possession of crawfish must also comply with provisions of chapter 220-640 WAC.

(4) Goose barnacles: Daily limit is 10 pounds of whole barnacles in the shell or 5 pounds of barnacle stalks. No minimum size limit.

(5) Mussels: Daily limit is 10 pounds in the shell, all species in the aggregate. No minimum size limit.

(6) Octopus: Daily limit is one octopus. No minimum size limit.

(7) Oysters:

(a) Daily limit is 18 oysters.

(b) Minimum size limit before shucking is 2 1/2 inches along the widest dimension of the shell. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(c) Oysters taken for personal use must be shucked before removing oysters from the intertidal zone and the shells replaced on the tidelands at the approximate tide level from which original was taken. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(8) Scallops:

(a) Rock scallops:

(i) Daily limit is 6 scallops.

(ii) Minimum size limit is 4 inches. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) Pink and spiny scallops:

(i) Combined daily limit is 40 scallops in the shell.

(ii) Minimum size limit is 2 inches. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(c) Weathervane scallops:

(i) Daily limits is 12 scallops.

(ii) Minimum size limit is 4 inches.

(9) Sea cucumbers: Daily limit is 18 California sea cucumbers. No minimum size limit.

(10) Sea urchins:

(a) Red sea urchins:

(i) Daily limit is 18 red sea urchins.

(ii) Minimum size limit 3 1/4 inch shell diameter exclusive of the spines. Maximum size limit is 5 inch shell diameter exclusive of the spines. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) Purple sea urchins:

(i) Daily limit is 18 purple sea urchins.

(ii) Minimum size limit is 2 1/4 inch shell diameter exclusive of the spines.

(c) Green sea urchins:

(i) Daily limit is 18 green sea urchins.

(ii) Minimum size limit is 2 1/4 inch shell diameter exclusive of the spines.

(11) Shrimp:

(a) In Marine Areas 1 ((through)), 2, and 3 and Marine Area 4 west of the Bonilla-Tatoosh line: Daily total weight limit is 25 pounds, maximum of 200 spot shrimp as part of the 25-pound limit.

(b)(i) In Marine Area 4 east of the Bonilla-Tatoosh line and Marine Areas 5 ((through)), 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13: First Saturday in May through May 31, daily limit is 80 shrimp; during all other open periods daily total weight limit is 10 pounds (whole shrimp) all species combined, maximum of 80 spot shrimp as part of the 10-pound limit((-

(10) Pinto abalone: Closed statewide.

(11) Crawfish: 10 pounds in the shell. Minimum size 3 1/4 inches from tip of rostrum to tip of tail. Female crawfish with eggs or young attached to the abdomen must be released immediately.

(12) Sea cucumbers: 25 sea cucumbers.

(13) Red sea urchins: 18 sea urchins.

(14) Purple sea urchins: 18 sea urchins.

(15) Green sea urchins: 36 sea urchins.

(16) Dungeness crab:

(a) In Area 1 except when fishing from the north jetty of the Columbia River and Areas 2, 3, and 4 west of the Bonilla-Tatoosh line – 6 male crab.

(b) In Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13 – 5 male crabs.

(c) In the Columbia River upstream of a line from the outermost end of the north jetty to the exposed end of the south jetty, or when fishing from the north jetty of the Columbia River – 12 male crab.

(17) Red rock crab: 6 crab.

(18) Mussels: 10 pounds in the shell, in the aggregate.

(19) Goose barnacles: 10 pounds of whole barnacles or 5 pounds of barnacle stalks.

(20) Ghost and mud shrimp: 10 dozen.

(21) King and box crab: Closed statewide.

(22) Tanner crab: 6 crab)).

(ii) Shrimp heads may be removed, but after May 31 must be retained in the field until ashore and finished fishing for the day.

(c) Ghost and mud shrimp: Daily limit is 120 shrimp.

(12) Squid:

(a) Humboldt squid: 1 squid. No minimum size limit.

(b) All other species of squid: Daily limit is 10 pounds or 5 quarts of squid. No minimum size limit.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-330-020 (~~Personal use shellfish gear—Unlawful acts.~~) Crab, shrimp, crawfish—Gear and gear-related unlawful acts. ((1) It is unlawful to violate the following provisions regarding unattended shellfish gear:

(a) ~~Unattended shellfish gear must be marked with a buoy that lists the first and last name and permanent mailing address of the owner.~~

(i) ~~The information on the buoy must be permanent, visible, and legible.~~

(ii) ~~Only one person's name and address may appear on a marker buoy.~~

(b) ~~All buoys must consist of durable material. It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy.~~

(c) ~~Buoys must remain visible on the surface at all times, except during extreme tidal conditions.~~

(d) ~~The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the line from floating on the water's surface.~~

(2) ~~It is unlawful to fish for or possess shellfish taken for personal use with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:~~

(a) ~~Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated, 100 percent cotton twine no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken.~~

(b) ~~An opening in the pot mesh no less than three inches by five inches which is laced or sewn closed with untreated, 100 percent cotton twine no larger than thread size 120. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.~~

(c) ~~Attachment of pot lid or one pot side serving as a pot lid with no more than 3 single loops of untreated 100 percent cotton or other natural fiber twine no larger than thread size 120 so that the pot lid or side will open freely if the twine or fiber is broken.~~

(3) ~~It is unlawful to set shellfish pots in a manner that they are not covered by water at all times.~~

(4) ~~Use of gear in violation of this section is an infraction, punishable under RCW 77.15.160, except failure to use untreated cotton twine as provided for in subsection (2) of this section is a misdemeanor punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty.~~

(5) ~~It is unlawful to possess shellfish taken with gear in violation of the provisions of this section. Possession of shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the shellfish were taken with that gear. Violation of this subsection is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.)~~

General gear requirements:

(1) It is unlawful to take, fish for, or possess crab, shrimp, and crawfish except by hand or with hand dip nets,

ring nets, shellfish pots, or any hand-operated, nonmechanized instrument. It is unlawful to harvest shellfish in any manner that penetrates the shell.

(2) It is unlawful to set, fish, or pull more than 2 units of gear per person per day, unless otherwise provided in this subsection. A unit of gear is defined as a hand dip net, shellfish pot, ring net or any other instrument used to capture crab, shrimp, or crawfish. A violation of this subsection is punishable under RCW 77.15.160, 77.15.380, or 77.15.370, depending on the circumstances of the violation.

(a) In Marine Area 4 east of the Bonilla-Tatoosh line and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13 (Puget Sound), it is unlawful to set, fish, or pull more than 2 units of crab gear and 2 additional units of shrimp gear per person per day.

(b) In Marine Areas 4, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13, it is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled to have on board or to fish more than 4 shrimp pots.

(c) In the Columbia River, it is unlawful to set, fish, or pull more than 3 units of crab gear per person.

(d) In fresh water, it is permissible to use up to 5 units of gear per person to fish for crawfish.

(3) It is unlawful to violate the following provisions regarding unattended shellfish gear:

(a)(i) Unattended shellfish gear must be marked with a buoy that permanently, visibly, and legibly lists the first and last name and permanent mailing address of the owner.

(ii) Only one person's name and address may appear on a marker buoy.

(b) All buoys must consist of durable material. It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy.

(c) Buoys must remain visible on the surface at all times, except during extreme tidal conditions.

(d) The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the line from floating on the water's surface.

(e) Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(4) It is unlawful to have more than one unit of unattended gear attached to a buoy line and buoy, or to fail to have a separate buoy for each unit of gear. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal-use purposes—Penalty.

(5) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.180 Unlawful interference with fishing or hunting gear—Penalty.

(6) It is unlawful to fish for or possess shellfish taken for personal use with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:

(a) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated, 100 percent cotton twine, hemp, jute, or sisal no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken.

(b) An opening in the pot mesh no less than 3 inches by 5 inches which is laced or sewn closed with untreated, 100 percent cotton twine, hemp, jute, or sisal no larger than thread size 120. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

(c) Attachment of pot lid or one pot side serving as a pot lid with no more than 3 single loops of untreated 100 percent cotton, hemp, jute, or sisal no larger than thread size 120 so that the pot lid or side will open freely if the twine or fiber is broken.

(d) Use of gear in violation of this subsection is an infraction, punishable under RCW 77.15.160.

(7) It is unlawful to set shellfish pots in a manner that they are not covered by water at all times. Use of gear in violation of this subsection is an infraction, punishable under RCW 77.15.160.

(8) Gear setting and retrieval:

(a) It is unlawful to fish, or place or retrieve gear outside of open days and hours.

(b) It is unlawful to fail to remove gear prior to the closure of a fishery.

(c) It is unlawful to fail to remove gear from the water within one hour after sunset if fishing is not allowed on the next calendar day.

(d) In waters that are open continuously, shellfish gear may be left in the water overnight, but may not be set or pulled from a vessel from one hour after official sunset to one hour before official sunrise in Marine Area 4 east of the Bonilla-Tatoosh line and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13.

(9) Crab pot gear requirements:

(a) All buoys attached to crab gear must be half red or half fluorescent red in color and half white in color. Flags and staff, if attached, may be any color. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) It is unlawful to fish for crab using shellfish pot gear greater than 13 cubic feet in volume.

(c) It is unlawful to fish for or possess crab taken with shellfish pot gear that are equipped with tunnel triggers or other devices which prevent free exit of crabs under the legal limit unless the gear is equipped with 2 or more escape rings located in the upper half of the pot and escape rings are 4 1/4 inches inside diameter or larger, except in the Columbia River where escape ring minimum size is 4 inches inside diameter.

(d) It is unlawful to use mesh size smaller than 1 1/2 inches for crab pots.

(e) Unless otherwise designated, a violation of this subsection is a violation of RCW 77.15.382. Possession of crab while using gear in violation of the provisions of this section is a rebuttable presumption that the crab were taken with such gear.

(10) Shrimp pot gear requirements:

(a) All buoys attached to shrimp gear must be yellow or fluorescent yellow in color. Flags and staff, if attached, may be any color. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(b) It is unlawful to take, fish for, or possess shrimp taken with shellfish pot gear unless the gear meets the following requirements:

(i) A shrimp pot may not exceed 10 feet in perimeter and 1 1/2 feet in height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Shrimp pot minimum mesh size:

(A) Year-round, Marine Areas 1, 2, 3, and 4 west of the Bonilla-Tatoosh line and shoreward of 20 fathoms, the minimum mesh size for shrimp pots is 1/2 inch. Seaward of 20 fathoms, the minimum mesh size for shrimp pots is 1 inch.

(B) May 1 through October 15, Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13, the minimum mesh size for shrimp pots is 1 inch, with the following exception: June 1 through October 15, in any Marine Area or portion thereof that is closed for spot shrimp but open for coonstripe and pink shrimp, the minimum mesh size for shrimp pots is 1/2 inch.

(C) Half-inch mesh is defined as mesh that a 3/8 inch square peg will pass through each mesh opening; flexible (web) mesh pots must have mesh size openings that are a minimum of 1 1/8 inch stretch measure.

(D) One inch mesh is defined as a mesh that a 7/8 inch square peg will pass through each mesh opening; flexible (web) mesh pots must have mesh size openings that are a minimum of 1 3/4 inch stretch measure.

(iv) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(v) Unless otherwise designated, a violation of this subsection is a violation of RCW 77.15.382. Possession of shrimp while using gear in violation of the provisions of this section is a rebuttable presumption that the shrimp were taken with such gear.

(c) In the field, it is unlawful for each person harvesting shrimp to fail to use a separate container to hold their catch and the container must be in the harvester's presence or identified with the harvester's name. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(d) It is unlawful to dig for or possess ghost or mud shrimp taken by any method except hand operated, nonmechanized suction devices or dug by hand.

AMENDATORY SECTION (Amending WSR 18-22-010, filed 10/25/18, effective 11/25/18)

WAC 220-330-040 Crab—Areas and seasons((—Personal use)). (1) It is unlawful to fish for or possess crab taken for personal use from Puget Sound except during the following seasons:

(a) Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5, 6, 8-1, 8-2, 9, 10, 11, 12, and 13: Open 7:00 a.m., July 1 through Labor Day, Thursday through Monday of each week.

(b) Those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island (48° 43.

038'N, 122° 43.127'W), through the navigation buoy just east of Matia Island (48° 44.610'N, 122° 48.961'W), thence to the buoy at Clements Reef (48° 46.659'N, 122° 53.481'W), thence to the easternmost point of Patos Island (48° 47.123'N, 122° 56.441'W), thence running along the northern shore of Patos Island to the westernmost point of Patos Island (48° 47.355'N, 122° 58.308'W), thence true west to the international boundary and south of a line that extends south-southwest from Point Francis on Portage Island (48° 41.627'N, 122° 37.013'W), through the marker just north of Inati Bay on Lummi Island (48° 40.467'N, 122° 37.234'W) to Lummi Island (48° 40.331'N, 122° 37.262'W): Open 7:00 a.m., July 15 through September 30, Thursday through Monday of each week.

(c) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island (~~through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island true west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island~~) (48° 43.038'N, 122° 43.127'W), through the navigation buoy just east of Matia Island (48° 44.610'N, 122° 48.961'W), thence to the buoy at Clements Reef (48° 46.659'N, 122° 53.481'W), thence to the easternmost point of Patos Island (48° 47.123'N, 122° 56.441'W), thence running along the northern shore of Patos Island to the westernmost point of Patos Island (48° 47.355'N, 122° 58.308'W), thence true west to the international boundary and south of a line that extends south-southwest from Point Francis on Portage Island (48° 41.627'N, 122° 37.013'W), through the marker just north of Inati Bay on Lummi Island (48° 40.467'N, 122° 37.234'W) to Lummi Island (48° 40.331'N, 122° 37.262'W): Open 7:00 a.m. August 15 through September 30, Thursday through Monday of each week.

(2) It is unlawful to fish for or possess crab taken for personal use with shellfish pot gear from Marine Areas 1, 2, 3, and Marine Area 4 west of the Bonilla-Tatoosh line except during the period from December 1 through September 15, except that it is lawful to fish for or possess crab taken for personal use with shellfish pot gear from Marine Area 2-1 (Willapa Bay) from November 15 through September 15. Open to gear other than shellfish pot gear year-round.

(3) The Columbia River upstream from a line projected from the outermost end of the north jetty to the exposed end of the south jetty is open year-round to crab fishing for personal use ((year-round)).

(4) It is unlawful to fish for or possess crab taken for personal use with shellfish pot or ring net gear from the waters of Padilla Bay or Swinomish Slough within 25 yards of the ((Burlington Northern)) railroad crossing the northern end of Swinomish Slough except from one hour before official sunrise to one hour after official sunset.

((5) Violation of this section is a misdemeanor, punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty:))

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-330-070 Shrimp—Areas and seasons. It is unlawful to fish for or possess shrimp taken for personal use from the following areas, except as otherwise provided in this section:

(1) It is unlawful to fish for or possess shrimp taken for personal use in Marine Area 4 east of the Bonilla-Tatoosh line and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13 ((except as provided by emergency rule)).

(2) Marine Areas 1 through 3 and Marine Area 4 west of the Bonilla-Tatoosh line - Open year-round.

AMENDATORY SECTION (Amending WSR 19-13-013, filed 6/7/19, effective 7/8/19)

WAC 220-330-090 Crawfish, sea urchins, sea cucumbers, goose barnacles, scallops, squid, octopus—Areas and seasons((~~personal use fishery~~)). ((H)) It is unlawful to fish for personal use for crawfish, sea urchins, sea cucumbers, goose barnacles, and scallops except in the following areas and seasons:

(1) **Crawfish:** ((The open season for crawfish is)) Open in all waters from the first Monday in May through October 31.

((2) **Sea urchins:** It is lawful to fish for sea urchins for personal use the entire year. It shall be lawful to take, fish for and possess sea urchins for personal use with any hand-operated instrument which does not penetrate the shell.

(3) **Sea cucumbers:** It is lawful to fish for sea cucumbers for personal use the entire year except closed year round in Marine Area 12. It shall be lawful to take, fish for and possess sea cucumbers for personal use with any hand-operated instrument which does not penetrate the animal.

(4) **Goose barnacles:** It is lawful to take goose barnacles for personal use the entire year.))

(2) **Sea cucumbers and sea urchins:** Open year-round in all waters, except that it is unlawful to take sea cucumbers and sea urchins in Marine Area 12 and in the following closed areas:

(a) Those waters of San Juan Channel and Upright Channel within the following lines: North and west of a line from the northernmost point of Turn Island on San Juan Island (48° 32.146'N, 122° 58.279'W) to Flat Point on Lopez Island (48° 33.060'N, 122° 55.181'W) and thence projected from Flat Point true west to Shaw Island (48° 33.062'N, 122° 56.509'W) north of a line projected from the northernmost point of Turn Island (48° 32.146'N, 122° 58.279'W) true west to San Juan Island (48° 32.146'N, 122° 59.033'W) west of a line from Neck Point on Shaw Island (48° 35.233'N, 123° 0.744'W) to Steep Point on Orcas Island (48° 36.559'N, 123° 1.387'W) and south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island (48° 37.348'N, 123° 6.450'W).

