

WSR 14-21-132
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed October 20, 2014, 2:49 p.m.]

Title of Rule and Other Identifying Information: Amending chapter 388-106 WAC to update references to health care authority WACs.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850, or deliver to 1115 Washington, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, AND RECEIVED BY January 6, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-106 WAC to update references to health care authority WACs that have changed.

Changing references to other WACs without changing the effect of the rule is appropriate for expedited rule making under RCW 34.05.353 (1)(c).

Reasons Supporting Proposal: Updating the rule will help clients locate the appropriate WAC references related to long-term care services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2531.

October 15, 2014
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-070, filed 7/28/06, effective 8/28/06)

WAC 388-106-0047 When can the department terminate or deny long-term care services to me? (1) The department will deny or terminate long-term care services if you are not eligible for long-term care services pursuant to WAC 388-106-0210, 388-106-0310, ((388-106-0410, 388-106-0510,)) or 388-106-0610.

(2) The department may deny or terminate long-term care services to you if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, any of the following conditions exist:

(a) After a department representative reviews with you your rights and responsibilities as a client of the department, per WAC 388-106-1300 and 388-106-1303, you refuse to accept those long-term care services identified in your plan of care that are vital to your health, welfare or safety;

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider;

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

- (i) Threatening, uncontrolled animals (e.g., dogs);
- (ii) The manufacture, sale, or use of illegal drugs;
- (iii) The presence of hazardous materials (e.g., exposed sewage, evidence of a methamphetamine lab).

AMENDATORY SECTION (Amending WSR 12-14-064, filed 6/29/12, effective 7/30/12)

WAC 388-106-0210 Am I eligible for MPC-funded services? You are eligible for MPC-funded services when the department assesses your functional ability and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC ((388-500-0005)) 182-513-1305. Categorically needy medical institutional programs described in chapter ((388-513)) 182-513 WAC do not meet this criteria.

(2) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need for assistance with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: ■Application of ointment or lotions; ■Toenails trimmed; ■Dry bandage changes; (■ = if you are over eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/ Needs Need: Coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (a) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

; or

(b) You have an unmet or partially met need for assistance or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Physical Help/part of bathing	One person physical assist
Dressing	Extensive Assistance	One person physical assist

For each Activity of Daily Living, the minimum level of assistance required in		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Personal Hygiene	Extensive Assistance	One person physical assist
Body care which includes: ■Application of ointment or lotions; ■Toenails trimmed; ■Dry bandage changes; (■ = if you are eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/ Needs Need: Coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.		

AMENDATORY SECTION (Amending WSR 12-15-087, filed 7/18/12, effective 8/18/12)

WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of medicare reimbursed home health services as described in WAC 182-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of medicare-reimbursed home health services as provided under WAC 182-551-2100.

(8) Specialized durable and nondurable medical equipment and supplies under WAC (~~(388-543-1000)~~ 182-543-1000), if the items are:

(a) Medically necessary under WAC 182-500-0700;

(b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicare and/or medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services, when the service:

(a) Provides access to community services and resources to meet your therapeutic goal;

(b) Is not diverting in nature; and

(c) Is in addition to and does not replace the medicare-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency.

A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(14) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility; or

(F) Are not capable of participating safely in a group care setting.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0325 How do I pay for COPES services? Depending on your income and resources, you may be required to pay participation toward the cost of your care, as outlined in WAC ((~~388-515-1505~~)) 182-515-1505. If you have nonexempt income that exceeds the cost of COPES services, you may retain the difference. If you are receiving services in:

(1) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(2) In a residential facility, you must use your income to pay for your room and board and services. You are allowed to keep some of your income for personal needs allowance (PNA). The department determines the amount of PNA that you may keep. The department pays the facility for the difference between what you pay and the department-set rate for the facility. The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the medicaid resident dies in the facility; or

(b) Day of service before the day the medicaid resident is discharged.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0330 Can I be employed and receive COPES? You can be employed and receive COPES, per WAC ((~~388-515-1505~~)) 182-515-1505.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0355 Am I eligible for nursing facility care services? You are eligible for nursing facility care if the department:

(1) Assesses you in CARE and determines that you meet the functional criteria for nursing facility level of care which means one of the following applies:

(a) You require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis;

(b) You have an unmet or partially met need with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Your need for assistance in any activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose in determining your functional eligibility.		

(c) You have an unmet or partially met need with at least two of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Your need for assistance in any of the activities listed in subsection (c) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

or:

(d) You have a cognitive impairment and require supervision due to one or more of the following: Disorientation, memory impairment, impaired decision making, or wandering and have an unmet or partially met need with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Your need for assistance in any of the activities listed in subsection (d) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

(2) Determines that you meet the financial eligibility requirements set through WAC ((388-513-1315)) 182-513-1315.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0610 Am I eligible for chore-funded services? To be eligible for chore-funded services you must meet all of the following criteria:

- (1) Be grandfathered on the chore program before August 1, 2001 and have continued to receive chore without a break in service.
- (2) Not be eligible for MPC or COPES.
- (3) Be eighteen years of age or older.
- (4) Have an unmet or partially met need with at least one of the following activities of daily living, as defined in WAC 388-106-0010.

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: Application of ointment or lotions; Toenails trimmed; Dry bandage changes; or Passive range of motion treatment.	Need	N/A
Your need for assistance in any of the activities listed in this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

(5) Have net household income (as described in WAC 388-450-0005 and 388-450-0040) not exceeding:

- (a) The sum of the cost of your chore services; and
- (b) One-hundred percent of the federal poverty level (FPL) adjusted for family size.

(6) Have resources, as described in chapter 388-470 WAC, which do not exceed ten thousand dollars for a one-person family or fifteen thousand dollars for a two-person family. (Note: One thousand dollars for each additional family member may be added to these limits.); and

(7) Not transfer assets on or after November 1, 1995 for less than fair market value, as described in WAC ((388-513-1365)) 182-513-1365.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0625 How do I pay for chore? You may retain an amount equal to one hundred percent of the federal poverty level, adjusted for family size, as the home maintenance allowance and pay the difference between the FPL and your nonexempt income. Exempt income includes:

- (1) Income listed in WAC ((388-513-1340)) 182-513-1340;

(2) Spousal income allocated and actually paid as participation in the cost of the spouse's community options program entry system (COPEs) services;

(3) Amounts paid for medical expenses not subject to third party payment;

(4) Health insurance premiums, coinsurance or deductible charges; and

(5) If applicable, those work expense deductions listed in WAC 388-106-0630(2).

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0655 Am I eligible to receive volunteer chore services? You may receive volunteer chore services if you are:

- (1) Eighteen years of age or older;
- (2) Living at home unless you are moving from a residential facility to home and need assistance moving;
- (3) Unable to perform certain personal care tasks due to functional or cognitive impairment;
- (4) Financially unable to purchase services from a private provider;
- (5) Not receiving services under COPEs, ((MNIW;)) MPC, or chore because you:
 - (a) Do not meet the eligibility requirements; or
 - (b) Decline these services.
- (6) In need of assistance from volunteer chore in addition to or in substitution of paid services under COPEs, ((MNIW;)) MPC, or chore.

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-106-0705 Am I eligible for PACE services?

To qualify for medicaid-funded PACE services, you must apply for an assessment by contacting your local home and community services office. The department will assess and determine whether you:

- (1) Are age:
 - (a) Fifty-five or older, and blind or have a disability, as defined in WAC ((388-475-0050)) 182-512-0050, SSI-related eligibility requirements; or
 - (b) Sixty-five or older.
- (2) Need nursing facility level of care as defined in WAC 388-106-0355;
- (3) Live within the designated service area of the PACE provider;
- (4) Meet financial eligibility requirements. This means the department will assess your finances, determine if your income and resources fall within the limits, and determine the amount you may be required to contribute, if any, toward the cost of your care as described in WAC ((388-515-1505)) 182-515-1505;

(5) Not be enrolled in any other medicare or medicaid prepayment plan or optional benefit; and

(6) Agree to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0905 Am I eligible to receive ((GAU-funded)) medical care services (MCS) residential care services? You are eligible to receive ((GAU)) MCS-funded residential care services if:

- (1) You meet financial eligibility requirements for ((general assistance unemployable (GAU)) medical care services (MCS), described in WAC ((388-400-0025)) 182-508-0005;
- (2) You are not eligible for services under COPES, ((MNRW,)) or MPC; and
- (3) You are assessed in CARE and meet the functional criteria outlined in WAC 388-106-0210(2).

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0955 Am I eligible for residential care discharge allowance? You are eligible for a residential discharge allowance if you:

- (1) Receive long-term care services from home and community services;
- (2) Are being discharged from a hospital, nursing facility, a licensed assisted living facility, enhanced services facility, or adult family home to your own home;
- (3) Do not have other programs, services, or resources to assist you with these costs; and
- (4) Have needs beyond what is covered under the community transition service (under COPES ((and MNRW))).

AMENDATORY SECTION (Amending WSR 11-05-079, filed 2/15/11, effective 3/18/11)

WAC 388-106-1010 Am I eligible for medicaid-funded private duty nursing services? In order to be eligible for medicaid-funded private duty nursing (PDN):

- (1) You must be eighteen years of age or older and financially eligible, which means you:
 - (a) Meet medicaid requirements under the categorically needy program or the medically needy program; and
 - (b) Use private insurance as first payer, as required by medicaid rules. Private insurance benefits, which cover hospitalization and in-home services, must be ruled out as the first payment source to PDN.
- (2) You must be medically eligible, which means:
 - (a) The department has received the skilled nursing task log or ADSA-approved equivalent completed by a nurse licensed under chapter 18.79 RCW.
 - (b) You have been assessed by an ADSA community nurse consultant (CNC) or nursing care consultant (NCC) and determined medically eligible for PDN.
- (3) The department must assess you using the CARE assessment tool, as provided in chapter 388-106 WAC to determine that you:
 - (a) Require care in a hospital or meet nursing facility level of care, as defined in WAC 388-106-0310; and
 - (b) Have unmet skilled nursing needs that cannot be met in a less costly program or less restrictive environment; and
 - (c) Are not able to have your care tasks provided through nurse delegation, WAC 246-840-910 through 246-840-970;

COPES skilled nursing, WAC 182-515-1505; DDD waiver skilled nursing, WAC 388-845-0215 or self-directed care RCW 74.39.050; and

- (d) Have a complex medical need that requires four or more hours every day of continuous skilled nursing care that can be safely provided outside a hospital or nursing facility; and
- (e) Require skilled nursing care that is medically necessary, per WAC ((388-500-0005)) 182-500-0070; and
- (f) Are able to supervise your care or have a guardian who is authorized and able to supervise your care; and
- (g) Have a family member or other appropriate informal support who is responsible for assuming a portion of your care; and
- (h) Are medically stable and appropriate for PDN services, as reflected by your primary care provider's:
 - (i) Orders for medical services; and
 - (ii) Documentation of approval for the service provider's PDN care plan.
- (i) Do not have any other resources or means to obtain PDN services; and
- (j) Are dependent upon technology every day with at least one of the following skilled care needs:
 - (i) Mechanical ventilation which takes over active breathing due to your inability to breathe on your own due to injury or illness. A tracheal tube is in place and is hooked up to a ventilator that pumps air into the lungs; or
 - (ii) Complex respiratory support, which means that you require two of the following treatment needs:
 - (A) Postural drainage and chest percussion;
 - (B) Application of respiratory vests;
 - (C) Nebulizer treatments with or without medications;
 - (D) Intermittent positive pressure breathing;
 - (E) O2 saturation measurement with treatment decisions dependent on the results; or
 - (F) Tracheal suctioning.
 - (iii) Intravenous/parenteral administration of multiple medications, and care is occurring on a continuing or frequent basis; or
 - (iv) Intravenous administration of nutritional substances, and care is occurring on a continuing or frequent basis.