(b) Those waters of Haro Strait north of a line projected true west from the southernmost point of Cattle Point on San Juan Island (48° 27.006'N, 122° 57.818'W) to the international border and south of a line projected true west from a point one-quarter mile north of Lime Kiln Light on San Juan

Island (48° 31.202'N, 123° 9.162'W) to the international border.

(c) Argyle Lagoon: Those University of Washington-owned tidelands and all bedlands enclosed by the inner spit of Argyle Lagoon on San Juan Island.

(d) Those waters within one-quarter mile of Tatoosh Island.

(e) Those waters of the Strait of Juan de Fuca in the vicinity of Low Point west of a line projected true north from the shoreline at 123° 48.3'W longitude to the international border, and east of a line projected true north from the shoreline at 123° 52.7'W longitude to the international border at 123° 52.7'W longitude.

(f) Those waters of Eagle Harbor west of a line projected from Wing Point (47° 37.241'N, 122° 29.535'W) to Eagle Harbor Creosote Light Number 1 (47° 36.975'N, 122° 29.792'W), then projected true west to the shore on Bainbridge Island (47° 36.975'N, 122° 29.977'W).

(g) The waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner (47° 33.886'N, 122° 37.397'W) to landfall directly below the Veteran's Home in Annapolis (47° 32.868'N, 122° 36.973'W).

(h) All waters of Hale Passage and Wollochet Bay within the following lines: West of a line projected true south from the shoreline near Point Fosdick (47° 14'N, 122° 35'W), and thence projected true west to the shoreline of Fox Island (47° 14'N, 122° 35.368'W) and east of a line projected true south from the shoreline near Green Point (47° 16.5'N, 122° 41'W), and thence projected true east to the shoreline of Fox Island (47° 16.5'N, 122° 40.145'W).

(3) Goose barnacles:

(a) In Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13 (Puget Sound), open year-round.

(b) In Marine Areas 1, 2, and 3 and Marine Area 4 west of the Bonilla-Tatoosh line (outside of Olympic National Park), open November 1 through March 31 only.

(4) **Scallops:** Open in all waters year-round.

(5) **Squid:** Open in all waters year-round.

(6) **Octopus:** Open year-round in all waters, except that is unlawful to take octopus in Marine Area 12 and from the following closed areas:

(a) **Redondo Beach.** Redondo Beach is defined as the waters, bedlands, and tidelands within the area described by a line starting from shore at 47° 20.927'N, 122° 19.462'W; then northwesterly to 47° 20.947'N, 122° 19.513'W; then to 47° 20.955'N, 122° 19.564'W; then northeasterly to 47° 21.039'N, 122° 19.496'W; then returning to shore at 47° 21.011'N, 122° 19.42'W.

(b) **Three Tree Point.** Three Tree Point is defined as the waters, bedlands, and tidelands within the area described by a line starting from shore at 47° 27.108'N, 122° 22.811'W; then northwesterly to 47° 27.255'N, 122° 22.948'W; then northeasterly to 47° 27.425'N, 122° 22.617'W; then returning to shore at 47° 27.278'N, 122° 22.461'W.

(c) **Alki Beach Seacrest Coves 1, 2, and 3.** Alki Beach Seacrest Coves 1, 2, and 3 are defined as the waters, bedlands, and tidelands within the area described by a line starting from shore at 47° 35.216'N, 122° 22.622'W; then northeasterly and offshore to 47° 35.268'N, 122° 22.560'W; then

northwesterly to 47° 35.492'N, 122° 23.87'W; then returning to shore at 47° 35.480'N, 122° 23.905'W. This area does not include waters within 150 feet of the Seacrest Public Fishing Pier, as demarcated at the surface with buoys and on the sea floor by a perimeter line.

(d) **Les Davis.** Les Davis is defined as the waters, bedlands, and tidelands within the area described by a line starting from shore at 47° 17.086'N, 122° 29.120'W; the north-easterly to 47° 17.176'N, 122° 29.016'W; then southeasterly to 47° 17.115'N, 122° 28.902'W; then returning to shore at 47° 17.025'N, 122° 29.003'W.

(e) **Alki Beach Junk Yard.** Alki Beach Junk Yard is defined as the waters, bedlands, and tidelands within the area described by a line starting from shore at 47° 34.677'N, 122° 24.953'W; then northwesterly to 47° 34.834'N, 122° 25.054'W; then northeasterly to 47° 34.946'N, 122° 24.678'W; then returning to shore at 47° 34.789'N, 122° 24.575'W.

(f) **Days Island.** Days Island is defined as the waters, bedlands, and tidelands within the area described by a line starting from shore at 47° 14.125'N, 122° 33.819'W; then west to 47° 14.126'N, 122° 34.024'W; then north to 47° 14.696'N, 122° 34.013'W; then returning to shore at 47° 14.696'N, 122° 34.679'W.

(g) **Deception Pass.** Deception Pass is defined as the waters, bedlands, and tidelands east of a line starting at 48° 24.134'N, 122° 39.801'W; and north to 48° 25.169'N, 122° 40.343'W; then east to 48° 25.269'N, 122° 40.161'W; proceeding to 48° 24.925'N, 122° 39.845'W; and west of a line starting at 48° 24.492'N, 122° 36.904'W; and north to 48° 24.815'N, 122° 36.912'W.

AMENDATORY SECTION (Amending WSR 17-18-004, filed 8/24/17, effective 9/24/17)

WAC 220-330-120 Clams, oysters, mussels, scallops, sea urchins, sea cucumbers, squid, octopus—Gear and gear-related unlawful acts. ((+)) It is unlawful to take, dig for ((and)), fish for, or possess clams ((excluding razor clams)), cockles, and mussels taken for personal use except), oysters, mussels, scallops, sea urchins, sea cucumbers, squid, or octopus for personal use, except using gear outlined in the following subsections:

(1) Clams (excluding razor clams and geoducks): By hand or with hand-operated forks, picks, mattocks, rakes and shovels. ((Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(2) It is unlawful to take, dig for and possess razor clams taken for personal use except))

(2) Razor clams: By hand, shovels or with cylindrical cans, tubes or hinged digging devices. The opening of tubes or cans must be either circular or elliptical with the circular can/tube having a minimum outside diameter of 4 inches and the elliptical can/tube having a minimum dimension of 4 inches long and 3 inches wide outside diameter. The hinged digging device when opened in a cylindrical position, must have a minimum outside diameter of 4 inches at the bottom. ((Violation of this subsection is an infraction, punishable under RCW 77.15.160.

~~(3) Any newly designed or modified digging device intended for the recreational use of razor clams must receive the specific approval of the director of fish and wildlife.~~

~~(4) In the field each digger, including holders of razor clam disability permits, must have his or her daily limit in a separate container. Violation of this subsection is an infraction, punishable under RCW 77.15.160.~~

~~(5) It is unlawful to possess shellfish taken with gear that violates the provisions of this section. Possession of shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the shellfish were taken with such gear. Possession of such shellfish is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.~~

~~(6) It shall be unlawful for any person digging clams other than razor clams for personal use to fail to fill in holes created during the digging operation. Beach terrain must be returned to approximately its original condition by clam diggers before leaving the scene.~~

~~(7) It shall be unlawful to maim, injure or attempt to capture a geoduck by thrusting any instrument through its siphon or to possess only the siphon or neck portion of a geoduck.~~

~~(8) Oysters taken for personal use must be shucked before removing oysters from the intertidal zone and the shells replaced on the tidelands at the approximate tide level from which originally taken and it shall be unlawful for any person to fail to do so.~~

~~(9) It is unlawful to possess Manila, native littleneck, coekle, or butter clams taken for personal use which measure less than 1 1/2 inches across the longest dimension of the shell.~~

~~(10) It is unlawful to return any eastern softshells, horse clams, or geoducks to the beach or water regardless of size or condition. All such clams taken for personal use must be retained by the digger as part of the daily limit.~~

~~(11) Violation of the provisions of this section shall be an infraction, punishable under RCW 77.15.160.))~~

(3) Geoducks:

(a) By hand or with nonmechanized hand-operated forks, picks, mattocks, rakes, and shovels and a cylindrical can or tube not exceeding 24 inches in diameter may be used to dig geoduck.

(b) It is unlawful for any person digging clams, other than razor clams, for personal use to fail to fill in holes created during the digging operation. Beach terrain must be returned to its approximate original condition by the clam diggers immediately after harvest.

(4) It is unlawful to return any horse clams or geoducks to the beach or water regardless of size or condition. All such clams taken for personal use must be retained by the digger as part of their daily limit.

(5) Oysters and scallops: By hand or with the aid of a hand-held manually operated prying tool. It is unlawful to use a hammer, mallet or other object to strike oysters and rock scallops during the removal process.

(6) Sea cucumbers: By hand or hand-operated, non-mechanized instrument which does not penetrate the animal.

(7) Sea urchins: By hand or hand-operated, nonmechanized instrument which does not penetrate the shell.

(8) In the field each harvester, including holders of razor clam disability permits, must have their daily limit in a separate container. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(9) Squid: It is unlawful to take, fish for or possess squid taken for personal use with more than one line. A maximum of four squid lures may be used. If gear utilizes conventional hooks, it shall not exceed a total of nine points. Herring rakes and hand dip net gear may be used to take squid. In the field each person taking squid must use a separate container to hold their catch.

(10) Octopus: Octopus may be taken by hand, only except that one octopus per person per day may be retained when caught incidentally using shellfish pot gear during a lawful shellfish pot fishery. Shellfish pots may not be used to capture octopus outside of a lawful shellfish pot fishery. It is unlawful to take octopus using chemical irritants or by any instrument which will penetrate or mutilate the body, except that it is permissible to retain octopus taken while angling with hook and line gear during a lawful hook and line fishery.

(11) A violation of this subsection is punishable under RCW 77.15.160, 77.15.380, or 77.15.370, depending on the circumstances of the violation. Possession of shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the shellfish were taken with such gear.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-330-150 Oysters and clams on private tidelands—Personal use. ((1) WAC 220-330-120 through 220-330-140 shall not apply to private tideland owners or lessees of state tidelands or immediate family members taking or possessing oysters, clams, coekles, borers and mussels for personal use from their own tidelands or leased state tidelands.

(2) This section shall not apply to razor clams.)) Provisions of this chapter do not apply where oysters, clams (excluding razor clams), or mussels, are taken or possessed for personal use only, by private tideland owners and lessees and immediate family members of the owners or lessees of state tidelands, from their own private tidelands.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-330-030 Personal-use crab pot gear requirements.

WAC 220-330-050 Crab—Unlawful acts—Personal use.

WAC 220-330-060 Personal-use shrimp pot gear requirements.

WAC 220-330-080 Shrimp containers.

WAC 220-330-100 Personal-use crab, shrimp, crawfish—Unlawful acts.

WAC 220-330-130 Oysters and scallops—Gear.

WAC 220-330-180 Squid, octopus.

WSR 20-04-063
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 31, 2020, 9:07 a.m., effective March 2, 2020]

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

Purpose: Updating WAC 458-61A-100 and 458-61A-101 to reflect changes in the real estate excise tax from ESSB 5998 (2019) and since previous updates. Adding and updating definitions to WAC 458-61A-102, for new terms contained in ESSB 5998 (2019), codified in RCW 82.45.060(5). Updating WAC 458-61A-107 to reflect changes to the definition of a "controlling interest" contained in ESSB 5998 (2019), codified in RCW 82.45.010(2).

Citation of Rules Affected by this Order: Amending WAC 458-61A-100, 458-61A-101, 458-61A-102, and 458-61A-107.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, and 82.01.060(2).

Adopted under notice filed as WSR 19-23-062 on November 15, 2019.

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 the Request of a Non-governmental 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: January 31, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-12-074, filed 5/27/16, effective 6/27/16)

WAC 458-61A-100 Real estate excise tax—Overview. (1) **Introduction.** Chapter 82.45 RCW imposes an excise tax on every sale of real estate in the state of Washington. All sales of real property in this state are subject to the real estate excise tax unless specifically exempted by chapter 82.45 RCW (~~and these rules~~). The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, except as provided in RCW 82.45.150. This chapter provides applicable definitions, describes procedures for payment, collec-

tion, and reporting of the tax, explains when penalties and interest are imposed on late payment, describes those transactions exempted from imposition of the tax, and explains the procedures for refunds and reviews.

Legislation adopted in (~~(2010, Effective May 1, 2010, chapter 23, Laws of 2010 sp. sess.)~~) **2019, Effective January 1, 2020, chapter 424, Laws of 2019** established new requirements regarding:

(a) Sales of real estate that result from the transfer of a controlling interest in an entity that owns real property within a thirty-six-month period. See RCW 82.45.010 and WAC 458-61A-101.

(b) (~~Enforcement of tax liability. See WAC 458-61A-301.~~) New graduated real estate excise tax rates. See RCW 82.45.060.

(2) **Imposition of tax.**

(a) The taxes imposed are due at the time the sale occurs, are the obligation of the seller, and, in most instances, are collected by the county upon presentation of the documents of sale for recording in the public records.

(b) If there is a sale of the controlling interest in an entity that owns real property in this state, the tax is paid to the department at the time the interest is transferred. See WAC 458-61A-101.

(3) **Rate of tax.** The rate of the tax is set forth in RCW 82.45.060. Counties, cities, and towns may impose additional taxes on sales of real property on the same incidences, collection, and reporting methods authorized under chapter 82.45 RCW. See chapter 82.46 RCW.

(4) **Nonprofit organizations.** Transfers to or from an organization exempt from ad valorem property taxes under chapter 84.36 RCW, or from federal income tax, because of the organization's nonprofit or charitable status are nevertheless subject to the real estate excise tax unless specifically exempt under chapter 82.45 RCW or these rules.

(5) **Sales in Indian country.** A sale of real property located in Indian country by an enrolled tribe or tribal member is not subject to real estate excise tax. See WAC 458-20-192 for complete information regarding the taxability of transactions involving Indians and Indian country.

AMENDATORY SECTION (Amending WSR 11-16-106, filed 8/3/11, effective 9/3/11)

WAC 458-61A-101 Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state. (1) **Introduction.** The transfer of a controlling interest in an entity that has an interest in real property in this state is considered a taxable sale of the entity's real property for purposes of the real estate excise tax under chapter 82.45 RCW. This rule explains the application of the tax on those transfers.

Legislation adopted in (~~(2010, Effective May 1, 2010, chapter 23, Laws of 2010 1st sp. sess.)~~) **2019, Effective January 1, 2020, chapter 424, Laws of 2019** established new requirements (~~(regarding option agreements and regarding enforcement of tax liability. See subsections (3) and (6) through (8) of this section)~~), extending the time period in which a controlling interest transfer occurs for real estate excise tax purposes from twelve months to thirty-six months.

(2) **Definitions.** For the purposes of this chapter, the following definitions apply unless the context requires otherwise.

(a) **"Controlling interest"** means:

(i) In the case of a profit corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(ii) In the case of any other corporation, or a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such corporation, partnership, association, trust, or other entity.

Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which the transfer of an interest in an entity may or may not be taxable. 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.

(A) Able and Baker each own 40% of the voting shares of a corporation, Flyaway, Inc. Charlie, Delta, Echo, and Frank each own 5% voting shares. Charlie acquires Baker's 40% interest, and Delta's and Echo's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by Charlie (40% from Baker plus 5% from Delta and 5% from Echo). However, if Charlie, Delta, and Echo were to transfer their shares (totaling 15%) to Able, those transfers would not be taxable. Although Able would own 55% of the corporation, only a 15% interest was transferred and acquired, so the acquisition by Able is not taxable.

(B) Melody LLC consists of a general partner and three limited partners, each possessing a 25% interest. Even though the general partner controls the management and daily operations, a 25% interest is not a controlling interest. If someone were to acquire a 50% or greater interest from any of the existing partners, there would be a taxable acquisition of a controlling interest. If one partner acquires an additional 25% interest from another partner for a total of a 50% interest, no transfer or acquisition of a controlling interest occurs because less than 50% is transferred and acquired.

(C) Anne, Bobby, Chelsea, and David each own 25% of the voting shares of a corporation. The corporation redeems the shares of Bobby, Chelsea, and David. Anne now owns all the outstanding shares of the corporation. A taxable transfer occurred when the corporation redeemed the shares of Bobby, Chelsea, and David.

(D) Andrew owns 75% of the voting shares of a corporation. Andrew transfers all of his stock by 25% portions of the shares in three separate and unrelated transactions to Betsy, Carolyn, and Daniel, who are not acting in concert. A taxable transfer of a controlling interest occurs when Andrew transfers 75% of the voting shares of the corporation, even though no one has subsequently acquired a controlling interest.

(E) Big Corporation has two stockholders, Adrian and Britain. Adrian owns 90 shares of stock (90%) and Britain owns 10 shares of stock (10%). Big Corporation owns 60% of the stock of Little Corporation, which owns real property. Adrian, by virtue of owning 90% of Big Corporation's stock, has a 54% interest in Little Corporation (90% interest in Big multiplied by the 60% interest Big has in Little equals the

54% interest Adrian has in Little). Adrian sells his 90 shares of stock in Big to Britain. Adrian, by selling his 90 shares of Big stock, has transferred a controlling interest (54%) in an entity that owns real property (Little). This transfer is subject to the real estate excise tax.

(F) Assume the same facts as in Example (E) of this subsection, except that Big owns only 50% of Little's stock. Since Adrian has not transferred and Britain has not acquired a controlling interest in Little (90% x 50% = 45%), the real estate excise tax does not apply. If, however, Big had transferred its 50% interest in Little, that would be a transfer of a controlling interest and it would be subject to the real estate excise tax.

(b) The terms **"person"** or **"company"** mean any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state of Washington or any political subdivision thereof, corporation, limited liability company association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any agency or instrumentality thereof.

(c) **"True and fair value"** means market value, which is the amount of money that a willing, but unobliged, buyer would pay a willing, but unobligated, owner for real property, taking into consideration all reasonable, possible uses of the property.

(d) (~~"Twelve-month period" is any period of twelve consecutive months and~~) **"Taxable transfer period"** is either twelve months or thirty-six months. If twelve months, the period may span two calendar years. If thirty-six months, the period may span four calendar years. RCW 82.45.010(2). The thirty-six-month period is effective January 1, 2020. The department of revenue has issued guidance on the application of the thirty-six-month period, available at dor.wa.gov.

(e) **"Acting in concert"** occurs:

(i) When one or more persons have a relationship with each other such that one person influences or controls the actions of another through common ownership. For example, if a parent corporation and a wholly owned subsidiary each purchase a 25% interest in an entity, the two corporations have acted in concert and acquired a controlling (i.e., at least 50%) interest in the entity.

(ii) Where buyers are not commonly controlled or owned, but the unity of purpose with which they have negotiated and will complete the acquisition of ownership interests, indicates that they are acting together. For example, three separate individuals who decide together to acquire control of a company jointly through separate purchases of 20% interests in the company act in concert when they acquire the interests.

(3) **In general.** In order for the tax to apply when the controlling interest in an entity that owns real property is transferred, the following must have occurred:

(a) The transfer or acquisition of the controlling interest occurred within a (~~twelve-month~~) taxable transfer period.

(~~Effective May 1, 2010,;~~) Solely for the purpose of determining whether a transfer or acquisition pursuant to the exercise of an option occurred within a (~~twelve-month~~) tax-

able transfer period, the date on which the option agreement was executed is deemed to be the date of the transfer or acquisition;

(b) The controlling interest was transferred in a single transaction or series of transactions by a single person or acquired by a single person or a group of persons acting in concert;

(c) The entity has an interest in real property located in this state;

(d) The transfer is not otherwise exempt under chapters 82.45 RCW and 458-61A WAC; and

(e) The transfer was made for valuable consideration.

(4) **Measure of the tax.** The measure of the tax is the "selling price." For the purpose of this rule, "selling price" means the true and fair value of the real property owned by the entity at the time the controlling interest is transferred.

(a) If the true and fair value of the property cannot reasonably be determined, one of the following methods may be used to determine the true and fair value:

(i) A fair market value appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made pursuant to section 1060 of the Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005.

(b) If the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained on the county property tax rolls at the time of the sale will be used as the selling price.

(c) **Examples.**

(i) A partnership owns real property and consists of two partners, Amy and Beth. Each has a 50% partnership interest. The true and fair value of the real property owned by the partnership is \$100,000. Amy transfers her 50% interest in the partnership to Beth for valuable consideration. The taxable selling price is the true and fair value of the real property owned by the partnership, or \$100,000.

(ii) A corporation consists of two shareholders, Chris and Dilbert. The assets of the corporation include real property, tangible personal property, and other intangible assets (goodwill, cash, licenses, etc.). An appraisal of the corporation's assets determines that the values of the assets are as follows: \$250,000 for real property; \$130,000 for tangible personal property; and \$55,000 for miscellaneous intangible assets. Chris transfers his 50% interest to Ellie for valuable consideration. The taxable selling price is the true and fair value of the real property owned by the corporation, or \$250,000.

(iii) An LLC owns real property and consists of two members, Frances and George. Each has a 50% LLC interest. Frances transfers her 50% interest to George. In exchange for the transfer, George pays Frances \$100,000. The true and fair value of the real property owned by the LLC is unknown. There is no debt on the real property. A fair market value appraisal is not available. The market value assessment for the property maintained on the county property tax rolls is \$275,000. The taxable selling price is the market value assessment, or \$275,000.

(5) **Persons acting in concert.** The tax applies to acquisitions made by persons acting in concert, as defined in subsection (2)((~~F~~)) (e) of this (~~section~~) rule.

(a) Where persons are not commonly controlled or influenced, factors that indicate whether persons are acting in concert include:

(i) A close relation in time of the transfers or acquisitions;

(ii) A small number of purchasers;

(iii) Mutual terms contained in the contracts of sale; and

(iv) Additional agreements to the sales contract that bind the purchasers to a course of action with respect to the transfer or acquisition.

(b) If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the persons are not acting in concert, and the acquisitions will be considered separate acquisitions.

(c) **Example.** Able owns 100% of Emerald Corporation, which owns real property. As a group, Baker, Charlie, Delta, and Echo negotiate to acquire all of Able's interest in Emerald. Baker, Charlie, Delta, and Echo each acquire 25% of Able's interest. The contracts of Baker, Charlie, Delta, and Echo are identical and the purchases occur simultaneously. Baker, Charlie, Delta, and Echo also negotiated an agreement binding themselves to a course of action with respect to the acquisition of Emerald and the terms of the shareholders agreement that will govern their relationship as owners of Emerald. Baker, Charlie, Delta, and Echo are acting in concert and their acquisitions from Able are treated as a single acquisition of a controlling interest that is subject to the real estate excise tax.

(6) **Date of sale.**

(a) When the controlling interest is acquired in one transaction, the actual date control is transferred is the date of sale. Examples of when an interest in an entity is transferred include when payment is received by the seller and the shares of stock are delivered to the buyer, or when payment is received by the seller and partnership documents are signed, etc.

(b) When the parties enter into an agreement to acquire or transfer a controlling interest over time through a series of transactions, the date of sale is deemed the date of the agreement arranging the transactions. The agreement results in the transfer of both a present interest and a beneficial interest in the entity, the sum of which results in a controlling interest, regardless of whether the first of the successive transactions ~~((is more than twelve months prior to the final transaction))~~ occurred outside the taxable transfer period.

(c) When the controlling interest is transferred or acquired pursuant to the exercise of an option, the date upon which the option is exercised is the date of sale.

(d) **Examples.**

(i) Andrew owns 100% of the voting shares of Topaz Corporation. Andrew signs a binding agreement to transfer 51% of his shares in the corporation to Ted. The agreement states that the transfer will occur as follows: 49% of the shares will be transferred on January 1st, and the remaining 2% of the shares will be transferred on February 1st of the following year. Andrew has contractually agreed to sell 51% of the voting shares in Topaz within a ~~((twelve-month))~~ tax-

able transfer period, even though the shares will not actually be transferred to Ted until later. The date of sale is the date of the agreement, and ~~((REET))~~ real estate excise tax is due upon the true and fair value of the property as of the date of the agreement.

(ii) Matt acquires a 10% interest in an entity which owns an apartment building under construction worth \$500,000 from Simon on January 30th. On July 30th Matt acquires a 30% interest in the same entity from Mary, but the building is now worth \$900,000. On September 30th Matt acquires a 10% interest in the same entity from Ruth, but the building is now worth \$1,000,000. These are three separate and completely independent transfers. The final transfer allowed Matt to acquire, within ~~((twelve months))~~ a taxable transfer period, a controlling interest in an entity that owns real property. September 30th is the date of sale.

To determine the sellers' proportional tax liability in the example above, the series of transactions is viewed as a whole. Note both the individual and the total interests transferred. Here, Simon and Mary each conveyed 10% interests, while Ruth conveyed a 30% interest, with a total of a 50% interest being conveyed. To determine the liability percentage for each seller, divide the interest each conveyed by the total interest conveyed (Here, Simon and Mary: $10/50 = 20\%$; Ruth: $30/50 = 60\%$). This results in tax liability percentages here for Simon and Mary of 20% each and for Ruth, 60%.

To determine the amount of tax owed, the percentage is applied to the value of the property at the time of conveyance. In the example above, the value of the property to which the percentage applies is dependent on the time of each transfer (i.e., Simon's 20% on the \$500,000; Mary's 60% on the \$900,000; Ruth's 20% on the \$1,000,000).

(7) **Tax liability.** When there is a transfer or acquisition of a controlling interest in an entity that has an interest in real property, the seller of the interest is generally liable for the tax.

~~(a) ((Prior to May 1, 2010, when the seller had not paid the tax by the due date and neither the buyer nor the seller notified the department of the sale within thirty days of the sale, the buyer was also liable for the tax. When the buyer notified the department of the sale within thirty days of the sale, the buyer was not held personally liable for any tax due. Effective May 1, 2010, however, notice to the department by either the seller or the buyer does not exempt the buyer from liability for the tax, if the department cannot collect the tax from the seller.~~

~~(b) Effective May 1, 2010,))~~ The department may, at the department's option, enforce the obligation of the seller.

(i) If the entity is a corporation;

(A) Against the corporation;

(B) Against the person or persons who acquired the controlling interest; or

(C) When the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest.

(ii) If the entity is a partnership, association, trust, or other entity that is not a corporation;

(A) Against the entity; or

(B) Against the person or persons who transferred or acquired the controlling interest.

~~((e))~~ (b) Unpaid tax is a specific lien on each parcel of real property in this state owned by an entity in which a controlling interest has been transferred or acquired. The lien attaches from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

(8) **Reporting requirements.**

(a) The transfer of a controlling interest in real property must be reported to the department when no instrument is recorded in the official real property records of the county in which the property is located. If the transfer is not taxable due to an exemption, that exemption should be stated on the affidavit.

(i) The sale must be reported by the seller to the department within five days from the date of the sale on the department of revenue affidavit form, DOR Form 84-0001B. The affidavit form must be signed by both the seller and the buyer, or their agent, and must be accompanied by payment of the tax due.

(ii) The affidavit form may also be used to disclose the sale, in which case:

(A) It must be signed by the person making the disclosure; and

(B) It must be accompanied by payment of the tax due only when submitted by a seller reporting a taxable sale.

(iii) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is subject to penalty of perjury.

(iv) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which the transfer of an interest in an entity must be reported to the department. 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.

(A) Simon and Peter each own 40% of the voting shares of a corporation. Paul, Matthew, Mark, and John each own 5% voting shares. Paul acquires Peter's 40% interest, and Matthew's and Mark's 5% interests. This is a taxable acquisition because a controlling interest (50% or more) was acquired by Paul (40% from Peter plus 5% from Matthew and 5% from Mark). This transaction must be reported.

(B) Assume same facts as in example (iv)(A) of this subsection. Paul files an affidavit to disclose the sale to the department within thirty days of the date of sale. Peter, Matthew, and Mark go on vacation and the affidavit and required tax payment is not sent to the department. The department notifies Peter, Matthew, and Mark of their tax liability, which now includes interest and penalties. ~~((Effective May 1, 2010,))~~ Paul is not relieved of personal liability for the tax, interest, or penalties, if the department cannot collect from Peter, Matthew, and Mark.

(C) Assume the same facts as in example (iv)(A) of this subsection, except Paul only acquires Peter's 40% interest and Matthew's 5% interest. This is not a taxable acquisition because a controlling interest (50% or more) was not acquired by Paul. This transaction does not need to be reported.

(b) Under RCW 43.07.390, an entity must report the transfer of a controlling interest or an interest that amounts to at least one-third of a controlling interest in the entity to the secretary of state, and (~~(effective May 1, 2010)~~), also the granting of any option that, if exercised, would result in a transfer or acquisition of a controlling interest. Failure to report a taxable transfer subjects the entity to interest and penalties.

(9) **Due date, interest and penalties.** The tax imposed is due and payable immediately on the date of sale. See WAC 458-61A-306 for interest and penalties that may apply.

(10) **Transfers after tax has been paid.** When there is a transfer or acquisition of a controlling interest in an entity and the real estate excise tax is paid on the transfer, and there is a subsequent acquisition of an additional interest in the same entity within the same (~~(twelve-month)~~) taxable transfer period by a person acting in concert with the previous buyer(s), the subsequent seller is liable for its proportional portion of the tax. After payment by the subsequent seller of its proportional share, the person(s) who previously paid the tax may apply to the department for a refund of the amount overpaid because of the new proportional amount paid as a result of the subsequent transfer or acquisition.

(11) **Exemptions.** Because transfer and acquisition of a controlling interest in an entity that owns real estate in this state is statutorily defined as a "sale" of the real property owned by the entity, the exemptions of chapter 82.45 RCW and this chapter also apply to the sale of a controlling interest.

Examples.

(a) The merger of a wholly owned subsidiary owning real property located in this state with another subsidiary wholly owned by the same parent is a transfer of a controlling interest. However, this transfer may be exempt from taxation on two grounds. First, it may be exempt because it is a mere change in form or identity (see WAC 458-61A-211). Second, it may be exempt if it qualifies under the nonrecognition of gain or loss provisions of the Internal Revenue Code for entity formation, liquidation and dissolution, and reorganization. (See WAC 458-61A-212.)

(b) Taki owns 100% of a corporation. Taki wants her child, Mieko, and corporate manager, Sage, to be co-owners with her in the corporation. Taki makes a gift of 50% of the voting stock to Mieko and sells 33 1/3% to Sage. Although a controlling interest in the corporation has been transferred to and acquired by Mieko, it is not taxed because a gift is an exempt transfer and not considered for purposes of determining whether a controlling interest has transferred. The sale of the 33 1/3% interest to Sage is not a controlling interest, and is not taxed.

(c) Richard owns 75% of the voting stock of a corporation that owns real estate located in this state. Richard pledges all of his corporate stock to secure a loan with a bank. When Richard defaults on the loan and the bank forecloses on Richard's stock in the corporation, the transfer and acquisition of the controlling interest of the entity is not a taxable transaction because foreclosures of mortgages and other security devices are exempt transfers. (See WAC 458-61A-208.)

AMENDATORY SECTION (Amending WSR 13-21-016, filed 10/4/13, effective 11/4/13)

WAC 458-61A-102 Definitions. For the purposes of chapter 458-61A WAC, the following definitions apply unless the context requires otherwise:

(1) **"Affidavit"** means the real estate excise tax affidavit provided by the department for use by taxpayers in reporting transfers of real property. Both the seller/grantor and the buyer/grantee, or their agents, sign the affidavit under penalty of perjury. The term also includes the form used to report to the department transfers and acquisitions of a controlling interest in an entity owning real property in this state under WAC 458-61A-101.

(2) **"Agricultural land"** means farm and agricultural land and farm and agricultural conservation land, as those terms are defined in RCW 84.34.020, including any structures on such land.

(3) **"Consideration"** means money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. For example, Lee purchases a home for \$250,000. He puts down \$50,000, and finances the balance of \$200,000. The full consideration paid for the house is \$250,000.

(a) "Consideration" includes the issue of an ownership interest in any entity in exchange for a transfer of real property to the entity. For example, if Julie transfers title to 20 acres of commercial property to Smith Development, LLC in exchange for a 50% ownership interest in the company, that constitutes consideration for the transfer. In the case of partnerships, consideration includes the increase in the capital account of the partner made as a result of the partner's transfer of real property to the partnership, unless the transfer is otherwise specifically exempt under WAC 458-61A-211 or 458-61A-212.

(b) "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer. For example, Ben buys a residence, valued at \$300,000, from Liza. Liza was purchasing the property on a real estate contract that has an outstanding balance of \$175,000. Ben gives Liza \$125,000 in cash and he assumes the obligation on the real estate contract, which Liza assigns to him. Real estate excise tax is due on \$300,000, which is the total consideration for the sale.

(c) "Consideration" does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements. For example, Mel buys residential property for \$300,000. The title is encumbered by a lien for unpaid property taxes in the amount of \$12,000, and a lien for unpaid municipal sidewalk improvements in the amount of \$6,000. Although Mel will become liable for those liens in order to take title to the property, they are not considered part of the purchase price for the purpose of calculating real estate excise tax. The real estate excise tax is due only on the purchase price of \$300,000.

~~((3))~~ (4) **"Consumer price index for shelter"** means the most current seasonally adjusted index for the shelter expenditure category of the consumer price index for all urban consumers (CPI-U) as published by July 31st by the Bureau of Labor Statistics of the United States Department of Labor.

(5) **"Controlling interest"** means:

(a) In the case of a profit corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) In the case of any other corporation, or a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in the corporation, partnership, association, trust, or other entity.