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

AMENDATORY SECTION (Amending WSR 05-24-091, filed 12/6/05, effective 1/6/06)

WAC 388-106-1020 How do I pay for my PDN services? You are not required to pay participation for PDN services, but the cost of services is subject to estate recovery, under chapter ((388-527)) 182-527 WAC. If you are also receiving other services (e.g. COPES), you may be responsible for paying participation as required under WAC ((388-515-1505, 388-515-1540, or 388-515-1550)) 182-515-1505. Your financial worker will inform you about your participation requirements for those services.

AMENDATORY SECTION (Amending WSR 11-05-079, filed 2/15/11, effective 3/18/11)

WAC 388-106-1040 What requirements must ((a)) an RN, or LPN under the supervision of an RN, meet in order to provide and get paid for my PDN services? In order to be paid by the department, a private RN under the supervision of a primary care provider or an LPN under the supervision of an RN, must:

(1) Be licensed and in good standing, as provided in RCW 18.79.030 (1)(3);

(2) Have a contract with the medicaid agency to provide PDN services;

(3) Complete a background check which requires fingerprinting if the RN or LPN has lived in Washington state less than three years;

(4) Have no conviction for a disqualifying crime, as provided in RCW 43.43.830 and 43.43.842 and WAC 388-71-0500 through 388-71-05640 series;

(5) Have no finding of fact and conclusion of law (stipulated or otherwise), agreed order, or final order issued by a disciplining authority, a court of law, or entered into a state registry with a finding of abuse, neglect, abandonment or exploitation of a minor or vulnerable adult;

(6) Provide services according to the care plan under the supervision/direction of the primary care provider;

(7) Document all PDN services provided by the care plan as required by WAC ((388-502-0020)) 182-502-0020 and 246-840-700;

(8) Meet provider requirements under WAC 388-71-0510, 388-71-0515, 388-71-0540, 388-71-0551, and 388-71-0556;

(9) Complete time sheets on a monthly basis;

(10) Complete the PDN seven-day look back skilled nursing task log and submit it to the CNC or NCC for review for initial eligibility determination, and for ongoing eligibility every six months; and

(11) Submit timely and accurate invoices for payment.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 11-05-079, filed 2/15/11, effective 3/18/11)

WAC 388-106-1050 May I receive other long-term care services in addition to PDN? (1) In addition to PDN services, you may be eligible to receive care through community options program entry system (COPES), ((the medically needy residential waiver (MNRW), the medically needy in-home waiver (MNIW);)) or medicaid personal care (MPC), for unmet personal needs not performed by informal supports.

(2) PDN hours will be deducted from the personal care hours generated by CARE to account for services that meet some of your need for personal care services (i.e., one hour from the available hours for each hour of PDN authorized per WAC 388-106-1030).

(3) Services may not be duplicated. PDN hours may not be scheduled during the same time that personal care hours

are being provided by an individual provider or home care agency provider.

(4) The PDN provider is responsible for providing assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) unless there is an informal support that is providing or assisting at the same time.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1105 How do I apply for SCSA-funded services? To receive SCSA-funded services, you or your representative must:

(1) Complete and submit a department application form, providing complete and accurate information; and

(2) Promptly submit a written report of any changes in income or resources. For the definition of income and resources, refer to chapter 182-509 WAC ((388-500-0005)).

WSR 14-22-006

EXPEDITED RULES

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Filed October 23, 2014, 9:10 a.m.]

Title of Rule and Other Identifying Information: Rules governing the appointment of public employment relations commission staff arbitrators, WAC 391-65-072 and 391-65-073.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Michael P. Sellars, Executive Director, Public Employment Relations Commission, 112 Henry Street, Suite 300, Olympia, WA 98506 [98506], AND RECEIVED BY January 5, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under current agency rule, PERC will not appoint agency staff members to conduct grievance arbitrations involving school districts and community college districts. By repealing WAC 391-65-072 and 391-65-073, school districts, community colleges, and the labor organizations representing employees at school district and community colleges may, if both parties agree, ask PERC to appoint a staff arbitrator to hear any grievance that may arise under a collective bargaining agreement negotiated under chapter 41.59 RCW or chapter 28B.52 RCW.

Reasons Supporting Proposal: Both WAC 391-65-072 and 391-65-073 are unnecessary. If a public employer and labor organization desire to have PERC appoint a staff arbi-

trator to hear a grievance arising under a collective bargaining agreement, both parties must agree to such a request.

Statutory Authority for Adoption: RCW 41.58.050, 41.59.110, 28B.52.080.

Statute Being Implemented: None.

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

Name of Proponent: Eric Nordlof, attorney at law, private.

Name of Agency Personnel Responsible for Drafting: Dario de la Rosa, Olympia, Washington, (360) 570-7328; Implementation and Enforcement: Michael P. Sellars, Olympia, Washington, (360) 570-7306.

October 23, 2014

Dario de la Rosa

Representation Case Administrator

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|--|
| WAC 391-65-072 | Special provision—Educational employees. |
| WAC 391-65-073 | Special provision—Academic employees. |

WSR 14-22-068 EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed October 31, 2014, 10:45 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-261 Commute trip reduction incentive, this rule discusses the various commute trip reduction incentives available. The amendments in this proposal are to the commute trip reduction incentives under chapter 82.70 RCW in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY Monday, January 5, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to this rule explain that:

- Vehicles must be "primarily" used for commuter ride sharing (subsection (3)(b));
- If the program is not extended after June 30, 2015, commute trip reduction incentive payments paid by employers and property managers from January 1 through June 30, 2015 will not accrue commute trip reduction credits (subsection (4)(h));
- Deleting dated language relating to periods prior to a statutory change effective June 30, 2005; and
- Clarifying language in an example that there is a maximum credit limit of \$60 per employee (subsection (k)(iii)).

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: To recognize provisions of ESSB 6001 (chapter 222, Laws of 2014) and SSB 6333 (chapter 97, Laws of 2014).

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

Statute Being Implemented: RCW 82.70.020, 82.70.040, 82.70.900, 82.44.015, 82.08.0287, and 82.12.0282.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

October 31, 2014

Dylan Waits

Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-13-096, filed 6/17/14, effective 7/18/14)

WAC 458-20-261 Commute trip reduction incentives. (1) **Introduction.** This rule explains the various commute trip reduction incentives that are available. First, RCW 82.04.355 and 82.16.047 provide exemptions from business and occupation (B&O) tax and public utility tax on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs. RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride-sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or public utility tax credit, effective July 1, 2003, in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **B&O tax and public utility tax exemptions on providing commuter ride sharing or ride sharing for persons with special transportation needs.** Amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs are exempt from the business and occupation tax and from the public utility tax. RCW 82.04.355 and 82.16.047.

(a) **What is "commuter ride sharing"?** "Commuter ride sharing" means a car pool or van pool arrangement, whereby one or more fixed groups:

- (i) Not exceeding fifteen persons each, including the drivers; and
- (ii) Either:
 - (A) Not fewer than five persons, including the drivers; or
 - (B) Not fewer than four persons, including the drivers, where at least two of those persons are confined to wheelchairs when riding;

Are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. Each group must be in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institutions.

(b) **What is "ride sharing for persons with special transportation needs"?** "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs.

(i) **What is a "private, nonprofit transportation provider"?** A "private, nonprofit transportation provider" is any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs.

(ii) **What is "persons with special transportation needs"?** "Persons with special transportation needs" are those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation.

(3) **Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ride-sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles.

(a) **What are the requirements?** The requirements are that the passenger motor vehicles must be used:

- (i) For commuter ride sharing or ride sharing for persons with special transportation needs; and
- (ii) As ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must pay the retail sales tax or use tax.

(b) **Additional requirements in certain cases.** Vehicles ~~((with five or six passengers, including the driver,))~~ used primarily for commuter ride sharing must be operated within a county, or a city or town within that county, which has a commute trip reduction plan under chapter 70.94 RCW in order to

be exempt from retail sales tax or use tax. In addition, for the exemptions to apply, at least one of the following conditions must apply:

- (i) The vehicle must be operated by a public transportation agency for the general public;
- (ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or
- (iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

Individual-employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commute ride-sharing arrangement conforms to a car pool/van pool element contained within their commute trip reduction program.

(4) **B&O tax or public utility tax credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** Effective July 1, 2003, RCW 82.70.020 provides a credit against B&O tax or public utility tax liability for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) **What is "ride sharing"?** "Ride sharing" means a car pool or van pool arrangement, whereby a group of at least two but not exceeding fifteen persons, including the driver, is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. The driver must also be on the way to or from his or her place of employment or educational or other institution. "Ride sharing" includes ride sharing on Washington state ferries.

(c) **What is "public transportation"?** "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries.

(d) **What is "car sharing"?** "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(e) **What is "nonmotorized commuting"?** "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(f) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year.

(g) **What is a "fiscal year"?** A "fiscal year" begins at July 1st of one year and ends on June 30th of the following year.

(h) **When will the credit expire?** The credit program is scheduled to expire June 30, 2015. If the program is not extended after June 30, 2015, commute trip reduction incentive payments paid by employers and property managers from January 1, 2015 through June 30, 2015, will not accrue commute trip reduction credits.

(i) **What are the limitations of the credit?** ~~((For periods after June 30, 2005:))~~

(i) The credit may not exceed the amount of B&O tax or public utility tax that would otherwise be due for the same fiscal year.

(ii) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and public utility tax.

(iii) A person may not take a credit for amounts claimed for credit by other persons.

(iv) Total credit received by a person against both B&O tax and public utility tax may not exceed two hundred thousand dollars for a fiscal year. ~~((This limitation does not apply to credits deferred from prior fiscal years as described in (i)(vii) and (viii) of this subsection.))~~

(v) Total credit granted to all persons under both B&O tax and public utility tax, including any credits carried forward from prior fiscal years as described in (i)(vii) of this subsection, may not exceed:

(A) Two million seven hundred fifty thousand dollars in any fiscal year through the fiscal year ending June 30, 2013; and

(B) One million five hundred thousand dollars per fiscal year for the period beginning July 1, 2013, through June 30, 2016.

(vi) No credit or portion of a credit denied, because of exceeding the limitations in (i)(iv) or (v) of this subsection, may be used against tax liability for other fiscal years ~~((, subject to (i)(vii) and (viii) of this subsection.))~~

~~(vii) A person, with B&O tax and public utility tax liability equal to or in excess of the credit for a fiscal year, may use all or part of the credit deferred prior to July 1, 2005, for a period of not more than three fiscal years after the fiscal year~~

~~in which the credit accrued. No credit deferred under this paragraph (i)(vii) of this subsection may be used after June 30, 2008. The person must submit an application, as provided in (j)(i) of this subsection, in the fiscal year tax credit will be applied, and the credit must be approved by the department before use. This application is subject to eligibility under (i)(v) of this subsection for the fiscal year tax credit will be applied. If a deferred credit is subject to proportional reduction under (j)(iv) of this subsection, the amount of deferred credit reduced may be carried forward as long as the period of deferral does not exceed three years after the year the credit was earned.~~

~~(viii) For deferred))~~

~~(vii) Credit approved by the department ((after June 30, 2005, the approved credit)) may be carried forward to subsequent years until used((-The limitation described in (i)(v) of this subsection does not apply to such deferred credit approved after June 30, 2005.~~

~~(ix)), except that no person ((is eligible for)) may claim the tax credit((-including the deferred tax credit authorized under (i)(vii) and (viii) of this subsection,)) after June 30, ((2014)) 2015.~~

~~((x)) (viii) No person is eligible for tax credit if the additional revenues for the multimodal transportation account created under RCW 46.68.035(1), 82.08.020(3), 82.12.045(7), 46.16.233(2), and 46.16.690 (((created by the Engrossed Substitute House Bill No. 2231, chapter 361, Laws of 2003))) are terminated.~~

~~(j) What are the credit procedures? ((For periods after June 30, 2005:))~~

(i) Persons applying for the credit must complete an application. The application must be received by the department between January 1 and January 31, following the calendar year in which the applicants made incentive payments. The application must be made to the department in a form and manner prescribed by the department.

(ii) ~~((An application due by January 31, 2006, must not include incentive payments made from January 1, 2005, to June 30, 2005.~~

~~(iii)) The department must ((rule)) make a determination on an application within sixty days of the January 31 deadline. In addition, the department must disapprove an application not received by the January 31 deadline. Once the application is approved and tax credit is granted, the department is not allowed to increase the credit.~~

~~((iv)) (iii) If the total amount of credit applied for by all applicants in a fiscal year exceeds the limitation as provided in (i)(v) of this subsection, the amount of credit allowed for all applicants is proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years((-except as provided in (i)(vii) of this subsection)).~~

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

(i) An employer pays one hundred eighty dollars for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of

fifty dollars. These are the total expenditures during a fiscal year of amounts paid to or on behalf of employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of sixty dollars for the amount spent for the employee using the bus pass. Fifty percent of one hundred eighty dollars is ninety dollars, but the credit is limited to sixty dollars per employee. The employer may claim a credit of twenty-five dollars (fifty percent of fifty dollars) for the amount spent for the employee who bicycles to work. Even though fifty percent of two hundred thirty dollars, the amount spent on both employees, works out to be less than sixty dollars per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) An employer provides parking spaces for the exclusive use of ride-sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride-sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit ~~((if it does not cause the sixty-dollar limitation to be exceeded, because it is an amount paid on behalf of a specific))~~ but there is a maximum credit limit of sixty dollars per employee.

(iv) An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

WSR 14-22-081
EXPEDITED RULES
DEPARTMENT OF HEALTH
(Board of Physical Therapy)
[Filed November 3, 2014, 3:02 p.m.]

Title of Rule and Other Identifying Information: WAC 246-915-995 Waiver of examination—Physical therapist assistants, proposing to repeal this rule because it is now obsolete.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF

THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kris Waidely, Program Manager, Department of Health, Board of Physical Therapy, P.O. Box 47852, Olympia, WA 98504-7852, AND RECEIVED BY January 5, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of physical therapy (board) is proposing to repeal WAC 246-915-995 because it is no longer needed.

Reasons Supporting Proposal: RCW 18.74.038 requires licensure for physical therapist assistants (PTAs). The legislation required the board to establish rules that waive the examination requirement and issue a license to a person who meets the commonly accepted standards for practicing as a PTA from July 1, 2008, through July 1, 2009. This period of time has passed and the rule is no longer needed. Per RCW 34.05.353 (2)(c), Administrative Procedure Act, expedited rule making, this proposal qualifies for expedited rule making because it is no longer necessary because of changed circumstances.

Statutory Authority for Adoption: RCW 18.74.023.

Statute Being Implemented: RCW 18.74.023 and 18.74.038.

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

Name of Proponent: Department of health, board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kris Waidely, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

November 3, 2014
Blake T. Maresh
Executive Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-915-995 Waiver of examination—Physical therapist assistants.

WSR 14-22-094
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed November 4, 2014, 12:05 p.m.]

Title of Rule and Other Identifying Information: WAC 458-30-232 Application for timber land classification, 458-30-240 Agreement relating to open space and timber land classifications, 458-30-275 Continuing classification upon sale or transfer of ownership of classified land—Actions of landowner and county officials to be taken prior to recording a conveyance of classified land, 458-30-280 Notice to withdraw from classification, 458-30-285 Withdrawal from classification, 458-30-295 Removal of classification, 458-30-300

Additional tax—Withdrawal or removal from classification, 458-30-325 Transfers between classifications—Application for reclassification, 458-30-500 Definitions of terms used in 458-30-500 through 458-30-590, 458-30-520 Notification of district—Certification by assessor—Estimate by district, 458-30-550 Exemption—Removal or withdrawal, and 458-30-700 Designated forest land—Removal—Change in status—Compensating tax.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leslie Mullin, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail LeslieMu@dor.wa.gov, AND RECEIVED BY January 5, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue is proposing to amend these rules to incorporate current and past legislation:

WAC 458-30-232 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program. Updated rule by adding statutory language from RCW 84.34.041 and added language from WAC 458-30-240 and 458-30-250.

WAC 458-30-240 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program.

WAC 458-30-275 incorporates 2ESHB 1117 (2014), which allows classified land to be transferred without the signing of a notice of classification continuance if it is a transfer by a transfer on death deed; E2SHB 1597 (2010), which allows classified land to be subject to the same gross income requirements applicable before death if classified farm and agricultural land is transferred to a surviving state registered domestic partner; and EHB 1815 (2009), which allows a minimum investment requirement for land at least five but less than twenty acres that contains a standing crop. Updated rule to reflect existing language in RCW 84.34.020, 84.34.041, 84.34.080, and 84.34.108. Updated examples, deleted outdated references, and clarified various subsections.

WAC 458-30-280 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program. Updated rule by adding statutory language from RCW 84.34.070.

WAC 458-30-285 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program. Updated rule by adding statutory language from RCW 84.34.070, 84.34.108, and also updated examples.

WAC 458-30-295 incorporates 2ESHB 1117 (2014), which allows classified land to be transferred without the

signing of a notice of classification continuance if it is a transfer by a transfer on death deed; and SSB 6333 (2014), which added language to RCW 84.40.038 regarding electronic transmission of value change notices or other notices. Updated rule by adding language from RCW 84.34.108, WAC 458-30-270, 458-30-275, and 458-30-285; and clarified various subsections.

WAC 458-30-300 incorporates 2ESHB 1117 (2014), which allows classified land to be transferred without the signing of a notice of classification continuance if it is a transfer by a transfer on death deed; SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program; and HB 1277 (2013), which allows federally recognized Indian tribes to acquire classified land for conservation purposes without payment of additional tax, interest, and penalty. Updated rule using language from RCW 84.34.108, 84.33.145, WAC 458-30-245, 458-30-275, and 458-30-295 to clarify removal process, and added an example.

WAC 458-30-325 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program. Deleted outdated language and reference, added an example, and updated an example; and updated rule using language from RCW 84.34.030 and 84.33.145.

WAC 458-30-500 incorporates 2SHB 1416 (2013), which removed irrigation districts from the definition of "local government;" and deleted definitions that are already defined in a prior section.

WAC 458-30-520 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program; added clarifying language from RCW 84.34.030, 84.34.035 and 84.34.041; and deleted language that conflicts with statute.

WAC 458-30-550 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program.

WAC 458-30-700 incorporates 2ESHB 1117 (2014), which allows classified land to be transferred without the signing of a notice of classification continuance if it is a transfer by a transfer on death deed; SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program; SSB 6333 (2014), which added language to RCW 84.40.038 regarding electronic transmission of value change notices or other notices and also clarified that treasurers mail out the notice of the amount of compensating tax due; HB 1277 (2013), which allows federally recognized Indian tribes to acquire designated forest land for conservation purposes without payment of compensating tax; 2SSB 5367 (2013), which allows community forest trust lands to be removed from designation without compensating tax if acquired by certain entities; ESHB 2502 (2012), which allows forest land to be removed from designation if transferred to certain entities for conservation purposes in a county with a population of at least 245,000 that borders Puget Sound; SHB 1733 (2009), which allowed forest land to be removed without compensating tax if the assessor discovered the forest land was designated in error through no fault of the owner; updated removal dates, chart, and language to be consistent with RCW 84.33.140, 84.33.220, and existing

language in WAC 458-30-700, added an example, and deleted an outdated reference.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: To recognize current and past legislation.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.08.080, 84.34.141, 84.34.360.

Statute Being Implemented: RCW 84.33.130, 84.33.140, 84.33.145, 84.33.220, 84.34.020, 84.34.030, 84.34.035, 84.34.041, 84.34.070, 84.34.080, 84.34.108, 84.34.310-[84.34.]370, 84.34.400, and 84.40.038.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 534-1589; Implementation and Enforcement: Kathy Beith, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 534-1503.

November 4, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-30-232 Application for timber land classification. Introduction. This ~~((section))~~ rule explains the application process used by an applicant who seeks to have land classified or reclassified as timber land under RCW 84.34.020(3).

~~((1))~~ **Definitions.** For purposes of this ~~((section))~~ rule, the following definitions apply:

~~((a))~~ **(a) "Stand of timber"** means a stand of trees that will yield log and/or fiber:

~~((i))~~ **(i)** Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; and

~~((ii))~~ **(ii)** Of sufficient value to cover at least all the costs of harvest and transportation to available markets.

~~((b))~~ **(b) "Timber management plan"** means a plan prepared by a professional forester, or by another person who has adequate knowledge of timber management practices, concerning the use of the land to grow and harvest timber. ~~((Such a))~~ This plan is described in RCW 84.34.041 and includes the following elements:

~~((i))~~ **(i)** A legal description of the land;

~~((ii))~~ **(ii)** A statement that the timber land is held in contiguous ownership of at least five acres and is primarily devoted to and used to grow and harvest timber;

~~((iii))~~ **(iii)** A brief description of the timber on the timber land or, if the timber has been recently harvested, the owner's plan to restock the land with timber;

~~((iv))~~ **(iv)** A statement about whether the timber land is also used to graze livestock;

~~((v))~~ **(v)** A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

~~((vi))~~ **(vi)** If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the timber land within three years.

~~((2))~~ **(2) Where to submit.** An application for classification or reclassification of land as timber land under RCW 84.34.020(3) is submitted to the county legislative authority of the county in which the land is located.

~~((3))~~ **(3) Granting authority.** The identity of the entity that will act as the granting authority will be determined by the location of the land the applicant seeks to classify or reclassify as timber land. The granting authority will be determined as follows:

(a) If the parcel(s) of land is located in an unincorporated area of county, the county legislative authority is the granting authority.

(b) If the parcel(s) of land is located in an incorporated area, a copy of the application for classification is forwarded to the city legislative authority in which the land is located. Applications must be acted upon by:

(i) A granting authority composed of three members of the county legislative ~~((body))~~ authority and three members of the city legislative authority in a meeting where members may be physically absent but participating through a telephonic connection; or

(ii) Separate affirmative acts by both the county and city legislative authorities whereby each authority affirms the entirety of the application without modification or each authority affirms the application with identical modifications.

~~((4))~~ **(4) Application process.**

(a) **Consider all relevant evidence.** The granting authority will act upon the application with due regard to all relevant evidence.

(b) **Information that must accompany application.** An application for classification or reclassification of a parcel(s) of land as timber land is made on forms ~~((prepared))~~ provided by the department. An application must include the following information and be accompanied by a timber management plan as defined in subsection (2) of this ~~((section))~~ rule:

(i) A legal description of or the parcel number(s) of all land the applicant desires to be classified as timber land;

(ii) The date or dates the land was acquired;

(iii) A brief description of the timber on the land or, if the timber has been harvested, the owner's plan for restocking;

(iv) If the timber or forest management plan for the land has existed for more than one year, the application must indicate the nature and extent to which the plan has been implemented or changed;

(v) Whether the land is used for grazing;

(vi) Whether the land has been subdivided or a plat has been filed with respect for the land;

(vii) Whether the land and the applicant have complied with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

(viii) Whether the land is subject to forest fire protection assessments under RCW 76.04.610;

(ix) Whether the land is subject to a lease, option, or other right that permits the land to be used for a purpose other than growing and harvesting timber;

(x) A summary of the applicant's past experience and activities in growing and harvesting timber;

(xi) A summary of the applicant's current and continuing activities in growing and harvesting of timber; and

(xii) A statement that the applicant is aware of the potential tax liability involved if the land ceases to be classified as timber land.

(c) **Solitary factors that will result in automatic denial.** An application may be denied for any of the following reasons without regard to any other factor:

(i) The land does not contain a stand of timber as defined in subsection (1) of this ~~(section)~~ rule, as well as in chapter 76.09 RCW, and WAC 222-16-010. This reason alone is not sufficient to deny the application if:

(A) The land has been recently harvested or supports a growth of brush or noncommercial type timber and the application includes a plan for restocking within three years or a longer period necessitated because seed or seedlings are unavailable; or

(B) Only isolated areas within the land do not meet minimum standards due to rock outcroppings, swamps, unproductive soil, or other natural conditions.