~~((4))~~ (6) **"County"** means the county treasurer or its agent.

~~((5))~~ (7) **"Date of sale"** means the date (normally shown on the instrument of conveyance or sale) that ownership of or title to real property, or control of the controlling interest in an entity that has a beneficial interest in real property, is delivered to the buyer/transferee in exchange for valuable consideration. In the case of a lease with option to purchase, the date of sale is the date when the purchase option is exercised and the property is transferred. "Date of sale," "date of transfer," "conveyance date," and "transaction date" all have the same meaning and may be used interchangeably in this chapter. The real estate excise tax is due on the date of sale.

~~((6))~~ (8) **"Department"** means the department of revenue.

~~((7))~~ (9) **"Domestic partner"** has the same meaning as defined in chapter 26.60 RCW.

~~((8))~~ (10) **"Floating home"** means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self-propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located.

~~((9))~~ (11) **"Governmental entity"** means:

(a) The United States;

(b) The state of Washington ("state"), including its departments and institutions, as distinct from its corporate agencies or instrumentalities; and

(c) Any municipal corporation or political subdivision of the state of Washington.

~~((10))~~ (12) **"Growth of the consumer price index for shelter"** means the percentage increase in the consumer price index for shelter as measured from data published by the Bureau of Labor Statistics of the United States Department of Labor by July 31st for the most recent three-year period for the selling price threshold adjustment in 2022, and the most recent four-year period for subsequent selling price threshold adjustments.

(13) **"Mining property"** is property containing or believed to contain metallic or nonmetallic minerals, and sold or leased under terms that require the buyer or lessee to conduct exploration or mining work thereon, and for no other purpose.

~~((11))~~ (14) **"Mobile home"** means a mobile home as defined by RCW 46.04.302.

~~((12))~~ (15) **"Mortgage"** has its ordinary meaning, and includes a "deed of trust" for the purposes of this chapter, unless the context clearly indicates otherwise. The term "underlying debt" may also be used to refer to a mortgage or other security interest.

~~((13))~~ (16) **"Municipal corporation or political subdivision of the state of Washington"** means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax exemption provided by Article VII of the Washington state Constitution.

~~((14))~~ (17) **"Park model trailer"** means a park model trailer as defined in RCW 46.04.622.

~~((15))~~ (18) **"Real estate" or "real property"** means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber and crops. The term includes condominiums and individual apartments for which the buyer receives a warranty deed. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land. The term also includes any part of an irrigation system that is underground or affixed to the land. The term does not include irrigation equipment that is above the ground or that is not affixed to land. See RCW 82.12.020 for the tax treatment of sales of irrigation equipment that is not included in the definition of "real estate."

~~((16))~~ (19) **"Real estate contract" or "contract"** means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for the payment of the purchase price. The term does not include earnest money agreements or options to purchase real property.

~~((17))~~ (20) **"Sale"** means:

(a) Any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such a conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term includes the grant, relinquishment, or assignment of a life estate in property. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(b) The term "sale" also includes the transfer or acquisition within any ~~(twelve-month)~~ thirty-six-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For the purposes of this chapter, all acquisitions of persons acting in concert are aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place. For purposes of establishing the applicable

~~((twelve-month))~~ thirty-six-month period for a transfer or acquisition pursuant to the exercise of an option, see WAC 458-61A-101.

(c) The term "sale" also applies to successive sales of the same property. An owner of real property is subject to payment of the real estate excise tax upon the entry of each successive contract for the sale of the same parcel of property. For example, Bob owns a house that he sells to Sam on a real estate contract. Real estate excise tax is paid on the transfer from Bob to Sam. Sam makes several payments, until he becomes unemployed. Since Sam can no longer make payments on the property, he conveys it back to Bob. Bob then makes a subsequent sale of the house to Sally. Real estate excise tax is due on the transfer from Bob to Sally. See WAC 458-61A-209 for the tax implications on the conveyance from Sam back to Bob.

(d) The term "sale" does not include:

(i) Those real property transfers that are excluded from the definition of "sale" and exempted from the real estate excise tax under RCW 82.45.010(3) and this chapter, including transfers without valuable consideration.

(ii) The transfer of lots or graves in an established cemetery. An established cemetery is one that meets the requirements for ad valorem property tax exemption under chapter 84.36 RCW.

(iii) The transfer of an interest in real property merely to secure a debt or the assignment of a security interest, release of a security interest, satisfaction of a mortgage, or reconveyance under the terms of a mortgage or deed of trust.

(iv) A deed given to a purchaser under a real estate contract upon fulfillment of the terms of the contract provided that the proper tax was paid on the original transaction. The fulfillment deed must be stamped by the county treasurer as required by WAC 458-61A-301, and the stamp must show the affidavit number of the sale for which the deed is fulfilling.

(v) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030~~((, that takes place on or after June 12, 2008, but before December 31, 2018))~~.

(e) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not be taxable. 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) John paid off his home mortgage and wants to get a loan to make improvements and buy a new car. John obtains an equity loan, secured by his home as collateral. This transaction is not subject to the real estate excise tax.

(ii) Bob purchased real property from Sam pursuant to a real estate contract. Real estate excise tax was paid on the purchase price at the time of the sale. Bob has now paid off the property, and Sam is issuing a fulfillment deed to Bob indicating that the real estate contract has been satisfied. The fulfillment deed from Sam to Bob is not subject to the real estate excise tax.

(iii) Diane has made the final payment on her mortgage, and the bank issues a full reconveyance of her property, indicating that the mortgage is paid in full. The reconveyance is not subject to the real estate excise tax.

(iv) Bill is refinancing his mortgage for a lower interest rate. There is a balloon payment on the new loan that will require that he refinance again in five years. Neither transaction is subject to the real estate excise tax.

~~((18))~~ (21) "Seller" means any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, limited liability company, business trust, municipal corporation, quasi municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, but it does not include the United States or the state of Washington. The term "grantor" is used interchangeably with the term "seller" in this chapter and has the same meaning for purposes of the real estate excise tax.

~~((19))~~ (22) "Selling price" means the true and fair value of the property conveyed. There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

(c) When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership transferred, and that amount added to any other consideration to determine the selling price.

(d) In the case of a lease with option to purchase, the selling price is the true and fair value of the property conveyed at the time the option is exercised.

~~((20))~~ (23) "Timberland" means land classified under chapter 84.34 RCW or designated under chapter 84.33 RCW, including any structures and standing timber on such land, and standing timber sold apart from the land upon which it sits.

(24) "United States" means:

(a) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National

Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

AMENDATORY SECTION (Amending WSR 11-16-106, filed 8/3/11, effective 9/3/11)

WAC 458-61A-107 Option to purchase. (1) **Introduction.** The real estate excise tax applies to a conveyance of real property upon the exercise of an option to purchase.

(2) **Taxability of sales of options.** The real estate excise tax does not apply to the grant or sale of an option and the real estate excise tax affidavit is not required for that transaction. However, the sale of an option is subject to business and occupation tax under the service and other category and should be reported on the combined excise tax return. RCW 82.04.290.

(3) (~~Effective May 1, 2010,~~) For the sole purpose of determining whether a transfer or acquisition of a controlling interest pursuant to the exercise of an option occurred within ~~((a twelve month))~~ the period provided in RCW 82.45.010 and WAC 458-61A-101, the date on which the option agreement was executed is deemed to be the date of the transfer or acquisition. For any other purpose; however, the date on which the option is exercised is the date of the transfer or acquisition. RCW 82.45.010 (2)(b). See WAC 458-61A-101.

(4) **Examples.**

(a) Joe acquires an option at a cost of \$100,000. The option, if exercised, allows Joe to purchase ten parcels of land for \$700,000. As individual parcels, these lots of land are uneconomical to develop. Joe "packages" the land, making it economically feasible to develop by either obtaining sufficient acreage or required studies. Buildup, a real estate development and construction company, purchases Joe's option on the property for \$2.3 million and subsequently exercises the option, paying \$700,000 for the land. The real estate excise tax does not apply to the sale of the option, however the \$2.3 million received for the option is subject to the business and occupation tax under the service and other category. The measure of the real estate excise tax is the \$700,000 purchase price paid on the transfer of the land.

(b) Consider the same initial facts as in the example in (a) of this subsection, but instead, Joe exercises the option, and subsequently sells the land to Buildup. The real estate excise tax applies to both the transfer to Joe and the subsequent transfer from Joe to Buildup.

WSR 20-04-066
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-15—Filed January 31, 2020, 2:12 p.m., effective March 2, 2020]

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

Purpose: These proposed rule changes would reduce the risk of coastal commercial Dungeness crab gear becoming entangled with marine mammals including humpback whales, which are listed under the Endangered Species Act.

Changes would require crab line that connects a crab pot to the buoy at the surface be marked in [a] manner that makes it identifiable and specifies that the amount of line used be only that which is necessary to compensate for tides, currents and weather. In addition, permanent pot limits would be reduced beginning May 1 through the end of the season on September 15th and the amount of replacement tags would be reduced. A summery buoy tag would be required beginning May 1 which would distinguish it from crab gear that is allowed prior to May 1.

Citation of Rules Affected by this Order: Amending WAC 220-340-430 Commercial crab fishery—Gear requirements, 220-340-435 Commercial crab fishery—Shellfish pot requirements, and 220-340-480 Commercial crab fishery—Gear limits—Coastal.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 19-19-075 on September 17, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 4, 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 the Request of a Non-governmental 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: January 17, 2020.

Larry M. Carpenter, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-17-104, filed 8/18/17, effective 9/18/17)

WAC 220-340-430 Commercial crab fishery—
((Buoy tag, pot tag, and buoy)) Gear requirements. (1)
Buoy tag and pot tag required.

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) and (c) of this subsection. A violation of this subsection is punishable under RCW 77.15.520(ç) Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-340-440 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520((7)) Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery beginning March 1 and after a signed affidavit is received by an authorized department employee. The affidavit must be signed by the primary or alternate operator fishing the commercial crab gear and state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(A) Coastal crab license holders with a 300-pot limit may replace lost tags according to the following schedule: ~~((H) Period 1)~~ March 1 through April 30, up to 10 tags.

~~((H) Period 2, 5 additional tags with no more than 15 tags total issued through the end of Period 2.)~~

(B) Coastal crab license holders with a 500-pot limit may replace lost tags according to the following schedule: ~~((H) Period 1)~~ March 1 through April 30, up to 15 tags.

~~((H) Period 2, 10 additional tags with no more than 25 tags total issued through the end of Period 2.~~

~~(C) Replacement tag periods are defined as follows:~~

~~(I) Period 1: March 1 through April 30.~~

~~(II) Period 2: May 1 through June 30.)~~ (C) No replacement tags will be issued for the current season after ~~(July)~~ May 1.

(D) In the case of extraordinary loss of crab pot gear, the department may issue replacement tags in excess of the amount listed in this subsection on a case-by-case basis.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520((7)) Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached.

(b) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-330-020.

(c) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder may register only one unique buoy brand and one buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

(6) **Coastal commercial crab fishery line requirements.**

(a) All crab pots used in the coastal Dungeness crab fishery shall be set up to use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(b)(i) Beginning December 1, 2020, it is unlawful for a coastal Dungeness crab fishery license holder to use line that connects the main buoy to the crab pot that is not marked sufficiently to identify it as gear used in the Washington coastal Dungeness crab fishery.

(ii) Each shellfish pot used in the Washington coastal commercial Dungeness crab fishery must be rigged with line that is marked with 12 inches of red in at least two places. At a minimum, 12 inches of line must be marked in red, no more than one fathom from the main buoy and no more than one fathom from the pot.

(7) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520((7)) Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-435 Commercial crab fishery—Shellfish pot requirements. (1) **Commercial gear limited to pots ((and ring nets)).** It is unlawful to take or fish for crab for commercial purposes except with shellfish pots ((and ring nets)).

(2) **Commercial gear escape rings and ports defined.** It is unlawful to use or operate any shellfish pot gear in the commercial Dungeness crab fishery unless the gear meets the following requirements:

- (a) Pot gear must have 2 or more escape rings or ports;
- (b) Escape rings or ports must be 4-1/4 inches inside diameter or larger; and
- (c) Escape rings or ports must be located in the upper half of the trap.

(3) **Maximum size for commercial crab pots.** It is unlawful to use a crab pot greater than 13 cubic feet in volume to fish for or take Dungeness crab from state or offshore waters for commercial purposes.

(4) **Groundline gear is unlawful.** It is unlawful to attach or connect a crab pot or ring net to another crab pot or ring net by a common groundline or any other means that connects crab pots together.

(5) **Penalty.** Violation of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty, or RCW 77.15.522 Unlawful use of shellfish gear for commercial purposes—Penalty, whichever is applicable depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-480 Commercial crab fishery—Gear limits—Coastal. (1) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless the person's Dungeness crab coastal fishery license or the equivalent Oregon or California Dungeness crab fishery license is assigned a crab pot limit. A violation of this subsection is punishable under RCW 77.15.520((?)) Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520((?)) Commercial fishing—Unlawful gear or methods—Penalty.

(c) It is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.530((?)) Unlawful use of a nondesignated vessel—Penalty.

(d) It is unlawful for a person to take or fish for Dungeness crab or to deploy crab pots unless the person is in possession of valid documentation issued by the department that specifies the crab pot limit assigned to the license. A viola-

tion of this subsection is a misdemeanor, punishable under RCW 77.15.540((?)) Unlawful use of a commercial fishery license—Penalty.

(e) Beginning May 1, through September 15, it is unlawful to leave Dungeness crab pots deployed in Grays Harbor, Willapa Bay, Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington for more than 21 consecutive days without making a Dungeness crab landing.

(2) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (Catch Area 60B) with more than 200 shellfish pots in the aggregate. It is unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520((?)) Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Determination of permanent coastal crab pot limits.**

(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license is based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria is used to determine and assign a crab pot limit to a Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997; from December 1, 1997, through September 15, 1998; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license determines the crab pot limit for that license. A crab pot limit of 300 will be assigned to a license with landings totaling up to 35,999 pounds and a crab pot limit of 500 will be assigned to a license with landings totaling 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon department of fish and wildlife and/or the California department of fish and game.

(iii) Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A crab pot limit assigned as a result of combined

landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license will be assigned more than one coastal crab pot limit.

(4) **Appeals of coastal crab pot limits.** An appeal of a crab pot limit by a coastal commercial license holder must be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department will remain in effect until such time as the appeal process is concluded.

(5) **Summer management period - Pot limits.** Beginning May 1 through September 15, it is unlawful for a person to deploy or fish more than the specified reduced pot limit assigned to each license. Each pot deployed during the summer management period must possess a summer buoy tag.

(a) Licenses with a permanent pot limit of 500 will be assigned a reduced pot limit of 330 pots.

(b) Licenses with a permanent pot limit of 300 will be assigned a reduced pot limit of 200 pots.

(c) It is unlawful to deploy gear that includes tags other than the summer buoy tag.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-490 Commercial crab fishery—Coastal gear recovery permits. (1) **Emergency coastal crab gear recovery permit.** Emergency permits are granted on a case-by-case basis to allow crab fishers to recover shellfish pots that were irretrievable at the end of the lawful season opening due to extreme weather conditions. The director or director's designee may grant an emergency coastal crab gear permit once a commercial crab season is closed. Crab fishers must notify and apply to the department's enforcement program for such emergency permits within 24 hours prior to the close of the commercial crab season.

(2) **Coastal crab gear recovery permit.** 15 days after the close of the primary coastal commercial crab season, the director or director's designee may grant a coastal crab gear recovery permit for licensed coastal Dungeness crab fishers to recover crab pots that remain in the ocean and belong to state licensed fishers.

(3) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is a misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

WSR 20-04-070

PERMANENT RULES

DEPARTMENT OF COMMERCE

(Public Works Board)

[Filed February 3, 2020, 10:42 a.m., effective March 5, 2020]

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

Purpose: Technical changes to align the board's policies and public works board (PWB) chapter 43.155 RCW for the traditional program, and to update Title 399 WAC to align to the chapter 43.155 RCW of 2017. The last time the PWB Title 399 WAC was updated was February 4, 2009.

Citation of Rules Affected by this Order: New WAC 399-10-015, 399-30-024, 399-30-025, 399-30-070, 399-30-080 and 399-30-085; repealing WAC 399-30-031, 399-30-042 and 399-30-050; and amending WAC 399-10-010, 399-10-020, 399-10-030, 399-20-020, 399-20-060, 399-30-020, 399-30-032, 399-30-040, 399-30-045, and 399-30-060.

Statutory Authority for Adoption: RCW 43.155.040(5).

Adopted under notice filed as WSR 20-01-155 on December 17, 2019.

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 6, Amended 10, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: February 3, 2020.

S. Coggins
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-10-010 Organization and operation of the public works board. (1) The public works board is a thirteen-member board appointed by the governor under RCW 43.155.030.

(2) The governor appoints one of the general public members as chair. The board may elect other officers for terms deemed necessary.

(3) The department of ~~((community, trade, and economic development))~~ commerce provides staff support and office space to the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

NEW SECTION

WAC 399-10-015 General powers of the board. The board may:

(1) Accept from any state or federal agency, loans or grants for the planning or financing of any public works project and enter into agreements with any such agency concerning the loans or grants;

(2) Provide technical assistance to local governments;

(3) Accept any gifts, grants, or loans of funds, property, or financial or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(4) Develop a program that provides grants and additional assistance to leverage federal programs, and other opportunities to target deeper financial assistance to communities with economic distress or projects that would result in rate increases to residential utility rates that exceed a determined percentage of median household income;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(6) Do all acts and things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-10-020 Board meetings. (1) The board holds regular meetings on the first ~~((Tuesday))~~ Friday of each month ~~((, except in July))~~. In the month of ~~((August))~~ October meetings are held on the first ~~((and third Tuesdays))~~ Thursday and Friday. The board may ~~((those))~~ choose to cancel or move regular meetings and notice of any changes will be as provided by law.

(2) Notice of the times and places of the regular meetings will be published annually in a January edition of the Washington State Register. A copy of the schedule of regular meetings may also be obtained upon request from the board.

(3) Special meetings of the board may be called at any time by the chair of the board or by a majority of the board members. Notice of such meetings will be as provided by law.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-10-030 Communications with the board. Any and all written communications with the board ~~((;))~~ including, but not limited to, requests for information or copies of agency records, or submittals of any nature, must be addressed to the public works board, in care of:

Executive Director
Public Works Board
P.O. Box ~~((48349))~~ 42525
Olympia, WA 98504-~~((8349))~~ 2525

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-20-020 Definitions. The following definitions shall apply to this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record des-

igned a public record by any official action of the senate or the house of representatives.

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

(3) "Board" means the public works board, created in chapter 43.155 RCW, and also refers to the board's officers and staff, where appropriate.

(4) "Department" means the department of ~~((community, trade, and economic development))~~ commerce, and shall refer to the department's staff, where appropriate.

AMENDATORY SECTION (Amending WSR 09-04-100, filed 2/4/09, effective 3/7/09)

WAC 399-20-060 Office hours. Public records are available for inspection and copying from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through ~~((Thursday))~~ Friday, excluding legal holidays, or closure due to natural disaster, inclement weather, or local emergency.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-30-020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the public works board.

(2) "Capital facility plan" means a capital facility plan required by the Growth Management Act under chapter 36.70A RCW or, for local governments not fully planning under the Growth Management Act, a plan required by the public works board.

~~((3))~~ (3) "Department" means the department of ~~((community, trade, and economic development))~~ commerce.

~~((3))~~ (4) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

~~((4))~~ (5) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts and port districts.

~~((5))~~ (6) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, ~~((roads, domestic))~~ water systems, storm or sanitary sewer systems, ~~((storm sewer systems;))~~ lead remediation of drinking water systems, and solid waste/recycling systems. A planning project may include the compilation of biological, hydrological, or other

data on a county, drainage basin, or region necessary to develop a base of information for a capital facility plan.

~~((6))~~ (7) "Solid waste or recycling project" means remedial actions necessary to bring abandoned or closed landfills into compliance with regulatory requirements and the repair, restoration, and replacement of existing solid waste transfer, recycling facilities, and landfill projects limited to the opening of landfill cells that are in existing and permitted landfills.

(8) "Emergency public works project" means a public works project made necessary by a natural disaster, or an immediate and emergent threat to the public health and safety due to unforeseen or unavoidable circumstances.

(9) "Value planning" means a uniform approach to assist in decision making through systematic evaluation of potential alternatives to solving an identified problem.

NEW SECTION

WAC 399-30-024 Maximum award. This section implements RCW 43.155.070. The maximum amount of funding that the board may provide for any jurisdiction is ten million dollars per biennium. This includes all three funding types (construction, emergency and preconstruction) combined.

(1) Construction, the maximum is a ten million dollar award per jurisdiction per biennium limit.

(2) Preconstruction, the maximum is one million dollars per project.

(3) Emergency, the maximum is one million dollars per project.

NEW SECTION

WAC 399-30-025 Public works financing powers—Establishment of interest rates—Competitive bids on projects. (1) In order to aid the financing of public works projects, the board may:

(a) Make loans or grants to local governments from the public works assistance account or other funds and accounts for the purpose of assisting local governments in financing public works projects. Money received from local governments in repayment of loans made under this section shall be paid into the public works assistance account for uses consistent with this chapter.

(b) Pledge money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects. The board shall not pledge any amount greater than the sum of money in the public works assistance account plus money to be received from the payment of the debt service on loans made from that account, nor shall the board pledge the faith and credit or the taxing power of the state or any agency or subdivision thereof to the repayment of obligations issued by any local government.

(c) Create such subaccounts in the public works assistance account as the board deems necessary to carry out the purposes of this chapter.

(d) Provide a method for the allocation of loans, grants, and financing guarantees and the provision of technical assistance under this chapter.

(2) When establishing interest rates for loan programs authorized in this chapter for projects which are supported by a rate base of at least fifty thousand equivalent residential units, the board must base interest rates on the average daily market interest rate for tax-exempt municipal bonds as published in the bond buyer's index for the period from sixty to thirty days before the start of the application cycle.

(a) For projects with a repayment period over five and twenty years, the rate must be fifty percent of the market rate.

(b) For projects with a repayment period of five and under years, the rate must be twenty-five percent of the market rate.

(c) For any year in which the average daily market interest rate for tax-exempt municipal bonds for the period from sixty to thirty days before the start of an application cycle is nine percent or greater, the board may cap interest rates at four percent for projects with a repayment period between five and twenty years and at two percent for projects with a repayment period under five years.

(d) The board may also provide reduced interest rates, extended repayment periods, or grants for projects that meet financial hardship criteria as measured by the affordability index or similar standard measure of financial hardship. The board may provide reduced interest rates, extended repayment periods, or grants for projects that are supported by a rate base of less than fifty thousand equivalent residential units.

(3) All local public works projects aided in whole or in part under the provisions of this chapter shall be put out for competitive bids, except for emergency public works under RCW 43.155.065 for which the recipient jurisdiction shall comply with this requirement to the extent feasible and practicable. The competitive bids called for shall be administered in the same manner as all other public works projects put out for competitive bidding by the local governmental entity aided under this chapter.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-30-030 Applications for construction and preconstruction financial assistance. (1) Any local government in the state of Washington may apply for financial assistance to assist in financing critical public works projects.

(2) All applicants must meet the following conditions:

(a) Applicant cities and counties must be imposing a real estate excise tax under RCW 82.46.010(2) at a rate of at least one-quarter of one percent;

(b) Applicant local governments must have developed a long-term plan for financing public works needs as further described in the loan application package under "capital facilities planning."

(3) Direct costs eligible for public works financial assistance are those costs directly attributable to a specific project and include:

(a) Work done by employees of the applicant, or by other government employees under an interlocal agreement or con-

tract limited to: Engineering, environmental review, design activities, acquisition of rights of way or property, construction inspection activities, roadway seal coating (if bids from private sector contractors have been solicited and compared with the interlocal agreement proposal), and the cleaning, sterilization, or bacteriological testing of water system components prior to public use.

(i) Salaries and wages (at actual or average rates) covering productive labor hours of the local government employees (excluding the administrative organization of the operating unit involved). The cost of services rendered by employees generally classified as administrative are considered a direct cost only when such employees are assigned for short periods of time to perform on a full-time basis the types of services described above and when similar procedures are followed;

(ii) Employee benefits relating to direct labor are considered a direct cost of construction projects. The following items may be included as employee benefits:

- (A) F.I.C.A. (Social Security) - employer's share;
- (B) Retirement benefits;
- (C) Hospital, health, dental, and other welfare insurance;
- (D) Life insurance;
- (E) Industrial and medical insurance;
- (F) Vacation;
- (G) Holiday;
- (H) Sick leave; and
- (I) Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

(b) Contract engineering, planning, legal, and financial planning services. The board reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.

(c) Right of way acquisition costs including:

- (i) Purchase of land and easements acquired for and devoted to the project;
- (ii) Purchase of improvements;
- (iii) Adjustment or reestablishment of improvements;
- (iv) Salaries, expenses or fees of appraisers, negotiators or attorneys;
- (v) Removal or demolition of improvement;
- (vi) Other direct costs in connection with the acquisition.

Amounts received from the sale of excess real property or improvements and from any rentals will be reduced from the direct cost.

(d) Contract construction work.

(e) Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of eight thou-

sand or less not using type of fund are allowed the same rates as used by the department of transportation.

(f) Direct materials and supplies.

(i) An overhead rate or "loading factor" is not considered an appropriate additive to the actual cost of materials and supplies used on construction projects unless the factor is readily and properly supportable by the governmental unit's accounting records.

(ii) The cost, or reasonable estimate thereof, of materials paid for as contract estimate items, but not used, will be considered a reduction of direct costs. Any material that is salvaged in connection with a project will be assigned a reasonable value and considered a reduction of direct costs.

(iii) Wetland plants and other materials used for wetland planting, wildlife habitat, or fish habitat may be provided to a public or nonprofit organization without a reduction of direct costs.

(g) Interdepartmental charges for work performed by the local government for the benefit of specific construction projects is limited to direct costs plus an allocation of indirect costs based on ten percent of direct labor dollars, excluding employee benefits.

(h) Other direct costs incurred for materials or services acquired for a specific project are eligible for participation by public works loan or grant funds and may include, but are not limited to such items as:

- (i) Public communication plans and activities;
- (ii) Telephone charges;
- (iii) Reproduction and photogrammetry costs;
- (iv) Video and photography for project documentation;
- (v) Computer usage;
- (vi) Printing and advertising; and
- (vii) Value engineering and performance audits.

(4) Other than work identified in subsection (3)(a) of this section, no government employee labor related costs, including force account work, are eligible for financing assistance or to be considered as local match under this chapter.

(5) Applications must be submitted on forms provided by the board for the current funding cycle.

(6) A responsible official of the applicant jurisdiction must certify each application for financial assistance. The official must also provide the board with additional materials or information in support of the application when requested by the board or its staff.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-30-032 What are the requirements for meeting the Growth Management Act under RCW 43.155.070? (1) "Compliance with the Growth Management Act" means that at the time of application for financial assistance:

(a) A local government that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan and development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan and development regulations be adopted; and

(b) The local government has not been found out of compliance by a growth management hearings board; or

(c) A growth management hearings board has found a local government in compliance with the requirements of chapter 36.70A RCW, after previously finding the local government was not in compliance.

(2) Exceptions based on "public health need" or "substantial environmental degradation" shall not be used as a method to provide unrestricted access to financial assistance for local governments not in compliance with the law.

(3) Applicants that are not in conformance with GMA requirements because their periodic update is overdue, have five months after the date award has been offered to come into conformance.

AMENDATORY SECTION (Amending WSR 09-04-100, filed 2/4/09, effective 3/7/09)

WAC 399-30-040 Application evaluation procedure and board deliberations—Construction and preconstruction loan or grant programs. (1) The board will consider and prioritize, or disapprove, all applications for financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Applications will be evaluated and prioritized in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum qualification requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of all applications which meet the requirements of WAC 399-30-030(2). Applications will be scored according to responses in the application developed and approved by the board.

(d) Staff will provide the board with evaluation and scoring of the applications. All application materials will be available to the board for their deliberations. The board will approve a ranked list of projects based on the information provided to them by the staff and the applications.

(e) The board may adjust the ranked list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Type of projects;

(iv) Type of jurisdiction;

(v) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;

(vi) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) In order to ensure fairness to all jurisdictions with applications pending before the board, the board will not accept oral or written testimony from any applicant while deliberating loan priorities, other than specific responses to

information requests initiated by the board as provided in (h) of this subsection.

(h) The board may consult with officials of jurisdictions having projects submitted for funding on any issue it wishes to address.

(3) The board must develop a process to prioritize applications and funding of loans and grants for public works projects submitted by local governments. The board must consider, at a minimum and in any order, the following factors in prioritizing projects:

(a) Whether the project is critical in nature and would affect the health and safety of many people;

(b) The extent to which the project leverages other funds;

(c) The extent to which the project is ready to proceed to construction;

(d) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(e) Whether the project promotes the sustainable use of resources and environmental quality, as applicable;

(f) Whether the project consolidates or regionalizes systems;

(g) Whether the project encourages economic development through mixed-use and mixed-income development consistent with chapter 36.70A RCW;

(h) Whether the system is being well managed in the present and for long-term sustainability;

(i) Achieving equitable distribution of funds by geography and population;

(j) The extent to which the project meets the following state policy objectives:

(i) Efficient use of state resources;

(ii) Preservation and enhancement of health and safety;

(iii) Abatement of pollution and protection of the environment;

(iv) Creation of new, family-wage jobs, and avoidance of shifting existing jobs from one Washington state community to another;

(v) Fostering economic development consistent with chapter 36.70A RCW;

(vi) Efficiency in delivery of goods and services and transportation; and

(vii) Reduction of the overall cost of public infrastructure;

(k) Whether the applicant sought or is seeking funding for the project from other sources; and

(l) Other criteria that the board considers necessary to achieve the purposes of this chapter.

(4) After January 1, 2010, any project designed to address the effects of stormwater or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(5) For projects involving repair, replacement, or improvement of a wastewater treatment plant or other public works facility for which an investment grade efficiency audit is reasonably obtainable, the public works board must require as a contract condition that the project sponsor undertake an investment grade efficiency audit. The project sponsor may

finance the costs of the audit as part of its public works assistance account program loan or grant.

(6) Existing debt or financial obligations of local governments may not be refinanced under this chapter. Each local government applicant must provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(7) Applicants will be notified in writing of board decisions.

AMENDATORY SECTION (Amending WSR 09-04-100, filed 2/4/09, effective 3/7/09)

WAC 399-30-045 Application evaluation procedure and board deliberations—Emergency loan program. This section implements RCW 43.155.060 and 43.155.065. The board may make low-interest or interest free loans or grants to local governments for emergency public works projects. The emergency loan program is to financially assist eligible communities experiencing the loss of critical public works services or facilities due to an emergency, and that can demonstrate a substantial fiscal need.

(1) Eligible local governments. Applicants must meet the conditions as identified under WAC 399-30-030(2).

(2) Eligible uses of funds. Financial assistance received shall be used for the purpose of restoring the services and/or repair of the public works facilities involved in the emergency. Assistance provided may be used to help fund all or part of an emergency public works project less any reimbursement from any of the following:

- (a) Federal disaster or emergency funds, including funds from the Federal Emergency Management Agency;
- (b) State disaster or emergency funds;
- (c) Insurance settlements; or
- (d) Litigation.

Assisted local governments must reimburse the department any moneys received from the sources listed above. The local government is obligated to make reimbursement for four years after formal project closeout. Local governments eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

(3) Availability of funds. Funding will be made available on a first-come first-served basis. Only those funds specifically appropriated by the legislature from the public works assistance account shall be used to make emergency loans. That amount shall not exceed five percent of the total amount appropriated from this account in any biennium.

(4) Application process. Local governments must apply on the form provided by the board. Applications will be processed in the order received.

(5) Board deliberations—Emergency loan applications.

(a) The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(b) All applications will be accepted and evaluated in accordance with the following procedures:

(i) Applications will be accepted only when emergency funding is available.

(ii) Staff will review applications and verify that the applicant is eligible for assistance as set forth in RCW 43.155.-070(1).

(iii) Staff will provide the board an evaluation of whether an emergency loan is needed based upon the information documented by the applicant and staff.

(iv) Site visits to the location of the emergency public works project will be carried out at the discretion of the board or staff.

(6) Loan terms. The board shall determine the term and interest rate(s) of emergency loans annually.

(7) Exceptions to public works ~~((trust fund))~~ assistance account policies and procedures. Except as provided in this chapter or specified in annual program guidelines, the emergency program shall follow all general administrative program policies as set for the public works ~~((trust fund))~~ assistance account.

AMENDATORY SECTION (Amending WSR 09-04-100, filed 2/4/09, effective 3/7/09)

WAC 399-30-060 Loan and financing guarantee loan agreements for the construction loan program. (1) The board will only execute loan/grant agreements or otherwise financially obligate funds from the public works assistance account ~~((after the legislature approves the list and accompanying appropriation, except))~~ appropriated funds to the board for construction, preconstruction, planning, and emergency loans.

(2) After the legislature has appropriated funds from the public works assistance account for a specific list of public works projects or budget allocation, the construction loan/grant funds will be disbursed to the applicant local government through a loan/grant agreement. The loan/grant agreement will offer terms and conditions as the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated funding or federal or state shared revenues that can be allocated at the discretion of the local government.

(b) The interest rates, local share requirements and loan limits will be determined annually by the board.

(c) Loans must not exceed thirty years, or the useful life of the improvements, whichever is shorter.