(ii) The applicant, with respect to the land for which classification or reclassification is sought, has failed to comply with a final administrative or judicial order regarding a violation of the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW.

(iii) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line.

~~((6))~~ **(5) Public hearing required.** An application for classification of land as timber land will be approved or denied after a public hearing on the application is held. A notice of this hearing is to be announced once by publication in a newspaper of general circulation in the region, city, or county at least ten days before the hearing. The owner who submitted the application for classification or reclassification is to be notified in writing of the date, time, and location of the public hearing.

~~((7))~~ **(6) Timber management plan required.** A timber management plan must be filed with the county legislative authority either:

(a) When an application for classification is submitted; ~~((8))~~

(b) When a sale or transfer of timber land occurs and a notice of continuance is signed; or

(c) Within sixty days of the date an application for reclassification under chapter 84.34 RCW or from designated forest land under chapter 84.33 RCW is received. The application for reclassification will be accepted, but may not be processed until the timber management plan is received. If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

~~((9))~~ **(d)** If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for classification or reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for a timber management plan, the ~~(county legislative)~~ granting authority should delay processing the application until this plan is received. If this plan is not received by the date set by the assessor, the application for classification or reclassification will be automatically denied.

~~((8))~~ **(e)** If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when a notice of continuance is received. The applicant will be notified of this extension in writing.

(7) Approval or denial of application. The granting authority will either approve or ~~(disapprove)~~ deny the application for classification or reclassification within six months of the date ~~(it is received by the county legislative authority)~~ the completed application is received.

(a) The granting authority may approve the application for classification or reclassification in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) In approving the application in whole or in part, the granting authority may also require that certain conditions be met. The granting authority may not require the granting of easements for land classified as timber land.

(c) When an application for classification or reclassification as timber land has been approved, the granting authority will prepare an agreement. Refer to WAC 458-30-240 for a detailed description of this agreement.

(d) The granting or denial of an application for classification ~~(as open space land)~~ or reclassification as timber land is a legislative determination and is reviewable only for arbitrary and capricious actions. The applicant may appeal only to the superior court of the county in which the land is located and the application was made.

(e) No application may be approved for classification or reclassification as timber land if a county has merged its timber land classification and designated forest land program as described in subsection (8) of this rule.

(8) Termination of timber land classification.

(a) A county legislative authority has the option to merge its timber land classification with the designated forest land program, pursuant to RCW 84.34.400. To merge the programs, the county legislative authority must enact an ordinance that:

(i) Terminates the timber land classification; and

(ii) Declares that the land that had been classified as timber land is now designated as forest land under chapter 84.33 RCW.

(b) Once the timber land classification is terminated:

(i) Land that has been classified as timber land within the county is now designated as forest land under chapter 84.33 RCW. The date the property was classified as timber land is considered to be the date the property was designated as forest land. For example, if a county enacts an ordinance on October 15, 2014, terminating its timber land classification and declares that any timber land is now considered designated forest land, then a parcel of timber land classified on

January 1, 2006, would be considered designated as forest land as of January 1, 2006:

(ii) Any agreement prepared by the granting authority when land was approved as timber land is terminated and no longer in effect; and

(iii) The county must notify the department after taking action under this subsection. The department will maintain a list on its agency internet web site of all counties that have merged their timber land classification with their designated forest land program.

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-240 Agreement relating to open space and timber land classifications. (1) **Introduction.** This ~~((section))~~ rule explains the contents of and the procedures relating to the agreement that is executed when an application for classification or reclassification as open space land under RCW 84.34.037 or timber land under RCW 84.34.041 has been approved by the granting authority.

(2) **Preparation and contents.** When an application for classification or reclassification as open space or timber land has been approved by the granting authority, the granting authority ~~((shall))~~ must prepare an agreement. For purposes of this ~~((section))~~ rule, the date of approval ~~((shall))~~ will be the date on which the granting authority approves the application for classification or reclassification.

(a) The agreement ~~((shall))~~ must state all conditions attached to the approval of the application. The conditions of approval and any requirements of the classification detailed in the agreement ~~((shall))~~ will be binding upon any heir, successor, or assignee of the parties of the original agreement.

(b) The agreement ~~((shall))~~ will apply to the parcel(s) of land described in the agreement.

(c) The agreement may include, but is not limited to, a description of the ways the classified land may be used to retain its classified status, the actions that will cause removal of the land from classification, and the consequences of a change in the classified use of the land.

(3) Submit agreement to owner for signature.

(a) Within five calendar days after the approval of the application for classification or reclassification, in whole or in part, the granting authority ~~((shall))~~ will deliver by certified mail, return receipt requested, the agreement to the owner for signature.

(b) The owner may accept or reject the agreement.

(c) If accepted, the agreement ~~((shall))~~ must be signed and returned to the granting authority within thirty calendar days after receipt.

(d) If the agreement is not signed and returned to the granting authority within thirty calendar days of the date the unsigned agreement was mailed to the owner, the granting authority ~~((shall))~~ will conclusively presume the agreement has been rejected unless the owner can show proof that he or she was prevented from returning the agreement by events beyond his or her control.

(e) To be properly executed, the agreement ~~((shall))~~ must be signed by the owner and ~~((shall))~~ will become effective on

the date the granting authority receives the signed agreement from the owner of the classified parcel(s) of land.

(4) **Executed agreement to be sent to assessor.** The granting authority ~~((shall))~~ must, within ten calendar days after receiving the signed agreement, send one copy to the assessor of the county in which the land is located.

(5) **Termination of agreement.** In counties that have merged their timber land classification and designated forest land program pursuant to RCW 84.34.400, any land approved as timber land prior to the merger will be considered designated forest land and no longer subject to the agreement described in this rule.

AMENDATORY SECTION (Amending WSR 10-07-133, filed 3/23/10, effective 4/23/10)

WAC 458-30-275 Continuing classification upon sale or transfer of ownership of classified land—Actions of landowner and county officials to be taken prior to recording a conveyance of classified land. (1) **Introduction.** If land classified under chapter 84.34 RCW is sold or transferred and the new owner wants to retain the classified status of the land, certain procedures must be followed before the conveyance may be recorded or filed. This rule explains the necessary procedures and required forms.

(2) **General requirements - New owner elects to have the land remain classified.** The county recording authority ~~((shall))~~ may not accept an instrument conveying ownership of land classified under chapter 84.34 RCW unless certain conditions are satisfied. When land classified under chapter 84.34 RCW is sold or transferred and the new owner elects to have the land retain its classified status, prior to recording or filing the conveyance, the new owner or the new owner's agent must:

(a) Sign the notice of continuance that is part of the real estate excise tax (REET) affidavit or sign a separate notice of continuance and attach it to the REET affidavit. (Subsection (9) of this rule contains an explanation about REET.) Both the REET affidavit and the notice of continuance are forms ~~((prepared))~~ provided by the department of revenue and supplied to the counties. ~~((Both forms are available from the department by sending a written request to:~~

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478.

~~A copy of the notice of continuance may be obtained from the county assessor or it may be downloaded from the internet at <http://dor.wa.gov/index.asp> under "property tax, "forms."~~) A copy of the REET affidavit may be obtained from the county treasurer. If the classified land is owned by multiple owners, all owners or their agent(s) must sign the notice of continuance ~~((on the))~~ that is part of the REET affidavit or the separate notice of continuance attached to the REET affidavit.

Except, a notice of continuance is not required when the transfer of classified land is to a new owner who is an heir or devisee of a deceased owner or is a transfer by a transfer on death deed; however, the land must continue to meet the requirements of classification to avoid removal. The treasurer

determines that a transfer is by inheritance because the claim for the inheritance exemption is filled out on the REET affidavit with supporting documentation. The treasurer should notify the assessor when classified land has been transferred by inheritance or by a transfer on death deed without a notice of continuance; and

(b) Provide the assessor with a signed statement that explains how the new owner intends to use the classified land and any other information the assessor deems necessary to determine whether the land will continue to be eligible for classification under chapter 84.34 RCW. ~~((See))~~ RCW 84.34.121 and WAC 458-30-270.~~((+))~~

(3) Required duties of the assessor before a conveyance of classified land may be filed or recorded. The new owner must supply the assessor with the information outlined in subsection (2) of this rule if the new owner elects to have the land remain classified under chapter 84.34 RCW.

(a) After receiving all required documentation, the assessor is allowed up to fifteen calendar days to determine whether the land should retain its classified status or whether the land should be removed from classification as of the date of conveyance.

(b) To make this determination, the assessor may, but is not required to, consult with the county legislative authority if the land is classified as either open space or timber land or a combination of the county and city legislative ~~((bodies))~~ authorities if the classified open space land or timber land is within an incorporated part of the county. Both the assessor and the granting authority may require the new owner to submit additional information about the use of the classified land after the sale or transfer is complete. This information will be used to determine whether the land should remain classified under chapter 84.34 RCW.

(4) When may a county recording authority accept an instrument conveying ownership of classified land? A county recording authority ~~((shall))~~ may not accept an instrument of conveyance regarding the sale or transfer of land classified under chapter 84.34 RCW for filing or recording until the new owner ~~((signs a notice of continuance))~~ complies with subsection (2) of this rule and the assessor determines that the land will or will not continue to qualify for classification. ~~((If the assessor decides that the land must be removed from classification, the assessor will note that the land does not qualify for continuance on the REET affidavit and begin the removal procedures set forth in WAC 458-30-295.))~~

(a) If the new owner signs the notice of continuance and the assessor agrees that the land should remain classified, the assessor checks the box on the REET affidavit that the land qualifies for continued classified ~~((current use))~~ status. The completed affidavit is then presented to the county recording authority so that it may record or file the conveyance. A completed REET affidavit includes a stamp, placed on it by the treasurer, indicating that any REET or additional tax, interest, and penalty owed as a result of the sale or transfer has been paid. (See subsection (9) of this rule for a more detailed explanation of the real estate excise tax.)

(b) If the assessor decides that the land must be removed or the owner submits a written request to remove the land from classification, the assessor will check the appropriate

box on the REET affidavit that the land does not qualify for continuance, sign the REET affidavit, and begin the removal procedures set forth in WAC 458-30-295. Unless the removal results solely from one of the circumstances listed in RCW 84.34.108(6), the additional tax, interest, and penalty are due and payable by the seller or transferor at the time of sale.

(5) Land removed from classification with no back taxes imposed. If the removal results solely from one of the circumstances or actions listed in RCW 84.34.108(6), no additional tax, interest, or penalty is imposed. The assessor will:

(a) Follow the procedures set forth in WAC 458-30-295 and 458-30-300 for removing land from classification;

(b) Notify the treasurer and the seller or transferor that no additional tax, interest, or penalty will be imposed; and

(c) If the land is acquired for conservation purposes by any of the entities listed in RCW 84.34.108 (6)(f), inform the new owner that a lien equal to the amount of additional tax, interest, and penalty has been placed on the land, even though the additional tax, interest, and penalty will not be collected at this time. This lien becomes due and payable if and when the land ceases to be used for one of the purposes outlined in RCW 64.04.130 or 84.34.210.

(6) Sales or transfers of timber land. When a parcel(s) of classified timber land is sold or transferred, the new owner must submit a timber management plan to the assessor and comply with the general requirements listed in subsection (2) of this rule to retain the land's classified status. The assessor sends a copy of the timber management plan to the granting authority of the county in which the classified land is located. WAC 458-30-232 contains a list of the types of additional information an assessor may require the new owner to submit to enable the assessor to determine whether the land will be used to grow and harvest timber for commercial purposes. Generally, the new owner is required to submit a timber management plan ~~((at the time of sale or transfer. If circumstances require it.))~~ when a sale or transfer of timber land occurs and a notice of continuance is signed. However, because a notice of continuance is not required when classified land is transferred by a transfer on death deed or transferred to a new owner who is the heir or devisee of a deceased owner, a timber management plan would not be required under these circumstances.

The assessor may allow an extension of time for submitting ~~((this))~~ the timber management plan when a notice of continuance is received. The ~~((applicant))~~ new owner will be notified of this extension in writing. ~~((When the assessor extends the filing deadline for a timber management plan, the county legislative authority should delay processing the application until this plan is received.))~~ If the timber management plan is not received by the date set by the assessor, the notice of continuance will be automatically denied.