(3) The local government and the department must execute a final loan agreement before any funds are disbursed.

(4) The local government must submit for approval a scope of work, including such things as a budget and performance measures consistent with the application for financial assistance to the department within ninety days after the department offers a loan or financing guarantee.

(5) The local government must execute any loan or financing guarantee loan agreements offered within ~~((ninety days))~~ six months after the department offers the loan agreement.

(6) ~~((The local government must begin work on a public works project prior to October 1 of the year in which the loan or financing guarantee is offered.~~

~~(7))~~) The local government must complete work on the public works project within the time specified in the loan agreement, unless a written request for extension is approved by the board.

~~((8))~~) (7) The board or department will not reimburse local governments for any funds spent on public works projects financed through the public works assistance account before a planning, emergency or preconstruction loan agreement has been formally executed. The board or department may reimburse local governments for those construction loan costs incurred after September 1st of the year in which a construction loan was recommended for financing by the board, providing that the project is approved by law, the costs are eligible for reimbursement at the time of loan agreement execution, and there are funds available in the public works assistance account. For the competitive loan/grant cycles, the effective date for reimbursement is the date the board approves the award. These reimbursable costs, incurred before loan agreement execution, must be spent on eligible activities as defined by WAC 399-30-030, comply with executive order 05-05, and be consistent with the loan agreement as later executed. Any costs incurred before the execution of a construction loan agreement will not be reimbursed unless a loan agreement is executed.

NEW SECTION

WAC 399-30-070 Loans or grants for preconstruction activities. This section implements RCW 43.155.068.

(1) The board may make loans or grants to local governments for preconstruction activities on public works projects before the legislature approves the construction phase of the project. Preconstruction activities include design, engineering, bid-document preparation, environmental studies, right-of-way acquisition, value planning, and other preliminary phases of public works projects as determined by the board. The purpose of the loans and grants authorized in this section is to accelerate the completion of public works projects by allowing preconstruction activities to be performed before the appropriation for the construction phase of the project by the legislature.

(2) Projects receiving loans or grants for preconstruction activities under this section must be evaluated using the priority process and factors in RCW 43.155.070. The receipt of a loan or grant for preconstruction activities does not ensure the receipt of a construction loan or grant for the project under this chapter. Construction loans or grants for projects receiving a loan or grant for preconstruction activities under this section are subject to legislative appropriation under RCW 43.155.070(7). The board shall adopt a single application process for local governments seeking both a loan or grant for preconstruction activities under this section and a construction loan for the project.

NEW SECTION

WAC 399-30-080 Reporting. Before September 1, 2018, and each year thereafter, the board must develop and submit a report regarding the construction loans and grants to the office of financial management and appropriate fiscal

committees of the senate and house of representatives. The report must include:

(1) The total number of applications and amount of funding requested for public works projects;

(2) A list and description of projects approved in the preceding fiscal year with project scores against the board's prioritization criteria;

(3) The total amount of loan and grants disbursements made from the public works assistance account in the preceding fiscal year;

(4) The total amount of loan repayments in the preceding fiscal year for outstanding loans from the public works assistance account;

(5) The total amount of loan repayments due for outstanding loans for each fiscal year over the following ten-year period; and

(6) The total amount of funds obligated and timing of when the funds were obligated in the preceding fiscal year.

NEW SECTION

WAC 399-30-085 Loans and grants for public works projects—Statement of environmental benefits—Sustainable asset management best practices—Development of outcome-focused performance measures. (1) This section implements RCW 43.155.075. In providing loans and grants for public works projects, the board shall require recipients to incorporate the environmental benefits of the project into their applications, and the board shall utilize the statement of environmental benefits in its prioritization and selection process, when applicable. For projects funded under this chapter, the board may require a local government to:

(a) Have sustainable asset management best practices in place;

(b) Provide a long-term financial plan to demonstrate a sound maintenance program;

(c) Have a long-term financial plan for loan repayments in place; and

(d) Undergo value planning at the predesign project stage, where the greatest productivity gains and cost savings can be found.

(2) The board shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the loan and grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The board shall consult with affected interest groups in implementing this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 399-30-031 Applications for drinking water state revolving funds and water system acquisition and rehabilitation program financial assistance.

- WAC 399-30-042 Application evaluation procedure and board deliberations—Capital planning support.
- WAC 399-30-050 Recommendations to the legislature for construction loans.

WSR 20-04-076
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed February 4, 2020, 9:45 a.m., effective March 6, 2020]

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

Purpose: Creating chapter 136-500 WAC, Emergency loan program (ELP).

Citation of Rules Affected by this Order: New chapter 136-500 WAC, Emergency loan program.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Adopted under notice filed as WSR 19-22-065 on November 5, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 30, 2020.

John M. Koster
Executive Director

Chapter 136-500 WAC
EMERGENCY LOAN PROGRAM (ELP)

NEW SECTION

WAC 136-500-010 Purpose and authority. RCW 36.78.070 provides that the county road administration board shall administer the emergency revolving loan program established by chapter 36.78 RCW. This chapter describes the manner in which the county road administration board will administer the provisions of the emergency revolving loan program.

NEW SECTION

WAC 136-500-020 Definitions. For this chapter, the following definitions shall apply:

(1) Board - County road administration board as defined in chapter 36.78 RCW.

(2) CRAB - County road administration board.

(3) DDIR - Detailed damage inspection report used by the Federal Highway Administration as an application for emergency funding under their programs.

(4) LGIP - Local government investment pool under the administration of the state treasurer.

(5) Permanent - Work that restores or improves a county road for the long-term use by the traveling public.

(6) Temporary - Work that restores a county road for the short-term use by the traveling public. Temporary work typically results in restricted use and signing of deficiencies for the safety of the traveling public.

NEW SECTION

WAC 136-500-030 Eligible work. Eligible work under this chapter is work of either a temporary or a permanent nature. Permanent work must restore the roadway to the pre-disaster condition and may include necessary improvements to bring the damaged roadway to current design standards. This work must be the result of a natural or man-made event that results in the closure or substantial restriction of use of the roadway by the traveling public. Work of an emergency nature is beyond the scope of work done by a county in repairing damage normally or reasonably expected from seasonal or other natural conditions.

This program may fund eligible work on any classification of road under the county's jurisdiction.

NEW SECTION

WAC 136-500-040 County eligibility. Any county who is eligible to participate in the rural arterial program, has a current certificate of good practice and a total population under 800,000 as of April 1, 2019, is eligible to participate in this program.

NEW SECTION

WAC 136-500-050 Project type and submittal. (1) There are two project types eligible for funding under this program:

(a) Site specific - Single location.

(b) County wide - Multiple sites within a single county.

(2) To request a loan through this program, the county shall submit the following:

(a) A copy of the adopted emergency declaration; and

(b) A brief description of the project site(s) requested for funding; and

(c) An estimate of costs for work at each site(s); and

(d) Pictures of the damaged area(s); or

(e) A DDIR for each site may be submitted in lieu of requirements (a) through (d) of this subsection.

NEW SECTION

WAC 136-500-060 Funding limits. Project funding is limited to two million dollars or fifty percent of available fund balance, whichever value is less. If a county desires

funding above these limits, the county's legislative authority may request additional funding at the next regularly scheduled board meeting.

NEW SECTION

WAC 136-500-070 Prioritization. If CRAB receives multiple loan requests resulting from a single regional event, funding shall be prioritized. Prioritization will be made by averaging the county rankings for the following criteria:

(1) RCW 46.68.124(2) - Annual road costs. Counties ranked from lowest road cost factor to highest.

(2) RCW 46.68.124(3) - Money needs. Counties ranked from lowest money needs factor to highest.

The lower the average county ranking, the higher priority that county is for funding during a regional event.

NEW SECTION

WAC 136-500-080 Payback terms. Any loan funded through this program shall have a term not to exceed twenty-four months. The county will be invoiced six months from the date of contract execution and quarterly thereafter until the end of the contract term.

Interest on the amount of the loan shall be the monthly rate of return for the LGIP not to exceed three percent.

If a county pays the county road administration board the principle amount of the loan within six months of the date of contract execution, no interest will be charged and the contract will be closed. Should a county not pay the loan in full within six months of the date of contract execution, interest will be calculated from the date of contract execution to the date of final payment. A county may pay off any loan received through this program before the end of the term to reduce the amount of interest owed.

NEW SECTION

WAC 136-500-090 Execution of CRAB/county contract. The executive director of CRAB is authorized to execute a contract with any eligible county under this program with a not to exceed amount of two million dollars or fifty percent of available fund balance, whichever value is less. A county may request additional funding through this program at the next regularly scheduled board meeting.

Upon execution of a contract under this chapter, the executive director will advise board members of the contract details including county, number of project(s) and the loan amount.

NEW SECTION

WAC 136-500-100 Failure to meet requirements of this chapter or terms of the contract. Should a county fail to meet the requirements of this chapter or the terms of the contract, the matter will be before the board at their next regularly scheduled meeting. The county will be requested to be present for said meeting to provide an explanation for failing to meet the requirements of this chapter or terms of the contract. At said meeting, the board may take any action it deems

necessary to ensure prompt compliance of the requirements of this chapter and the terms of the contract.

NEW SECTION

WAC 136-500-110 Report to legislature. Consistent with RCW 43.01.036, the board must submit a report to the legislature by December 1st of each even-numbered year identifying each project that received money from the CRAB emergency loan account, the amount of the loan, the expected repayment terms of the loan, the expected date of repayment, and the loan repayment status. Each project should be reported about until the loan is repaid.

WSR 20-04-077

PERMANENT RULES COUNTY ROAD

ADMINISTRATION BOARD

[Filed February 4, 2020, 9:45 a.m., effective March 6, 2020]

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

Purpose: Amendments to chapter 136-163 WAC, allocation of RTAT funds to projects.

Citation of Rules Affected by this Order: Amending chapter 136-163 WAC.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Adopted under notice filed as WSR 19-22-066 on November 5, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 30, 2020.

John M. Koster
Executive Director

Chapter 136-163 WAC

ALLOCATION OF RATA FUNDS TO EMERGENT (~~AND EMERGENCY~~) PROJECTS

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-163-010 Purpose and authority. RCW 36.79.140 provides for the authorization of ((RATA)) rural arterial trust account funds for projects of an emergent nature.

This chapter describes the manner in which counties may request ((RATA funds)) funding for such emergent projects and the manner in which the county road administration board will respond to such requests.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-163-020 ((Definitions.)) Project eligibility.
 ((For the purposes of this chapter, the term "emergent nature" as used in RCW 36.79.140 shall mean both "emergent" and "emergency" projects as follows:

(1) ~~**Emergency project:** Work of either a temporary or permanent nature which restores roads and bridges to the pre-disaster condition and may include reconstruction to current design standards. This work is the result of a sudden natural or man-made event which results in the destruction or severe damage to RATA-eligible roadway sections or structures such that, in the consideration of public safety and use, the roadway sections or structures must be immediately closed or substantially restricted to normal traffic. Work of an emergency nature is also beyond the scope of work done by a county in repairing damages normally or reasonably expected from seasonal or other natural conditions, and is beyond what would be considered maintenance, regardless of how extensive the maintenance may be.~~

(2) ~~**Emergent project:** RATA-eligible work necessitated by sudden and unanticipated development, growth, access needs, or legal decisions. This work is not the result of an emergency situation as previously defined. This work, in consideration of good transportation capital facilities management, will also require a county to commit resources beyond its current six-year transportation program and prior to the next six-year transportation program annual update as provided for in RCW 36.81.124.) Projects of an emergent nature may be funded through the rural arterial program as authorized by chapter 36.79 RCW. An emergent project is defined as a project whose need the county was unable to anticipate at the time the six-year program of the county was developed. Emergency work to temporarily restore a county road for the short-term use of the traveling public is not eligible for funding as an emergent project; however, a project to permanently repair a county road after an emergency may be considered for funding if the proposed project meets all other requirements of the rural arterial program.~~

To be eligible for emergent project approval, the project shall be evaluated by the county road administration board grant programs engineer, with the participation of the county engineer, on the same point system as all other projects within the region. The proposed emergent project must rank at or above the regional funding cutoff line on the current array based upon one hundred percent of the current estimated regional allocation as determined by the county road administration board.

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

WAC 136-163-050 Limitations and conditions((—Emergency and emergent projects)). All projects for which

((RATA)) rural arterial program funding is being requested under this chapter are subject to the following:

(1) The requesting county has the sole burden of making a clear and conclusive showing that the project is ((either)) emergent ((or emergency)) as described in ((WAC 136-163-020 through 136-163-040)) this chapter; and

(2) The requesting county shall clearly demonstrate that the need for the project was unable to be anticipated at the time the current six-year transportation program was developed; and

(3) The requesting county agrees to a reduction in the next funding period's maximum RATA eligibility to the county equal to the RATA that may be provided; however, should that region not have a maximum RATA eligibility for each county, the requesting county agrees to withdraw, amend or delay an existing approved project or portion thereof in an amount equal to the RATA that may be provided for the project.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 136-163-030 Limitations and conditions—Emergency projects.

WAC 136-163-040 Limitations and conditions—Emergent projects.

WSR 20-04-080

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed February 4, 2020, 11:39 a.m., effective March 6, 2020]

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

Purpose: WAC 246-817-907 Patient notification, secure storage, and disposal for opioid prescribing, the dental quality assurance commission (commission) adopted amendments to establish patient notification, documentation, counseling requirements, and the right to refuse an opioid prescription or order for any reason, when prescribing opioid drugs, as directed by section 4, codified as RCW 18.32.810, and section 17, codified as RCW 69.50.317, of SSB 5380 (chapter 314, Laws of 2019) for licensed dentists. The commission also adopted clarifications of when notification is not required.

Citation of Rules Affected by this Order: Amending WAC 246-817-907.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.32.810.

Other Authority: RCW 18.32.810 and 69.50.317.

Adopted under notice filed as WSR 19-21-135 on October 21, 2019.

Changes Other than Editing from Proposed to Adopted Version: Reference to RCW 69.50.317 (1)(b) and WAC 246-817-908 was added to subsection (3)(a) related to pain management alternatives. This change was made to ensure practi-

tioners are able to locate all information necessary related to alternatives.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388 or 711, email jennifer.santiago@doh.wa.gov, website www.doh.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 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: December 6, 2019.

Julia Richman, DDS
Chairperson

AMENDATORY SECTION (Amending WSR 19-02-043, filed 12/26/18, effective 1/26/19)

WAC 246-817-907 Patient notification, secure storage, and disposal. (1) The dentist shall ~~((provide information to))~~ discuss with the patient educating them of risks associated with the use of opioids, including the risk of dependence and overdose. The dentist shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and

(b) The transition between phase of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

(ii) Subacute pain to chronic pain.

(3) Patient written notification must include information regarding:

(a) Pain management alternatives to opioid medications as provided in RCW 69.50.317 (1)(b) and WAC 246-817-908;

~~((and~~ (b) The safe and secure storage of opioid prescriptions;

~~((b))~~ (c) The proper disposal of unused opioid medication including, but not limited to, the availability of recognized drug take-back programs~~((-~~

~~((4) This)); and~~

(d) The patient's right to refuse an opioid prescription or order for any reason. If the patient indicates a desire to not receive an opioid, the dentist shall document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(4) The requirements in this section do not apply to the administration of an opioid including, but not limited to, the following situations:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the administration of anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(5) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or other person identified in RCW 7.70.065, unless otherwise provided by law.

(6) The requirements of this section may be satisfied with a document provided by the department of health.

(7) The requirements of this section may be satisfied by a dentist designating any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.

WSR 20-04-081
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 4, 2020, 11:49 a.m., effective March 6, 2020]

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

Purpose: The purpose of this rule making is to increase fees by 5.08 percent for the factory assembled structures (FAS) program. This is the office of financial management's maximum allowable fiscal growth rate for fiscal year 2020. The fee increase is necessary to support operating expenses for inspections and other public safety activities for the FAS program.

Citation of Rules Affected by this Order: Amending WAC 296-150C-3000 Commercial coach fees, 296-150F-3000 Factory-built housing and commercial structure fees, 296-150M-3000 Manufactured/mobile home fees, 296-150P-3000 Recreational park trailer fees, 296-150R-3000 Recreational vehicle fees, 296-150T-3000 Factory-built temporary worker housing fees, and 296-150V-3000 Conversion vendor units and medical units—Fees.

Statutory Authority for Adoption: Chapters 43.22 and 43.22A RCW.

Adopted under notice filed as WSR 20-01-158 on December 17, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 0.

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: February 4, 2020.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150C-3000 Commercial coach fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction: VB	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
<ul style="list-style-type: none"> Square footage of the building multiplied by the amount in the BVD valuation table \$ 	
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*	
8. One year design review: (Valid for one year) multiply the total on line 7 by ((0.364) <u>0.382</u>)	\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.52) <u>0.546</u>)	\$
* Minimum plan review fee is 2 1/2 hours x \$((79.00) <u>83.00</u>) per hour	
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)	
10. Fire and life-safety plan review:	
a. One year design—Multiply the total on line 7 by ((0.156) <u>0.163</u>)	\$
b. Master plan design—Multiply the total on line 7 by ((0.26) <u>0.273</u>)	\$
• Required for all structures that are more than 4,000 square feet and for all A and I occupancy	
PLUMBING PLAN-REVIEW FEE	
11. Plumbing ((\$18.70 + \$6.20) <u>\$19.60 + \$6.50</u>) per fixture	\$
12. Medical gas ((\$18.70 + \$6.20) <u>\$19.60 + \$6.50</u>) per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM	
13. ((40.4) <u>10.92%</u>) of building permit + \$((79.00) <u>83.00</u>)	\$
RESUBMITTAL	
14. ((40.4) <u>10.92%</u>) of building permit + \$((79.00) <u>83.00</u>)	\$
ELECTRICAL PLAN-REVIEW FEE	
15. See WAC 296-46B-906(9) for electrical review fees	
INSIGNIA FEES	
16. FIRST SECTION	\$ ((23.70) <u>24.90</u>)
17. EACH ADDITIONAL SECTION	\$ ((14.60) <u>15.30</u>)
TOTAL FEES	
18. Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
19. Total fees due: Includes plan fees and insignia fees	\$
20. Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
b Unfinished basements (all use group) = \$15.00 per sq. ft.
c For shell only buildings deduct 20 percent
d N.P. = not permitted

Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	\$(39.10) 41.00
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((1-04)) 1.092*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((1-04)) 1.092*	
RENEWAL FEE - 10% of permit fee × ((1-04)) 1.092 +	\$(79.00) 83.00
RESUBMIT FEE - 10% of permit fee × ((1-04)) 1.092 +	\$(79.00) 83.00
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((1-04)) 1.092 +	\$(79.00) 83.00
ELECTRONIC PLAN SUBMITTAL FEE \$(5-60) 5.80 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, \$(48-70) 19.60 + PER FIXTURE FEE of	\$(6-20) 6.50
MEDICAL GAS PLAN FEE, \$(48-70) 19.60 + PER OUTLET FEE of	\$(6-20) 6.50
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((1-04)) 1.092	
One year design 15% of the permit fee × ((1-04)) 1.092	
ELECTRICAL PLAN REVIEW - Find fee @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN (minimum 3 hours)	\$(79.00) 83.00 per hour
INITIAL FEE - ONE YEAR DESIGN (minimum 2 hours)	\$(79.00) 83.00 per hour
RENEWAL FEE (minimum 1 hour)	\$(79.00) 83.00 per hour
ADDENDUM (minimum 1 hour)	\$(79.00) 83.00 per hour
PLANS APPROVED BY PROFESSIONALS - 10% of permit fee × ((1-04)) 1.092 +	\$(79.00) 83.00
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS - 5% of permit fee × ((1-04)) 1.092 +	\$(79.00) 83.00

DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time* and mileage***)	\$((79.00)) <u>83.00</u>
TRAVEL (Per hour)	\$((79.00)) <u>83.00</u>
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((79.00)) <u>83.00</u>
TRAVEL (Per hour**)	\$((79.00)) <u>83.00</u>
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
ALTERATION INSPECTION (one hour minimum + alteration insignia fee)	\$((102.70)) <u>107.90</u>
INSIGNIA FEES:	
FIRST SECTION (NEW or ALTERATION)	\$((23.70)) <u>24.90</u>
EACH ADDITIONAL SECTION (NEW or ALTERATION)	\$((14.60)) <u>15.30</u>
REISSUED-LOST/DAMAGED	\$((14.60)) <u>15.30</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	\$((79.00)) <u>83.00</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((14.60)) <u>15.30</u>
REFUND FEE	\$((26.00)) <u>27.30</u>

*Minimum plan review fee is 2 1/2 hours at the field technical service rate
 **Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments
 ***Per state guidelines
 ****Actual charges incurred

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction:	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
<ul style="list-style-type: none"> Square footage of the building multiplied by the amount in the BVD valuation table \$ 	

6.	Total valuation:	\$
PERMIT FEE		
7.	Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*		
8.	One year design review: (Valid for one year) multiply the total on line 7 by ((0.364)) <u>0.382</u>	\$
9.	Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.52)) <u>0.546</u>	\$
* Minimum plan review fee is 2 1/2 hours x \$ ((88.90)) <u>93.40</u> per hour		
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)		
10.	Fire and life-safety plan review:	
a.	One year design—Multiply the total on line 7 by ((0.156)) <u>0.163</u>	\$
b.	Master plan design—Multiply the total on line 7 by ((0.26)) <u>0.273</u>	\$
• Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy		
PLUMBING PLAN-REVIEW FEE		
11.	Plumbing ((18.70 + 6.20)) <u>\$19.60 + \$6.50</u> per fixture	\$
12.	Medical gas ((18.70 + 6.20)) <u>\$19.60 + \$6.50</u> per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM		
13.	((10.4)) <u>10.92%</u> of building permit + \$ ((88.90)) <u>93.40</u>	\$
RESUBMITTAL		
14.	((10.4)) <u>10.92%</u> of building permit + \$ ((88.90)) <u>93.40</u>	\$
ELECTRICAL PLAN-REVIEW FEE		
15.	See WAC 296-46B-906(9) for electrical review fees	
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)		
16.	Notification to local enforcement agency fee:	\$ ((38.40)) <u>40.30</u>
INSIGNIA FEES		
17.	FIRST SECTION	\$ ((284.30)) <u>298.70</u>
18.	EACH ADDITIONAL SECTION	\$ ((25.50)) <u>26.70</u>
TOTAL FEES		
19.	Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
20.	Total fees due: Includes plan fees, insignia fees, and NLEA fees	\$
21.	Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Table 1-A - Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00

Total Valuation	Fee
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	\$((69.40)) <u>72.90</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee $\times ((1.04))$ <u>1.092</u> *	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee $\times ((1.04))$ <u>1.092</u> *	
RENEWAL FEE - 10% of permit fee $\times ((1.04))$ <u>1.092</u> +	\$((88.90)) <u>93.40</u>
RESUBMIT FEE - 10% of permit fee $\times ((1.04))$ <u>1.092</u> +	\$((88.90)) <u>93.40</u>
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee $\times ((1.04))$ <u>1.092</u> +	\$((88.90)) <u>93.40</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.60)) <u>5.80</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, \$((48.70)) <u>19.60</u> + PER FIXTURE FEE of	\$((6.20)) <u>6.50</u>
MEDICAL GAS PLAN FEE, \$((48.70)) <u>19.60</u> + PER OUTLET FEE of	\$((6.20)) <u>6.50</u>
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee $\times ((1.04))$ <u>1.092</u>	
One year design - 15% of the permit fee $\times ((1.04))$ <u>1.092</u>	
ELECTRICAL PLAN REVIEW - Find fees @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN (minimum 3 hours)	\$((88.90)) <u>93.40</u> per hour
INITIAL FEE-ONE YEAR DESIGN (minimum 2 hours)	\$((88.90)) <u>93.40</u> per hour
RENEWAL FEE (minimum 1 hour)	\$((88.90)) <u>93.40</u>
ADDENDUM (minimum 1 hour)	\$((88.90)) <u>93.40</u> per hour
PLANS APPROVED BY DESIGN PROFESSIONALS - 10% of permit fee $\times ((1.04))$ <u>1.092</u> +	\$((88.90)) <u>93.40</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS - 5% of permit fee $\times ((1.04))$ <u>1.092</u> +	\$((88.90)) <u>93.40</u>
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time** and mileage***)	\$((88.90)) <u>93.40</u>
TRAVEL (Per hour**)	\$((88.90)) <u>93.40</u>
PER DIEM***	
HOTEL ****	
MILEAGE***	
RENTAL CAR****	
PARKING****	

AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour**)	\$((88.90)) <u>93.40</u>
TRAVEL (Per hour**)	\$((88.90)) <u>93.40</u>
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
INSIGNIA FEES:	
FIRST SECTION	\$((284.30)) <u>298.70</u>
EACH ADDITIONAL SECTION	\$((25.50)) <u>26.70</u>
REISSUED-LOST/DAMAGED	\$((69.40)) <u>72.90</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	\$((88.90)) <u>93.40</u>
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	\$((38.40)) <u>40.30</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((14.20)) <u>14.90</u>
REFUND FEE	\$((26.00)) <u>27.30</u>

*Minimum plan review fee is 2 1/2 hours at the field technical service rate.

**Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

***Per state guidelines.

****Actual charges incurred.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150M-3000 Manufactured/mobile home fees.

DESIGN PLAN FEES:	
STRUCTURAL ALTERATION	\$((172.80)) <u>181.50</u>
RESUBMITTAL FEE	\$((76.40)) <u>80.20</u>
ADDENDUM (Approval expires on the same date as original plan.)	\$((76.40)) <u>80.20</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.40)) <u>5.60</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
Combination permit - Mechanical and electrical inspections	\$((188.80)) <u>198.30</u>
Heat pump	\$((188.80)) <u>198.30</u>
Air conditioning	\$((188.80)) <u>198.30</u>
Air conditioning with replacement furnace	\$((188.80)) <u>198.30</u>
Gas furnace installation includes gas piping	\$((188.80)) <u>198.30</u>

Fire safety inspection	\$((188.80)) <u>198.30</u>
MECHANICAL	\$((83.90)) <u>88.10</u>
Gas*** Piping	\$((83.90)) <u>88.10</u>
Wood Stove	\$((83.90)) <u>88.10</u>
Pellet Stove	\$((83.90)) <u>88.10</u>
Gas*** Room Heater	\$((83.90)) <u>88.10</u>
Gas*** Decorative Appliance	\$((83.90)) <u>88.10</u>
Range: Changing from electric to gas***	\$((83.90)) <u>88.10</u>
Gas*** Water Heater Replacement	\$((62.90)) <u>66.00</u>
ELECTRICAL	\$((105.00)) <u>110.30</u>
Electric Water Heater Replacement	\$((105.00)) <u>110.30</u>
Electric Water Heater replacing Gas*** Water Heater	\$((105.00)) <u>110.30</u>
Each added or modified 120 volt circuit (maximum charge is two circuits)	\$((105.00)) <u>110.30</u>
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	\$((105.00)) <u>110.30</u>
Hot Tub or Spa (power from home electrical panel)	\$((105.00)) <u>110.30</u>
Replace main electrical panel/permanently installed transfer equipment	\$((105.00)) <u>110.30</u>
Low voltage fire/intrusion alarm	\$((105.00)) <u>110.30</u>
Any combination of Furnace, Range and Water Heater changing from electric to gas***	\$((105.00)) <u>110.30</u>
PLUMBING	
Fire sprinkler system	\$((235.90)) <u>247.80</u>
Each added fixture	\$((62.90)) <u>66.00</u>
Replacement of water piping system (this includes two inspections)	\$((210.60)) <u>221.20</u>
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	\$((94.20)) <u>98.90</u>
Reroofs (may require a plan review)	\$((168.30)) <u>176.70</u>
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	\$((168.30)) <u>176.70</u>
Other structural changes (may require a plan review)	\$((168.30)) <u>176.70</u>
MISCELLANEOUS	
OTHER REQUIRED INSPECTIONS (Per hour*)	\$((68.90)) <u>72.40</u>
ALL REINSPECTIONS (Per hour*)	\$((68.90)) <u>72.40</u>

Refund	\$((20.90)) <u>21.90</u>
INSIGNIA FEES:	
REISSUED - LOST/DAMAGED	\$((20.90)) <u>21.90</u>
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	\$((34.60)) <u>36.30</u>
Second and succeeding inspections of unlabeled sections (Per hour*)	\$((76.40)) <u>80.20</u>
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)	\$((76.40)) <u>80.20</u>
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
Increased frequency surveillance (Per hour* plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
Attendance at manufacturers training classes (Per hour* only)	\$((76.40)) <u>80.20</u>
Subpart "I" investigations (Per hour* plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)	\$((76.40)) <u>80.20</u>
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)	\$((76.40)) <u>80.20</u>
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)	\$((76.40)) <u>80.20</u>
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)	\$((76.40)) <u>80.20</u>
Replacement of HUD labels (Per hour* plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)	\$((76.40)) <u>80.20</u>
State Administrative Agency (SAA) dispute resolution filing fee	\$((76.40)) <u>80.20</u>
State Administrative Agency (SAA) dispute resolution (Per hour*)	\$((76.40)) <u>80.20</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)	\$((70.90)) <u>74.50</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((13.90)) <u>14.60</u>
VARIANCE INSPECTION FEE	\$((168.20)) <u>176.70</u>
HOMEOWNER REQUESTED INSPECTION	\$((168.20)) <u>176.70</u>
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	\$((168.20)) <u>176.70</u>

DEMOLITION OF A MOBILE/MANUFACTURED HOME	\$((168.20)) <u>176.70</u>
ENERGY CONSERVATION PERMIT	\$((28.70)) <u>30.10</u>

NOTE: Local jurisdictions may have other fees that apply.

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Gas means all gases; natural, propane, etc.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	\$((36.00)) <u>37.80</u>
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	\$((102.10)) <u>107.20</u>
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	\$((135.00)) <u>141.80</u>
RESUBMITTAL FEE	\$((73.00)) <u>76.70</u>
ADDENDUM (Approval expires on same date as original plan.)	\$((73.00)) <u>76.70</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.40)) <u>5.60</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$((73.00)) <u>76.70</u>
TRAVEL (per hour)*	\$((73.00)) <u>76.70</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$((73.00)) <u>76.70</u>
TRAVEL (per hour)*	\$((73.00)) <u>76.70</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((109.00)) <u>114.50</u>
INSIGNIA FEES:	
STATE CERTIFIED	\$((26.00)) <u>27.30</u>
ALTERATION	\$((36.00)) <u>37.80</u>
REISSUED-LOST/DAMAGED	\$((13.40)) <u>14.00</u>

OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$((73.00)) <u>76.70</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((13.60)) <u>14.20</u>
REFUND FEE	\$((26.00)) <u>27.30</u>

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150R-3000 Recreational vehicle fees.

STATE PLAN	
INITIAL FILING FEE	\$((35.00)) <u>36.70</u>
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE	\$((97.60)) <u>102.50</u>
RESUBMITTAL FEE	\$((70.50)) <u>74.00</u>
ADDENDUM (Approval expires on same date as original plan.)	\$((70.50)) <u>74.00</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.30)) <u>5.50</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$((70.60)) <u>74.10</u>
TRAVEL (per hour)*	\$((70.60)) <u>74.10</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$((70.60)) <u>74.10</u>
TRAVEL (per hour)*	\$((70.60)) <u>74.10</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((105.60)) <u>110.90</u>
INSIGNIA FEES:	
STATE CERTIFIED	\$((26.00)) <u>27.30</u>
ALTERATION	\$((35.00)) <u>36.70</u>

REISSUED-LOST/DAMAGED	\$((12.50)) <u>13.10</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$((70.60)) <u>74.10</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$((13.20)) <u>13.80</u>

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

SELF CERTIFICATION	
INITIAL FILING FEE	\$((35.00)) <u>36.70</u>
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE (one time fee)	\$((98.90)) <u>103.90</u>
RESUBMITTAL FEE	\$((70.60)) <u>74.10</u>
ADDENDUM (Approval expires on same date as original plan.)	\$((70.60)) <u>74.10</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.30)) <u>5.50</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$((70.60)) <u>74.10</u>
TRAVEL (per hour)*	\$((70.60)) <u>74.10</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$((70.60)) <u>74.10</u>
TRAVEL (per hour)*	\$((70.60)) <u>74.10</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
SELF CERTIFIED	\$((26.00)) <u>27.30</u>
ALTERATION	\$((35.00)) <u>36.70</u>
REISSUED-LOST/DAMAGED	\$((12.50)) <u>13.10</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$((70.60)) <u>74.10</u>

PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$((13.20)) <u>13.80</u>
REFUND FEE	\$((26.00)) <u>27.30</u>

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	\$((54.80)) <u>57.50</u>
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	\$((158.80)) <u>166.80</u>
RENEWAL FEE	\$((54.80)) <u>57.50</u>
RESUBMIT FEE	\$((79.00)) <u>83.00</u>
ADDENDUM (Approval expires on same date as original plan)	\$((79.00)) <u>83.00</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.50)) <u>5.70</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$((93.70)) <u>98.40</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$((14.60)) <u>15.30</u>
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((79.00)) <u>83.00</u>
TRAVEL (Per hour)*	\$((79.00)) <u>83.00</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((79.00)) <u>83.00</u>
TRAVEL (Per hour*)	\$((79.00)) <u>83.00</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	\$((222.70)) <u>234.00</u>
EACH ADDITIONAL SECTION	\$((21.50)) <u>22.50</u>

REISSUED-LOST/DAMAGED	\$((54.80)) <u>57.50</u>
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	\$((230.70)) <u>242.40</u>
Additional Feeder	\$((43.70)) <u>45.90</u>
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	\$((122.30)) <u>128.50</u>
Additional Feeder	\$((31.00)) <u>32.50</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((79.00)) <u>83.00</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free per year)	\$((14.60)) <u>15.30</u>
REFUND FEE	\$((26.00)) <u>27.30</u>

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments

**Per state guidelines

***Actual charges incurred

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150V-3000 Conversion vendor units and medical units—Fees.