(7) Sales or transfers of farm and agricultural land. When a parcel(s) of classified farm and agricultural land is sold or transferred, the new owner must comply with the general requirements listed in subsection (2) of this rule. The size of the classified land ~~((dictates))~~ determines whether any additional requirements must also be satisfied. After all required information is submitted, the assessor determines whether the land qualifies for continued classification.

(a) If the classified land sold or transferred is twenty acres or more, the new owner must satisfy the general requirements listed in subsection (2) of this rule.

(b) If the sale or transfer involves less than twenty (~~contiguous~~) acres, the new owner will be required to comply with the general requirements of subsection (2) of this rule and the seller or buyer may be asked to provide gross income (~~(data)~~) or investment information relating to the productivity of the (~~farm or agricultural operation for three of the past five years~~) classified land. This income (~~(data)~~) and investment information is used to determine whether the land meets the (~~(income production)~~) requirements listed in RCW 84.34.020 (2)(b) (~~and~~), (c) (~~for classification~~), and (d). However, if the income (~~(data)~~) or investment information is unavailable but the new owner is willing to sign the notice of continuance and accept the responsibility for any additional tax (~~and~~), interest, and penalty owed for prior years that will be due if the land is later found to be ineligible for continued classification, the classified status of the land will continue until the assessor determines that the (~~use of the land has changed or has not produced the requisite minimum income~~) land is no longer eligible.

(i) RCW 84.34.020 (2)(b) and (c) set forth the minimum gross income (~~(production)~~) requirements for classified farm and agricultural land of less than twenty acres. (~~Any sale or transfer of classified land is subject to these income limits. However,~~) If classified land is transferred to a surviving spouse or state registered domestic partner, the gross income (~~(production)~~) requirements will not be examined (~~when classified land is being transferred to a surviving spouse or state registered domestic partner, but such land is~~) at the time of transfer, and the land will be subject to the same (~~(production)~~) gross income requirements that were applicable before the death of the spouse or domestic partner. For example, a sixteen acre parcel of classified farm and agricultural land (~~(-which was)~~) classified in (~~(1998)~~) 1988, is transferred to a surviving spouse in 2005. The classified land is still required to produce a minimum of (~~(two)~~) one hundred dollars per acre per year (~~(even though)~~) and the assessor is not required to review the income (~~(production data)~~) information at the time of sale or transfer.

(ii) Sale or transfer of land classified prior to January 1, 1993. As of January 1, 1993, the legislature imposed higher gross income (~~(production)~~) requirements on classified farm and agricultural land of less than twenty acres. When land classified prior to January 1, 1993, is sold or transferred to a new owner, excluding a transfer to a surviving spouse or state registered domestic partner, the higher minimum income requirements set forth in RCW 84.34.020 (2)(b)(~~(ii)~~) (i)(B) and (c)(ii) will be deferred for a period of three years. The new owner is required to produce either two hundred dollars per acre per year if the parcel is five acres or more but less than twenty acres, or fifteen hundred dollars per year if the parcel is less than five acres, at least once during the three calendar years immediately following the sale or transfer. For example, if classification was granted in (~~(1978)~~) 1991 to a fifteen acre parcel that produced a gross income of one hundred (~~(thirty)~~) dollars per acre per year until it was sold on April 15, (~~(1999)~~) 2009, the higher minimum gross income requirements will be deferred until (~~(2002)~~) 2012. By the end

of (~~(2002)~~) 2012, the new owner must show that the parcel produced at least two hundred dollars per acre for at least one year during the three-year period (~~(between 2000 and 2002)~~) of 2010 through 2012. If the land produced a gross income of two hundred dollars per acre, the land remains classified as farm and agricultural land. If the land failed to produce this amount at least once during this three-year period, the land will be removed from classification and the owner will be required to pay additional tax, interest, and penalty.

(iii) Sale or transfer of land classified on or after January 1, 1993. The higher minimum gross income (~~(production)~~) requirements of RCW 84.34.020 (2)(b)(~~(ii)~~) (i)(B) and (c)(ii) apply to (~~(all)~~) land classified on or after January 1, 1993. When (~~(such)~~) the land is sold or transferred, the assessor may ask the seller or buyer to provide gross income (~~(data)~~) information relating to the (~~(productivity of the)~~) farm (~~(or)~~) and agricultural operation for three of the past five years. This information will be used to determine whether the land should retain its status as classified farm and agricultural land. For example, a ten acre parcel that was classified as farm and agricultural land on May 1, 1995, is sold on February 23, 2001. The assessor asks the seller of the classified land to provide information about the gross income the land produced during the five calendar years preceding the sale (i.e., (~~(1995)~~) 1996 through 2000). To retain the farm and agricultural classification, the land must have produced a minimum gross income of two hundred dollars per acre per year at least three of the five calendar years preceding the date of sale. However, if the gross income (~~(data)~~) information is unavailable but the new owner is willing to sign the notice of continuance and accept the responsibility for any additional tax (~~and~~), interest, and penalty owed for prior years that will be due if the land is later found to be ineligible for continued classification, the classified status of the land will continue until the assessor determines that the (~~(use of the)~~) land (~~(has changed or has not produced the requisite minimum income)~~) is no longer eligible.

(iv) RCW 84.34.020 (2)(d) sets forth the minimum investment requirement for classified farm and agricultural land, at least five but less than twenty acres, that has a standing crop. If classified farm and agricultural land meeting this description is sold or transferred, the assessor may ask the buyer or seller to provide information that demonstrates that an investment in the production of the standing crops equivalent to one hundred dollars or more per acre in the current or previous calendar year was made.

(c) Segregation of land. If the sale or transfer of classified land involves a segregation, the owner of the newly created parcel(s) and the owner of the parcel from which the land was segregated must comply with the requirements for classification, including the (~~(production of)~~) minimum gross income or investment requirements, to enable the assessor to continue the classified status of the land.

(8) **New owner's acknowledgment.** The new owner, by signing the notice of continuance, acknowledges that future use of the land must conform to the provisions of chapter 84.34 RCW.

(9) **Real estate excise tax (REET).** An excise tax is generally imposed in accordance with chapter 82.45 RCW whenever real property is sold or transferred. The amount of this

tax is based upon the selling price of the real property. Real estate excise tax is due at the time of sale. This tax is paid to and collected by the treasurer of the county in which the real property is located. ((See)) Refer to RCW 82.45.010 for a listing of transactions that are not considered a sale or transfer upon which REET is imposed.

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-280 Notice to withdraw from classification. (1) **Introduction.** When an owner of classified land wishes to withdraw all or part of this land from the current use program, the owner must submit a request to withdraw classification to the assessor. This ~~((section))~~ rule explains when an owner may request a withdrawal from classification under the provisions of chapter 84.34 RCW and what the assessor must do upon receipt of this request.

(2) **Definition.** For purposes of this ~~((section))~~ rule, the following definition applies: "Withdrawal" or "withdrawn" occurs when the owner of land classified under the provisions on chapter 84.34 RCW has filed a notice of request to withdraw all or a portion of the land from classification. In order to qualify for withdrawal, the parcel(s) of land must have been classified for a minimum of ten years and the owner must have filed a notice of request to withdraw with the assessor at least two years prior to the ~~((assessment year when the parcel will be valued at the assessed value as determined in accordance with the county's approved revaluation cycle))~~ year the land is to be withdrawn. Land is withdrawn from classified status by a voluntary act of the owner.

(3) **Requirements - Ten years and notice of request for withdrawal.** Except as otherwise provided, land classified under the provisions of chapter 84.34 RCW ~~((shall))~~ must remain classified and ~~((shall))~~ may not be applied to any other use, except reclassifications as described in RCW 84.34.070(2), for at least ten assessment years from the effective date of classification.

(a) During the ninth or later assessment year of classification, the owner may file with the assessor a notice of request for withdrawal. The request for withdrawal may involve all or part of the land.

(b) Upon receiving the request for withdrawal, the assessor ~~((shall))~~ will, within seven working days, transmit one copy of the request to the granting authority that approved the original application for classification.

(4) **Termination of timber land classification and notice of withdrawal.** An owner of land classified under RCW 84.34.020(3) who has provided a notice of request to withdrawal under subsection (3) of this rule within two years prior to the date of the merger described in RCW 84.34.400, will have their land removed by the assessor as designated forest land under the provisions of chapter 84.33 RCW and not as timber land under the provisions of chapter 84.34 RCW. The land will be removed as designated forest land when two assessment years have elapsed following receipt of this notice.

AMENDATORY SECTION (Amending WSR 01-24-030, filed 11/27/01, effective 12/28/01)

WAC 458-30-285 Withdrawal from classification. (1) **Introduction.** RCW 84.34.070(1) states that once land has been classified under chapter 84.34 RCW, it must remain ~~((so))~~ classified for a minimum of ten years from the date of classification. The land will remain classified until and unless the owner submits to the assessor a notice of request for withdrawal of all or a portion of the land from classification. After a request to withdraw classification is received, the assessor is required to make a series of determinations. This rule explains the procedures the assessor must follow upon receipt of a request for withdrawal.

(2) **Withdrawal process.** Land classified under chapter 84.34 RCW must be applied to the classified use and remain in its classified status for at least ten years from the date of classification. During the ninth or later year of classification, the owner may request to have all or a portion of the land withdrawn from the current use program. The owner must submit a written request to withdraw classification to the assessor of the county in which the land is located. The land will be withdrawn from classification two assessment years after the request to withdraw is received.

If an owner of land classified as timber land under RCW 84.34.020(3) provides a notice of request to withdraw to the assessor and the county in which the land is located subsequently merges its timber land classification into its designated forest land program, as described in RCW 84.34.400, the land will be removed as designated forest land two assessment years after the request to withdraw was received. The notice of request to withdraw must be received by the assessor within two years prior to the merger date.

(a) A parcel of land may be withdrawn from classification in whole or in part. ((See)) RCW 84.34.070(1).

(b) The additional tax and interest imposed by RCW 84.34.108(4) are due when land is withdrawn from classification if the land has been classified under chapter 84.34 RCW for a minimum of ten assessment years. If a request to withdraw classification is received by the assessor's office and an intervening act causes the ~~((current use classification))~~ classified land to be removed before the two assessment years have elapsed, the penalty described in RCW 84.34.108 (4)(c) is also due. However, if the removal is a result of one of the circumstances listed in RCW 84.34.108(6) no additional tax, interest, or penalty will be imposed. ((See)) WAC 458-30-300.(3)

(c) Within seven working days of receiving a notice to withdraw classification, the assessor forwards a copy of this notice to the ~~((legislative body))~~ granting authority that approved the initial application for classification.

(d) A request to withdraw classification may be revoked by the owner at any time before the land is actually withdrawn from classification.

(3) **Procedure for partial withdrawal.** RCW 84.34.070 allows an owner to ~~((withdraw))~~ request withdrawal of all or ~~((only))~~ a portion of the land from classification as long as the owner submits a notice of request for withdrawal two assessment years in advance of the effective date of the withdrawal. If only a portion of the classified land is to be withdrawn from classification, the remaining ~~((parcel))~~ land must satisfy the

same requirements ~~that all of the ((entire parcel))~~ land was required to meet when ~~((the land))~~ it was originally granted classification unless different criteria are required by statute. For example, if the owner of ~~((a))~~ thirty acres ((parcel)) of classified farm and agricultural land wishes to withdraw fifteen acres, the remaining fifteen acres must meet the minimum gross income ((production)) or investment requirements listed in RCW 84.34.020 (2)(b)~~((i) or (ii))~~ or (d) to remain classified even though the thirty acres ~~((parcel was))~~ were not required to meet any minimum gross income ((production)) or investment requirements under RCW 84.34.020 (2)(a).

(a) The assessor may ask the owner of the ~~((parcel))~~ land that will remain classified to submit information relevant to its continuing eligibility under chapter 84.34 RCW. ~~((See))~~ Refer to WAC 458-30-270 for more details ~~((for))~~ on the types of information that may be requested.

(b) If the ~~((parcel))~~ land is classified farm and agricultural land, the assessor will verify that the remaining ~~((portion))~~ land meets the requirements of RCW 84.34.020(2).

(c) If the ~~((parcel))~~ land is classified as open space land or timber land, the assessor ~~((will))~~ may consult with the granting authority before determining whether the remaining ~~((portion))~~ land meets the requirements of RCW 84.34.020 (1) or (3). The granting authority and assessor may ask the owner to submit any data that it considers necessary to assist it in making this determination.

(d) The assessor may segregate the portion of land from which classification is being withdrawn for valuation and taxation purposes.

(4) **Date of withdrawal and notice to owner.** RCW 84.34.070(1) requires the assessor to withdraw land from classification when two assessment years have elapsed following receipt of the owner's request to withdraw. In other words, land is withdrawn from classification as of January 1st of the third assessment year after the request to withdraw classification is received by the assessor's office.

(a) Method for counting assessment years. The year in which the request to withdraw is received counts as the first assessment year; the second assessment year begins on January 1 of the year immediately following the year in which the request ~~((is))~~ was received; and the third assessment year begins on January 1 of the following year. ~~((For example, if a request to withdraw classification is received on November 1, ((1999)) 2012, the first assessment year is ((1999)) 2012, the second assessment year is ((2000)) 2013, and the third assessment year is ((2001)) 2014. The land is withdrawn from classification as of January 1, ((2001-)) 2014.~~

(b) Notice to owner. ~~((No later than))~~ Within thirty days ~~((after))~~ of withdrawing the land from classification, the assessor must notify the owner in writing that ~~((classification))~~ the land has been withdrawn.

(c) Valuation of land withdrawn from classification. When land has been withdrawn from classification, it ~~((shall))~~ must be placed on the assessment roll at its true and fair value ~~((determined in accordance with the county's approved revaluation plan))~~ as of January 1st of the year of withdrawal.

~~((Example-))~~ For example, an application for classification as open space land was submitted in April ~~((1990))~~

2003 and approved effective assessment year ~~((1991))~~ 2004. In ~~((1999))~~ 2012, the owner submits a notice of request to withdraw all the land from classification. The assessor withdraws the land from classification as of January 1, ~~((2001))~~ 2014, which is the third assessment year after the request to withdraw was received. This land is placed on the assessment roll at its true and fair value as of January 1, ~~((2001, in accordance with the county's approved revaluation plan))~~ 2014.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-30-295 Removal of classification. (1) **Introduction.** This ~~((section))~~ rule discusses the circumstances that may cause land to be removed from classification and the actions an assessor takes to remove the land, in whole or in part, from classification under chapter 84.34 RCW.

(2) **General requirement - Removal process.** If land classified under chapter 84.34 RCW is applied to a use other than the one for which classification is granted, the owner must notify the assessor of the change in use within sixty days of the change. If the new use of the land does not qualify for classification under chapter 84.34 RCW, the land must be removed from classification and, in most cases, additional tax, interest, and a penalty are imposed. Land may be totally or partially removed from classification depending on the reason(s) for the removal. ~~((See))~~ Refer to WAC 458-30-300 for details about the additional tax, interest, and penalty imposed when land is removed.

(3) **Circumstances that cause removal of land from classification.** When any of the following actions occur, the assessor ~~((shall))~~ must remove all or a portion of the land from classification:

(a) Receipt of a written notice from the owner directing the assessor to remove the land from classification;

(b) Sale or transfer of the land to an owner that makes the land exempt from property taxes, except a transfer resulting from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the land for the same use as before;

(c) Any nonqualifying change in use that occurs after a request to withdraw classification is made under RCW 84.34.070 and before the actual withdrawal of the classification occurs;

(d) Sale or transfer of classified land to a new owner who is required to pay property tax and who does not sign the notice of classification continuance, except a transfer by a transfer on death deed or a transfer to an owner who is an heir or devisee of a deceased owner. Land may also be removed if a new owner signs the notice of continuance but the assessor determines the land does not qualify to continue in its classified status;

(e) Failure of an owner to respond to a request from the assessor for ~~((data))~~ information regarding the use of the land, productivity of typical crops, and similar information pertinent to continued classification and assessment of the land ~~((see))~~ RCW 84.34.121 and WAC 458-30-270((y));

(f) The ~~((assessor))~~ granting authority denies an owner's request for reclassification and the land no longer meets the criteria under which it was originally classified;

(g) The assessor determines, based on field inspections, analysis of income and expense data, or any other reasonable evidence, that the land no longer meets the criteria for classification under chapter 84.34 RCW; or

(h) The assessor discovers that the land was classified under chapter 84.34 RCW in error.

~~((i) Example 1-))~~ **(4) Removal examples.**

(a) During an on-site inspection, the assessor discovers that classified farm and agricultural land has been paved over and is used as a parking lot for school buses.

~~((ii) Example 2-))~~ (b) Based on information released at a public meeting of the county planning commission, the assessor learns that an owner of classified timber land has harvested all timber from the land, the land has been platted, public services such as roads, sewers, and domestic water supply have been made available to the platted land, and houses have been built on the land. This information has led the assessor to conclude that the use of the land ~~((has changed or that the land))~~ no longer meets the criteria for classification as timber land.

~~((4))~~ **(5) Procedure when an assessor discovers a change in use.** If the assessor determines that the land is not being used for a ~~((classified))~~ qualifying use, the assessor must ~~((provide))~~ send the owner, by certified mail, return receipt requested, a written notice regarding this determination; e.g., the Notice of Intent to Remove Current Use Classification form. ~~((The assessor may not remove the land from classification until the owner has had an opportunity to respond to the assessor's determination.))~~

(a) The owner must respond, in writing, to the assessor's inquiry about the use of the classified land ~~((no later than))~~ within thirty calendar days ((following the)) of the postmark date ((the assessor's inquiry was mailed to the owner)) of the notice.

(b) If the ~~((parcel))~~ land in question is classified open space land or timber land, the assessor may ask ~~((, but is not required to ask,))~~ the granting authority to provide reasonable assistance in determining whether the classified land continues to meet the criteria for classification. The granting authority ~~((shall))~~ must provide this assistance within thirty days of receiving the assessor's request for assistance ~~((see))~~, RCW 84.34.108(1)(~~(b)~~).

(c) Unless the owner demonstrates to the assessor that the classified use of the land has not changed, the assessor will remove the land from classification and impose additional tax, interest, and penalty ~~((from the date of the change in use (see))~~, RCW 84.34.080 and 84.34.108(~~(b)~~).

~~((5))~~ **(6) Procedure for partial removal.** If ~~((the use of))~~ only a portion of the classified land ~~((has changed and it))~~ no longer qualifies for classification under chapter 84.34 RCW, the assessor will remove the nonqualifying portion of the classified land. The remaining ~~((parcel))~~ land must satisfy the same requirements ~~((the entire parcel was required to meet))~~ as when the land was originally granted classification unless different criteria are required by statute because of the reduced size of the land that remains classified.

(a) The assessor may ask the owner of the ~~((parcel))~~ land that will remain classified to submit information relevant to its continuing eligibility under chapter 84.34 RCW. ~~((See))~~ Refer to WAC 458-30-270 for more details.

(b) If the ~~((parcel))~~ land is classified as farm and agricultural land, the assessor will verify that the remaining portion meets the requirements of RCW 84.34.020(2).

(c) If the ~~((parcel))~~ land is classified as open space land or timber land, the assessor ~~((will))~~ may consult with the granting authority before determining whether the remaining portion meets the requirements of RCW 84.34.020 (1) or (3). The granting authority and assessor may ask the owner to submit pertinent data for this determination.

(d) The assessor may segregate the portion of land from which classification is being removed for valuation and taxation purposes.

~~((6))~~ **(7) Transactions that do not cause land to be removed from classification.** Land cannot be removed from classification solely because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement ((of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species)) for the riparian open space program under RCW 76.09.040.

~~((7))~~ **(8) Notice to owner.** Within thirty days of the removal of land from classification, the assessor must notify the owner in writing of the reason(s) for removal; e.g., the Notice of Removal of Current Use Classification and Additional Tax Calculation form. The removal notice must explain the steps an owner needs to follow if he or she wants to appeal the removal decision, including when a notice of appeal must be filed, where an appeal petition may be obtained, and how to contact the county board of equalization.

~~((8))~~ **(9) Right of appeal.** The seller, transferor, or owner of classified land may appeal the removal from classification to the board of equalization of the county in which the land is located. The appeal must be filed within thirty ~~((calendar))~~ days (or up to sixty days if such a time limit has been adopted by the county legislative authority) of the postmark date the notice of removal was mailed by the assessor, electronically transmitted by the assessor ((or given to the owner)), the assessor electronically notified the owner or person responsible for payment of taxes that the notice was available to be accessed by the owner or other person, or on or before July 1st of the year of removal, whichever is later ((t)), RCW 84.40.038(~~(b)~~).

~~((9))~~ **(10) Assessor's duty after removal.** Unless the removal is reversed on appeal, the assessor revalues the affected land with reference to its true and fair value as of January 1st of the year of removal from classification and places the land on the assessment roll ((at its true and fair value determined in accordance with the county's approved revaluation plan. The value on the date of removal is the true and fair value as of January 1st of the year of removal)). The assessment roll lists both the assessed value of the land before and after the removal ~~((of))~~ from classification. Taxes for the current tax year are prorated according to the portion of the year to which each assessed value applies.

~~((10))~~ **(11) Possible segregation after removal.** If only a portion of the land is being removed from classifica-

tion, the assessor (~~(must)~~) may segregate the affected portion for valuation and tax purposes.

~~((H))~~ **(12) Additional tax, interest, and penalty are due when land is removed.** The additional tax, interest, and penalty imposed by RCW 84.34.080 and 84.34.108 are due and payable to the treasurer thirty days after the owner is notified of the amount due, unless the removal is the result of one of the exempt circumstances or transactions listed in RCW 84.34.108(6). ~~((See))~~ WAC 458-30-300. ~~((H))~~

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-30-300 Additional tax—Withdrawal or removal from classification. (1) **Introduction.** This section outlines the withdrawal and removal procedures, events that trigger removal, and how to calculate the additional ~~((prop-erty))~~ tax ~~((("additional tax")))~~, interest, and penalty that may be imposed because land is withdrawn or removed from classification. When land is withdrawn or removed, additional tax and interest are due. A twenty percent penalty is also due when land is removed from classification ~~((see))~~, RCW 84.34.108 and 84.34.070(2) ~~((H))~~.

(2) **Duties of assessor and treasurer.** ~~((As soon as possible))~~ After determining ~~((that))~~ the land no longer qualifies for classification under chapter 84.34 RCW, ~~((the use of the land has changed, or the land was classified under chapter 84.34 RCW in error))~~ the assessor must provide the owner a written notice regarding this determination and of his or her intent to remove the land from classification; e.g., the Notice of Intent to Remove Current Use Classification form. ~~((The assessor may not remove the land from classification until the owner has had an opportunity to be heard on the issue of removal.))~~

(a) The owner ~~((has thirty calendar days following the postmark date on the assessor's notice of intent to remove to))~~ must respond, in writing, to the assessor ~~((about the removal of))~~ within thirty days of the postmark date of the notice regarding his or her intention of removing the classified land ~~((from classification. After giving the owner an opportunity to be heard and))~~. Unless sufficient information or evidence is presented as to why the land should not be removed from classified status, the land will be removed from classification ~~((as of the date the land no longer qualified for classification or the use of the land changed)).~~

(b) Within thirty days of removing land from classification, the assessor notifies the owner, in writing, about the reason(s) for the removal ~~((The owner, seller, or transferor may appeal the removal to the county board of equalization))~~; e.g., the Notice of Removal of Current Use Classification and Additional Tax Calculation form. The assessor will compute the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection (5) of this rule. The removal notice must explain the steps the owner needs to follow if he or she wants to appeal the removal decision, including when a notice of appeal must be filed, where an appeal petition may be obtained, and how to contact the county board of equalization.