INITIAL FILING FEE	\$((39.10)) <u>41.00</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$((270.90)) <u>284.60</u>
INITIAL FEE - ONE YEAR DESIGN	\$((110.70)) <u>116.30</u>
RENEWAL FEE	\$((47.00)) <u>49.30</u>
RESUBMIT FEE	\$((79.00)) <u>83.00</u>
ADDENDUM (Approval expires on same date as original plan)	\$((79.00)) <u>83.00</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.50)) <u>5.70</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	\$((120.70)) <u>126.80</u>
INITIAL FEE - ONE YEAR DESIGN	\$((72.90)) <u>76.60</u>
RENEWAL FEE	\$((72.90)) <u>76.60</u>
ADDENDUM	\$((72.90)) <u>76.60</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$((14.60)) <u>15.30</u>

DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((79.00)) <u>83.00</u>
TRAVEL (Per hour)*	\$((79.00)) <u>83.00</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((118.30)) <u>124.30</u>
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	\$((22.70)) <u>23.80</u>
REISSUED-LOST/DAMAGED	\$((14.60)) <u>15.30</u>
EXEMPT	\$((39.10)) <u>41.00</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((79.00)) <u>83.00</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((14.60)) <u>15.30</u>
REFUND FEE	\$((26.00)) <u>27.30</u>

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
 **Per state guidelines.
 ***Actual charges incurred.

**WSR 20-04-083
 PERMANENT RULES
 PROFESSIONAL EDUCATOR
 STANDARDS BOARD**

[Filed February 4, 2020, 1:38 p.m., effective March 6, 2020]

Effective Date of Rule: Thirty-one days after filing.
 Purpose: Amend WAC to reflect policy changes implemented by passage of HB 1621 (2019) impacting professional educator standards board policy regarding the basic skills assessment for educators.

Citation of Rules Affected by this Order: Repealing WAC 181-01-0025; and amending WAC 181-78A-300, 181-01-001, and 181-01-002.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 19-22-100 on November 6, 2019.

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 3, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental 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: January 17, 2020.

Justin Montermini
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-051, filed 8/1/13, effective 9/1/13)

WAC 181-01-001 WEST-B extension. Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 181-79A-257 (~~((1)(b))~~) or 181-79A-260 have up to one calendar year from issuance of temporary permit to ~~((pass))~~ take the WEST-B basic skills ((test-or)) assessment and report the individual results; present evidence of ~~((passing))~~ taking an alternative ((assessment per WAC 181-01-0025,)) or equiva-

lent assessment per WAC 181-01-002, provided that they have completed all other requirements for (~~residency~~) ~~teacher~~ certification other than (~~passage of~~) the WEST-B requirement and are thus eligible for a temporary permit under WAC 181-79A-128.

AMENDATORY SECTION (Amending WSR 15-08-030, filed 3/25/15, effective 4/25/15)

WAC 181-01-002 WEST-B exemptions, alternatives, and equivalent assessments. (1) (~~Candidates who are prepared and/or certified out of state applying for a Washington state residency teaching certificate under WAC 181-79A-257 (1)(b) or 181-79A-260, or out of state candidates applying to masters level/post baccalaureate teacher preparation programs in the state of Washington, in lieu of passing the WEST-B, may present evidence of passing an alternative assessment per WAC 181-01-0025, or may provide official documentation of scores on equivalent skills tests as approved and published by the professional educator standards board. A candidate may substitute a passing score on one or more sections of skills tests approved by the board as equivalent passing score on the WEST-B.~~) Individuals seeking admission to a state approved teacher preparation program, and out-of-state candidates applying for a Washington state teacher certificate under WAC 181-79A-257 or 181-79A-260, must submit evidence of taking the WEST-B or an alternative or equivalent to the WEST-B as identified and accepted by the professional educator standards board. Individuals may not receive a teacher certificate without taking a basic skills assessment under this section.

(2) Candidates applying for a Washington state (~~residency or professional~~) teaching certificate under WAC 181-79A-257 (~~(1)(b)~~) who hold a valid certificate through the National Board for Professional Teaching Standards or other equivalent second tier educator certifications from other states as approved and published by the professional educator standards board, are exempt from the WEST-B requirement.

AMENDATORY SECTION (Amending WSR 07-09-058, filed 4/12/07, effective 5/13/07)

WAC 181-01-004 (~~Appeals~~) Case-by-case exception process. (1) The Washington professional educator standards board may permit exceptions from the basic skills and content knowledge assessment requirements under RCW 28A.410.220 (1) and (2) on a case-by-case basis.

(2) Consistent with the discretion accorded to the professional educator standards board in RCW 28A.410.220(~~(3)~~) (4), the alternative assessments, equivalent assessments, exemptions and extensions provided for in WAC 181-01-001, 181-01-002, 181-02-001 and 181-02-002, shall be the sole exceptions to the WEST-B and WEST-E assessment requirements.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-01-0025 WEST-B alternatives.

AMENDATORY SECTION (Amending WSR 18-17-089, filed 8/14/18, effective 9/14/18)

WAC 181-78A-300 Educator preparation program provider requirements (~~for teacher candidates~~). In addition to the general program standards and expectations established in WAC 181-78A-220 and 181-78A-231 through 181-78A-237, providers shall comply with the following:

(1) Field placement. The board will publish minimum field placement and clinical experience requirements for all roles. Providers must establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement. Each field placement agreement shall require, but not be limited to:

(a) Fingerprint and character clearance under RCW 28A.410.010 is current at all times during the field experience for candidates who do not hold a valid Washington certificate;

(b) Assurance that programs shall ensure candidates are placed in settings where they can be objectively evaluated;

(c) Specified qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating educator/administrator;

(d) Assurances related to the provision of mentors, including:

(i) Mentors are instructional leaders identified collaboratively with the partner school or district;

(ii) Mentors and principals are provided with a set of internship expectations;

(iii) Mentors receive or provide evidence of training on mentoring of adult learners;

(iv) Mentors must be fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(e) Providers must describe in writing the duties and responsibilities of site supervisors and mentors and the anticipated length and nature of the field experience;

(f) Teacher preparation programs.

(i) A provider of a teacher education program must administer the teacher performance assessment adopted by the board to all candidates in a residency certificate program.

(ii) Clinical practice for teacher candidates should consist of no less than four hundred fifty hours in classrooms settings.

(g) Administrator preparation programs.

(i) The internship for administrators shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought.

(ii) A provider of a principal preparation program shall require for those persons beginning their internship August 1, 2016, and after, an internship which requires practice as an intern for five hundred forty hours, of which at least one-half shall be during school hours, when students and/or staff are present, and for the duration of a full school year. A "full school year" shall mean at least the majority of an academic year: Provided further, that a provider of a principal preparation program shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220.

(iii) A provider of a superintendent preparation program shall require an internship of at least three hundred sixty hours.

(2) Assessment requirements for providers of teacher preparation programs.

(a) A provider of a teacher preparation program must assure that all candidates entering the program have successfully ~~((passed))~~ met the WEST B ~~((or its alternative or exemptions per))~~ requirement under chapter 181-01 WAC at the time of admission. ~~((The candidate must take and pass the WEST B, or provide evidence of meeting an alternative or exception at the time of admissions. Candidates admitted to a residency teacher preparation program prior to passage of the WEST B or its approved alternative or exemptions must pass the WEST B prior to student teaching.))~~ The provider must collect and hold evidence of candidates meeting this requirement.

(b) A provider of a teacher preparation program shall assure that the candidate has successfully attempted at least one WEST E or equivalent content assessment test per chapter 181-02 WAC prior to placing a teacher candidate in a student teaching role with a district. The provider must collect and hold evidence of candidates meeting this requirement.

(c) Teacher evaluation. Teacher preparation program providers shall require candidates for a residency certificate to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(d) Performance assessment. Teacher preparation program providers shall require that each candidate engage in a performance assessment process approved by the board. All candidates shall exit the residency certificate program with a professional growth plan.

(3) Required since time immemorial curriculum integration.

(a) There shall be a one quarter or semester course in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

(4) Principal preparation programs.

(a) A provider of a principal preparation program must require candidates to demonstrate knowledge of teacher evaluation research, Washington's evaluation requirements, and

successfully complete opportunities to practice teacher evaluation skills.

(b) Performance assessment. All candidates shall exit the preparation program with a professional growth plan.

(5) Professional education advisory board.

(a) All educator preparation program providers shall establish and maintain a professional education advisory board to participate in and cooperate with the organization on decisions related to the development, implementation, and revision of preparation program(s).

(b) The professional education advisory board has adopted operating procedures and has met at least three times a year.

(c) The professional education advisory board annually shall review and analyze data for the purposes of determining whether candidates have a positive impact on student learning and providing the institution with recommendations for programmatic change. This data may include, but not be limited to: Student surveys, follow-up studies, employment placement records, student performance portfolios, course evaluations, program review indicators, and summaries of performance on the pedagogy assessment for teacher candidates.

(d) The professional education advisory board shall make recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.

(6) This section shall be in effect beginning September 1, 2017.

WSR 20-04-084

PERMANENT RULES

CENTRAL WASHINGTON UNIVERSITY

[Filed February 4, 2020, 2:41 p.m., effective March 6, 2020]

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

Purpose: Repeal of obsolete and redundant rules superseded by adoption of chapter 106-141 WAC.

Citation of Rules Affected by this Order: Repealing WAC 106-140-021, 106-140-027, 106-140-031, 106-140-032, 106-140-033, 106-140-034, 106-140-035, and 106-140-640.

Statutory Authority for Adoption: RCW 28B.35.120 and Administrative Procedure Act, chapter 34.05 RCW.

Adopted under notice filed as WSR 19-16-104 on August 2, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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: October 8, 2019.

Kimberly J. Dawson
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 106-140-021 Advertising—Advertising on bulletin boards.
- WAC 106-140-027 Gallery art display.
- WAC 106-140-031 Publicity and literature—Outdoor signs.
- WAC 106-140-032 Publicity and literature—Bulletin boards.
- WAC 106-140-033 Publicity and literature—Personal "for sale" notices.
- WAC 106-140-034 Publicity and literature—Free dissemination of literature.
- WAC 106-140-035 Publicity and literature—Use of tables.
- WAC 106-140-640 Festivals prohibited.

WSR 20-04-086

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed February 5, 2020, 7:50 a.m., effective March 7, 2020]

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

Purpose: This amendment adds to the authority statement at the suggestion of the joint administrative rules review committee. The amendment clarifies the authority of the department. There are no substantive changes.

Statutory Authority for Adoption: RCW 47.01.101.

Adopted under notice filed as WSR 19-24-056 on November 26, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 4, 2020.

Kara Larsen, Director
Risk Management and
Legal Services Division

AMENDATORY SECTION (Amending WSR 19-17-062, filed 8/20/19, effective 9/20/19)

WAC 468-17-010 Authority. RCW 47.01.101 provides that the Washington state department of transportation (WSDOT) may adopt rules that are subject to the adoption procedures contained in the state Administrative Procedure Act. RCW 47.01.260(1) provides that WSDOT "shall exercise all the powers and perform all the duties necessary" to managing the state's transportation systems.

WSR 20-04-090

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed February 5, 2020, 8:51 a.m., effective March 7, 2020]

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

Purpose: Rule making is needed to: (1) Rename the rule; (2) eliminate the firm licensing requirement for CPA firms that do not perform or offer attest or compilation services; and (3) align the rule with the firm licensing requirements per chapter 18.04 RCW, which were changed with the passage of HB 1208.

Citation of Rules Affected by this Order: Amending WAC 4-30-112.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 19-22-001 on October 24, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 31, 2020.

Charles E. Satterlund, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-112 (~~(Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state?)~~) **In state and out-of-state firm licensing requirements.** (1) A firm license must be obtained from the board if ~~((any of the following criteria apply:~~

(a)) the firm has an office in this state and performs attest or compilation services for clients in this state~~((or~~

~~(b) The firm has an office in this state and, by any means, represents the firm to the public that the firm is a firm of certified public accountants)).~~

(2) A firm license is not required for a firm that does not have an office in this state but offers or renders attest services described in RCW 18.04.025(1), and meets the requirements listed in RCW 18.04.195 (1)(a)(iii)(A) through (D).

(3) A firm license is not required to perform other professional services in this state, including compilation, review and other services for which reporting requirements are provided in professional standards, if the firm complies with the following:

(a) The firm performs such services through individuals with practice privileges under RCW 18.04.350(2) and WAC 4-30-090 or reciprocal license under RCW 18.04.180 and 18.04.183 and board rules;

(b) The firm is licensed to perform such services in the state in which the individuals with practice privileges have their principal place of business; and

(c) The firm meets the board's quality assurance program requirements, when applicable.

(4) As a condition of this privilege, any nonresident firm meeting the requirement of subsection (2) or (3) of this section is deemed to have consented to:

(a) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(b) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules contained in Title 4 WAC;

(c) Cease offering or rendering professional services in this state through a specific individual or individuals if the license(s) of the individual(s) through whom the services are offered or rendered becomes invalid;

(d) Cease offering or rendering specific professional services in this state through an individual or individuals if the license(s) from the state(s) of the principal place of business of such individual(s) is restricted from offering or performing such specific professional services;

(e) The appointment of the state board which issued the firm license as their agent upon whom process may be served in any action or proceeding by this state's board against firm licensee;

(f) Not render those services described in subsection (1)~~((e))~~ of this section for a client with a home office in this state unless the firm that has obtained a license from this state (RCW 18.04.195 and 18.04.295) and this section; and

(g) Not render any professional services in this state through out-of-state individual(s) who are not licensed to render such services by the state(s) in which the principal place of business of such individual(s) is (are) located.

WSR 20-04-096

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed February 5, 2020, 10:53 a.m., effective March 7, 2020]

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

Purpose: The agency is amending subsection (1)(c) to clarify access to baby and child dentistry (ABCD) program services provided by a dental provider for eligible clients enrolled in an agency-contracted managed care organization (MCO) are paid through the fee-for-service payment system. The agency is adding subsection (1)(d) to reflect that ABCD program services provided by a nondental provider for eligible clients enrolled in an agency-contracted MCO must be billed directly through the client's MCO.

Citation of Rules Affected by this Order: Amending WAC 182-535-1245.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 20-02-016 on December 19, 2019.

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 the Request of a Non-governmental 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: February 5, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-20-047, filed 9/25/19, effective 10/26/19)

WAC 182-535-1245 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)(~~(§ or)~~).

(c) ABCD program services provided by a dental provider for eligible clients who are enrolled in ((a)) an agency-contracted managed care organization (MCO) ((plan)) are paid through the fee-for-service payment system.

(d) ABCD program services provided by a nondental provider for eligible clients who are enrolled in an agency-contracted managed care organization (MCO) must be billed directly through the client's MCO.

(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) Only ABCD-certified dentists and other agency-approved certified providers are paid an enhanced fee for furnishing ABCD program services. ABCD program services include, when appropriate:

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

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

(ii) Must include documentation of all of the following in the client's record:

(A) "Lift the lip" training;

(B) Oral hygiene training;

(C) Risk assessment for early childhood caries;

(D) Dietary counseling;

(E) Discussion of fluoride supplements; and

(F) Documentation in the client's record to record the activities provided and duration of the oral education visit.

(b) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;

(c) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;

(d) Topical application of fluoride varnish;

(e) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in the agency's current published documents;

(f) Interim therapeutic restorations (ITRs) for primary teeth, only for clients age five and younger. The agency pays an enhanced rate for these restorations to ABCD-certified, ITR-trained dentists as follows:

(i) A one-surface, resin-based composite restoration with a maximum of five teeth per visit; and

(ii) Restorations on a tooth can be done every twelve months through age five, or until the client can be definitively treated for a restoration.

(g) Therapeutic pulpotomy;

(h) Prefabricated stainless steel crowns on primary teeth, as specified in the agency's current published documents;

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

(j) Other dental-related services, as specified in the agency's current published documents.

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

WSR 20-04-097

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed February 5, 2020, 11:38 a.m., effective March 7, 2020]

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

Purpose: The department determined that this rule is outdated, inaccurate, has the potential to cause confusion, and is no longer needed. Necessary portions were adopted under different chapters.

Citation of Rules Affected by this Order: Repealing chapter 388-22 WAC.

Statutory Authority for Adoption: RCW 43.20A.075, 34.05.353 (2)(c), 74.04.050, 74.08.090.

Adopted under notice filed as WSR 19-24-095 on December 3, 2019.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 29, 2020.

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 388-22 WAC Determining and verifying eligibility—Definitions