(c) Unless the removal is reversed on appeal, the assessor revalues the affected land with reference to its true and fair

value ~~((on))~~ as of January 1st of the year of removal from classification and places the land on the assessment roll. The assessment roll ~~((with))~~ lists both the assessed value of the land before and after the removal from classification. Taxes for the current tax year will be allocated to the part of the year to which each assessed value applies; that is, the current use value and the true and fair value.

(d) The assessor computes the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection (5) of this ~~((section))~~ rule.

(e) The assessor notifies the treasurer of the amount of additional tax, interest, and penalty due.

(f) The treasurer mails ~~((or gives))~~ the owner written notice about the amount of the additional tax, interest, and ~~((; if required,))~~ penalty due and the date on which the total amount must be paid.

(g) The total amount is due and payable to the treasurer thirty days after the owner is notified of the amount ~~((of additional tax, interest, and penalty))~~ due.

(3) **Amount of additional tax, interest, and penalty.** The amount of additional tax, interest, and penalty will be determined as follows:

(a) The amount of additional tax is equal to the difference between the property tax paid on the land because of its classified status and the property tax that would have been paid on the land based on its true and fair value for the seven tax years preceding the year of withdrawal or removal. And in the case of a removal, the taxes owed for the balance of the current tax year;

(b) The amount of interest, calculated at the same statutory rate charged on delinquent property taxes specified in RCW 84.56.020, is based upon the amount of additional tax determined under (a) of this subsection, starting from the date the additional tax could have been paid without interest until the date the tax is paid; and

(c) A penalty amounting to twenty percent of the sum of the additional tax and interest ~~((; that is, twenty percent of the total amount computed in (a) and (b) of this subsection))~~. A penalty is not imposed when ~~((~~

~~((i))~~ the land has been classified for at least ten years at the time it is withdrawn from classification and the owner submitted a request to withdraw classification to the assessor at least two assessment years prior to the date the land is withdrawn ~~((from classification; or~~

~~((ii))~~ The use of the land has changed and the change in use was the result of one of the circumstances listed in RCW 84.34.108(6). See subsection (5) of this section)).

(d) If additional tax, interest, and penalty are not imposed because the removal meets an exception in subsection (5) of this rule, the assessor still calculates the prorated taxes from the date of removal through December 31st of the removal year.

(e) When land is withdrawn or removed from classification under chapter 84.34 RCW, the assessor must forward the notice of withdrawal or removal to the county recording authority. The county recording authority must record all notices of withdrawal or removal, and the owner is required to pay all recording fees for the notice.

(4) **Failure to sign notice of continuance.** Land will be removed from current use classification if a new owner fails to sign the notice of continuance when the classified land is sold or transferred or if the new owner signs the notice of continuance and the assessor determines the land does not continue to qualify in its classification. Additional tax, interest, and penalty will be imposed in accordance with RCW 84.34.108(4) ~~((because of this removal))~~ and become due and payable by the seller or transferor at the time of sale or transfer.

A notice of continuance is not required when classified land is transferred by a transfer on death deed or transferred to a new owner who is the heir or devisee of a deceased owner and the new owner wishes to continue classified use ~~((see))~~ RCW 84.34.108 (1)(c)(~~h~~). If the ~~((heir or devisee))~~ new owner elects not to continue classified use, the land will be removed from classification and additional tax, interest, and penalty are due.

(5) **Exceptions.** No additional tax, interest, or penalty will be imposed if the withdrawal or removal from classification resulted solely from any of the following:

(a) Transfer to a governmental entity in exchange for other land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain or the sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power. This entity must have declared its intent to exercise the power of eminent domain in writing or by some other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than an act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city in which the land is located disallowing the current use of classified land. For the purposes of this ~~((section))~~ rule, "official action" includes: City ordinances, zoning restrictions, Growth Management Act, Shoreline Management Act, and Environmental Policy Act;

(e) Transfer of land to a church when the land would qualify for a property tax exemption under RCW 84.36.020. Only the land that would qualify for exemption under RCW 84.36.020 is included within this exception. Additional tax, interest, and ~~((, if appropriate, the))~~ penalty will be assessed upon the remainder of the land ~~((withdrawn or))~~ removed from classification;

(f) Acquisition of property interests by public agencies or private organizations qualified under RCW 84.34.210 or 64.04.130 for the conservation purposes specified therein. ~~((See))~~ Subsection (6) of this ((section for)) rule provides a listing of these agencies, organizations, and purposes. However, when the ~~((property interests are))~~ land is no longer used for one of the purposes ~~((enumerated))~~ described in RCW 84.34.210 or 64.04.130, additional tax, interest, and penalty will be imposed on the owner of the property at that time;

(g) Removal of land granted classification as farm and agricultural land under RCW 84.34.020 (2)(f) because the principal residence of the farm operator or owner and/or housing for farm and agricultural employees was situated on it. This exception applies only to the land upon which the res-

idence or housing is located even if this portion of the ((agricultural enterprise has)) land does not ((been allocated)) have a separate parcel number for assessment and tax purposes;

(h) Removal of classification after a statutory exemption is enacted that would exempt the land from property tax and the landowner submits a written request to the assessor to remove the land from classification. This exception applies only to newly enacted exemptions that would cause classified land to go from taxable to exempt status. For example, in 1999 the legislature created a new property tax exemption for property used for agricultural research and education programs. If the owner of such land subsequently requests removal of the land from classification, no additional tax, interest or penalty are imposed because of this new property tax exemption authorized by RCW 84.36.570;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years of the death of an owner who held at least a fifty percent interest in the land if:

(i) The individual(s) or entity(ies) who received the land from the deceased owner is selling or transferring the land; and

(ii) The land has been continuously assessed and valued as designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer. For example, an owner who holds at least a fifty percent interest in classified farm and agricultural land dies on March 1, 2012. The land was initially classified on January 1, 1989, and is still classified on the date of death of the owner. The heir (new owner) does not want to continue commercially farming the land and sells the land on January 20, 2014. At the time of sale, the buyer does not sign the notice of continuance because they will not be using the land for commercial farming. The assessor will remove the land at the time of sale and the removal would not be subject to additional tax, interest, and penalty;

(l) The assessor discovers that the land was classified under chapter 84.34 RCW in error through no fault of the owner;

(i) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for classification or the failure of the assessor to remove the land from classification;

(ii) This exception does not apply if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification; or

(m) The result of one of the following changes in classification because of the owner's request for:

(i) Reclassification from farm and agricultural land under RCW 84.34.020(2) to: Timber land under RCW

84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(ii) Reclassification from timber land under RCW 84.34.020(3) to: Farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(iii) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; or

(iv) Reclassification from forest land under chapter 84.33 RCW to timber land under RCW 84.34.020(3), farm and agricultural land under RCW 84.34.020(2), or open space land under RCW 84.34.020(1).

(6) Land acquired by agencies or organizations qualified under RCW 84.34.210 or 64.04.130. If the purpose for acquiring classified land is to protect, preserve, maintain, improve, restore, limit the future use of, or conserve the land for public use or enjoyment and the classified land is acquired by any of the following entities, no additional tax, interest, or penalty will be imposed ~~((as long as the property is used for one of these purposes))~~:

- (a) State agency;
- (b) Federal agency;
- (c) County;
- (d) City;
- (e) Town;
- (f) Metropolitan park district (see RCW 35.61.010);
- (g) Metropolitan municipal corporation (see RCW 35.58.020);
- (h) Nonprofit historic preservation corporation as defined in RCW 64.04.130; ~~((or))~~
- (i) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250; or
- (j) Federally recognized Indian tribe.

(7) Removal of classification from land that was previously designated forest land under chapter 84.33 RCW. Land that was previously designated as forest land under chapter 84.33 RCW may be reclassified under chapter 84.34 RCW at the owner's request ~~((made no later than))~~ within thirty days after removal of the land from designation. If such land is subsequently removed from ~~((the current use program))~~ classification under chapter 84.34 RCW before ((the land)) it has been classified under chapter 84.34 RCW for at least ten assessment years, a combination of compensating tax imposed under chapter 84.33 RCW and additional tax, interest, and penalty imposed under chapter 84.34 RCW is due. RCW 84.33.145 explains the way in which these taxes are to be calculated.

(8) Termination of timber land classification. Designation of forest land under RCW 84.33.130(1) as a result of a merger pursuant to RCW 84.34.400 terminating a county's timber land classification is not considered a withdrawal or removal under this chapter and is not subject to additional tax, interest, and penalty.

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

WAC 458-30-325 Transfers between classifications—Application for reclassification. (1) **Introduction.** This rule discusses the process used when land is reclassified into a different classification under chapter 84.34 or 84.33 RCW.

(2) **General information - When reclassification is required.** ~~((In 1992, the legislature created an opportunity for owners of classified land to change the classification under which their land is classified under chapter 84.34 RCW or designated under chapter 84.33 RCW. The name given to this process is "reclassification." It is now possible to switch between the different classifications of chapter 84.34 RCW and forest land under chapter 84.33 RCW.))~~ The following circumstances may cause an owner of classified land to seek reclassification:

(a) The classified land is no longer being used for the purpose for which it was granted classification;

(b) The owner ~~((or new owner))~~ of classified land has decided to change the use of classified land;

(c) The classified land no longer meets the requirements of the classification under which it was originally classified~~((;)).~~ For example, farm and agricultural land that no longer produces the minimum gross income ((required by)) or investment requirements in RCW 84.34.020 (2)(b) ((and)), (c), or (d) must either be reclassified or removed from ~~((the current use program))~~ classification; or

(d) ~~((The))~~ A new owner ((is an heir or devisee of)) who received classified land from a deceased owner ((who held classified land and the new owner either)) and the land does not ~~((choose to meet or cannot))~~ meet the requirements of the classification under which the land ~~((was originally))~~ is currently classified~~((; or~~

~~((e) The assessor has determined the classified land is no longer eligible under the existing classification and the land must either be reclassified or removed from the current use program)).~~

(3) **Reclassification process if land is subject to removal.** Within thirty days of receiving notice from the assessor that ~~((classified))~~ land ~~((is to be))~~ was removed from ((the current use program)) classification; e.g., Notice of Removal of Current Use Classification and Additional Tax Calculations form, the owner must submit an application for reclassification into another classification under chapter 84.34 or 84.33 RCW if the owner elects to have the land remain classified. The removal notice must include a statement informing the owner of the classified land about the reclassification option. If an application for reclassification is submitted within thirty days, the land is not considered removed from classification until the application for reclassification is approved or denied.

(4) **Reclassification process if an owner seeks change of classification.** An owner of classified land may seek to have the land reclassified under a different ~~((current use))~~ classification under chapter 84.34 RCW or may seek designation as forest land under chapter 84.33 RCW.

(a) If an owner elects to have land reclassified, the owner must submit an application for reclassification to the assessor of the county in which the land is located. This application

form will be prepared by the department and supplied to assessors ~~((or it may be obtained on the internet at <http://dor.wa.gov/index.asp> under property tax, "forms."))~~.

(b) Within seven days of receiving ~~((this request))~~ the application for reclassification, the assessor must forward a copy ~~((of the application for reclassification))~~ to the appropriate granting authority ~~((see the definition of "granting authority" in WAC 458-30-200 for more details))~~. The assessor retains a copy of all applications for reclassification.

(c) When an application for reclassification is submitted, the classified status of the land is not changed until the application is approved ~~((or denied))~~.

(5) **Application procedure.** An application for reclassification is processed in the same manner as an initial application for classification, which may include payment of an application fee if the county requires one. All classification requirements of RCW 84.34.035 for farm and agricultural land, RCW 84.34.037 for open space land, RCW 84.34.041 for timber land, and chapter 84.33 RCW for forest land must be satisfied in order to reclassify land. ~~((These requirements are also described in WAC 458-30-225, 458-30-230, 458-30-232, 458-30-242, and chapter 458-40 WAC.))~~ For example, if an owner of classified farm and agricultural land under RCW 84.34.020 (2)(a) submits a reclassification application into the timber land classification under RCW 84.34.020(3), some of the classified farm and agricultural land may not qualify for reclassification into the timber land classification because the timber land classification only allows up to ten percent of the land for compatible incidental uses and does not allow integral residential homesites to qualify.

(a) The granting authority must process an application for reclassification in the same manner as it processes an initial application for classification under chapter 84.34 RCW or for designation as forest land under chapter 84.33 RCW.

(b) A timber management plan must be filed with the county legislative authority within sixty days of the date the application for reclassification under ~~((this chapter or from designated forest land under chapter 84.33))~~ RCW 84.34.020(3) is received. The application for reclassification will be accepted, but may not be processed until this plan is received.

(i) If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(ii) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for this plan, the ~~((county legislative))~~ granting authority should delay processing the application until the plan is received. If the timber management plan is not received by the date set by the assessor, the application for reclassification will be automatically denied.

(c) An application for reclassification may be approved or denied, in whole or in part.

(i) The granting authority must notify the applicant in writing of the extent to which the application for reclassification is approved or denied.

(ii) The applicant has the same appeal rights in relation to a denial of an application for reclassification as the applicant has in regard to an initial application for classification.

(iii) If ~~((an))~~ land is subject to removal and the application for reclassification is denied, the assessor removes the land from classification and calculates additional tax, interest, and penalty in accordance with RCW 84.34.108.

(6) **Reclassifications exempt from additional tax, interest, and penalty.** No additional tax, interest, ~~((or))~~ and penalty are due when reclassification is a result of any of the following transfers between classifications:

(a) Reclassification from farm and agricultural land under RCW 84.34.020(2) to: Timber land under RCW 84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(b) Reclassification from timber land under RCW 84.34.020(3) to: Farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(c) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; ~~((or))~~

(d) Reclassification from forest land under chapter 84.33 RCW to open space land under RCW 84.34.020(1), farm and agricultural land under RCW 84.34.020(2), or timber land under RCW 84.34.020(3); or

(e) If a county merges its timber land classification into its designated forest land program pursuant to RCW 84.34.400, a reclassification application as described in subsection (5) of this rule will not be required.

(7) **Gross income ~~((production))~~ requirements of land to be reclassified.** The minimum gross income ~~((production))~~ requirements relating to the following reclassifications may be deferred for a period of up to five years from the effective date of reclassification when:

(a) Land classified as open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) or timber land under RCW 84.34.020(3) is reclassified as farm and agricultural land under RCW 84.34.020 (2)(b) or (c); or

(b) Land designated as forest land under chapter 84.33 RCW is reclassified as farm and agricultural land under RCW 84.34.020 (2)(b) or (c).

(8) **Valuation of reclassified land.** If approved, the assessed value of reclassified land will be based on the new classification as of January 1 of the assessment year following ~~((approval of the request for reclassification))~~ the year of application. For example, if an application for reclassification from farm and agricultural land to open space/farm and agricultural conservation land is submitted on February 15, ~~((1999))~~ 2014, and approved ~~((effective June 1, 1999))~~ on July 15, 2014, the land will be valued and assessed as open space/farm and agricultural conservation land on January 1, ~~((2000))~~ 2015, and the owner is required to pay taxes on this new assessed value in ~~((2001))~~ 2016.

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

WAC 458-30-500 Definitions of terms used in WAC 458-30-500 through 458-30-590. (1) **Introduction.** This rule sets forth the definitions to be used in administering and understanding the statutes and rules relating to special benefit assessments on classified farm and agricultural and timber land.

(2) **Definitions.** For the purposes of WAC 458-30-500 through 458-30-590, unless otherwise required by the context, the following definitions apply:

(a) "Average rate of inflation" means the annual rate of inflation adopted each year by the department of revenue in accordance with WAC ((458-30-580)) 458-30-590 averaged over the period of time provided in WAC 458-30-550 ((and 458-30-570)).

(b) "Connection charge" or "charge for connection" means the charge required to be paid to the district for connection to the service as opposed to the assessment based upon the benefits derived.

(c) "District" means any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to the districts.

(d) ("~~Farm and agricultural land~~" means land classified under the provisions of RCW 84.34.020(2); in other words, one of the following:

(i) ~~Any parcel of land twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size when the land is:~~

(A) ~~Primarily used to produce livestock or agricultural products for commercial purposes;~~

(B) ~~Enrolled in the federal Conservation Reserve Program or its successor administered by the United States Department of Agriculture; or~~

(C) ~~Primarily used in similar commercial agricultural activities as may be established by rule.~~

(ii) ~~Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres, in size that is primarily used for commercial agricultural purposes, and produces a gross income each year equal to:~~

(A) ~~One hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or~~

(B) ~~Two hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.~~

(iii) ~~Any parcel of land or contiguous parcels of land less than five acres in size that is primarily used for commercial agricultural purposes, and produces a gross income each year equal to:~~

(A) ~~One thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; and~~

~~(B) One thousand five hundred dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.~~

~~(iv) Any parcel of land that is twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size on which housing for farm and agricultural employees and the principal residence of the farm operator or the owner of land classified under RCW 84.34.020 (2)(a) is situated if:~~

~~(A) The housing or residence is on or contiguous to the classified parcel; and~~

~~(B) The use of the housing or the residence is integral to the use of the classified parcel for agricultural purposes.~~

~~(e)) "Final assessment roll" means a final special benefit assessment roll approved or confirmed by a local government for the purpose of levying special benefit assessments against property specially benefited by a sanitary and/or storm sewerage system, domestic water supply and/or distribution system, or road construction and/or improvement.~~

~~((f)) (e) "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 benefit assessments for sanitary and/or storm sewerage systems, domestic water supply and/or distribution systems, or road construction and/or improvement purposes. "Local government" does not include an irrigation district with respect to any local improvement district created or local improvement assessment levied by that irrigation district.~~

~~((g)) "Owner" means:~~

~~(i) Any person(s) having the fee interest in land; or~~

~~(ii) The contract vendee when the land is subject to a real estate contract.~~

~~(h) "Removal" or "removed" means land classified under chapter 84.34 RCW is removed from classification by the assessor because the owner requests removal, the new owner fails to sign notice of classification continuance, or the land is no longer being used for the purpose for which classification was granted.~~

~~((i)) (f) "Special benefits assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and that may be levied only for the special benefits to be realized by property because of the local improvement.~~

~~((j)) "Timber land" means land classified under the provisions of RCW 84.34.020(3); in other words, any parcel of land five or more acres in size or multiple parcels of land that are contiguous and total five or more acres in size that is primarily used to commercially grow and harvest forest crops. "Timber land" refers only to the land.~~

~~(k) "Withdrawal" or "withdrawn" means action taken by the owner of land classified under chapter 84.34 RCW by filing a notice of request to withdraw the land from classification under the current use program in compliance with RCW 84.34.070. Once land has been classified under chapter 84.34 RCW, it must remain so classified for at least ten years from~~

~~the date of classification. At any time after eight years of the initial ten-year classification period have elapsed, the owner may file a notice of request to withdraw all or a portion of the land from classification with the assessor of the county in which the land is located. Land is withdrawn from classification as a result of a voluntary act by the owner.)~~

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-520 Notification of district—Certification by assessor—Estimate by district. (1) **Introduction.** This ~~((section))~~ rule explains the procedures that follow the creation of a district.

(2) **Notice to assessor and legislative authority.** Upon creation of a district, the local government ~~((shall))~~ must immediately notify the assessor and legislative authority of the county where the district is located of its creation.

(3) **Assessor duties.** Upon receipt of notification that a district has been created, the assessor ~~((shall))~~ must certify in writing to the district whether or not classified farm and agricultural or timber land is within its boundaries.

(a) If there is any classified farm and agricultural or timber land within the district boundaries, the assessor ~~((shall))~~ must certify what land is within its boundaries by providing parcel numbers and legal descriptions of the property.

(b) If any owner of land within the created district has timely filed, as of ~~((January 1st))~~ December 31st, an application for ~~((current use))~~ classification or reclassification as farm and agricultural or timber land and no action has been taken, the assessor will report the status of the pending application(s) to the district. The assessor ~~((shall))~~ must:

(i) Take immediate action to render a decision for the approval or denial of ~~((this application. The assessor shall also))~~ any farm and agricultural land application and encourage the appropriate granting authority to render a decision for the approval or denial of any pending timber land application:

(ii) Inform the district that any decision regarding classification or reclassification as farm and agricultural land is appealable under RCW 84.34.035 ~~((and that the classification or reclassification as farm and agricultural or timber land would become))~~ and any decision regarding classification or reclassification as timber land is appealable under RCW 84.34.041; and

(iii) If approved, the assessment of farm and agricultural land and timber land in its classified status will be effective as of ~~((the initial filing date;))~~ January 1st of the year following application.

~~((e) If the legislature extends the filing date for applying for classification or reclassification as farm and agricultural or timber land beyond December 31, those applications approved will receive their status as of January 1 of the filing year.)~~

(4) **District duties.** The district, upon receipt of the assessor's certification required by subsection (3) of this ~~((section, shall))~~ rule, must notify the assessor and the legislative authority of the extent to which classified lands may be subject to a partial assessment for connection to the service

provided by the improvement(s). ~~((Said))~~ The estimate will be ~~((based upon))~~ determined by WAC 458-30-560.

(5) **If land is removed or withdrawn from classification.** The assessor ~~((shall))~~ must notify the district when any farm and agricultural land or timber land is removed or withdrawn from ~~((current use))~~ classification. Designation as forest land under RCW 84.33.130(1) as a result of a merger pursuant to RCW 84.34.400 terminating the timber land classification is not considered a removal or withdrawal of timber land under this rule.

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-550 Exemption—Removal or withdrawal. (1) **Introduction.** This ~~((section))~~ rule explains the process that must be followed when classified land subject to a special benefit assessment is withdrawn or removed from the farm and agricultural or timber land classifications.

(2) **General treatment of land.** After the creation of a district or the adoption and confirmation of a final assessment roll, an owner of classified farm and agricultural land or timber land who ~~((wishes it))~~ wants the land to be exempt from a special benefit assessment~~((s))~~ is not required to take any further action. The land will retain its classified status~~((;#))~~ and will not be connected to the improvement(s) or be listed on the final assessment roll.

(3) **Subsequent withdrawal or removal.** If the owner initially chose for the farm and agricultural land or timber land to remain exempt, ~~((but))~~ and the land is subsequently ~~((is))~~ removed or withdrawn from ~~((the farm and agricultural or timber land))~~ classification, the owner ~~((shall become liable to pay for))~~ will be liable for paying the special benefit assessment in the following manner:

(a) If the bonds used to fund the improvement have not been completely retired when the land is withdrawn or removed from classification, the liability will be:

(i) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320; and~~((;))~~

(ii) Interest on that amount, compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity creating the district to the time the land is withdrawn or removed from exempt status~~((;#))~~.

(b) If the bonds used to fund the improvement in the district have been completely retired when the land is withdrawn or removed from classification, immediate payment ~~((shall))~~ will be due for:

(i) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320;

(ii) Interest on that amount compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed to the time the bonds used to fund the improvement were retired~~((;))~~; and~~((;))~~

(iii) Interest on the total amount of (i) and (ii) at a simple per annum rate equal to the average rate of inflation from the time the bonds used to fund the improvement were retired to the time the land is withdrawn or removed from exempt status.

(4) **Withdrawal or removal of land with partial assessment.** If land is withdrawn or removed from classification and a partial special benefit assessment has been paid because the classified land was connected to a domestic water system, sewerage facility, or road improvement, the amount of partial assessment paid ~~((shall))~~ will be credited against the total amount due for the special benefit assessment~~((s))~~.

(5) **Due date of special benefit assessment upon withdrawal or removal.** When land is to be withdrawn or removed from the farm and agricultural land or timber land classification and an amount ~~((of))~~ for a special benefit assessment~~((s))~~ is due, ~~((the))~~ this amount ~~((of special benefit assessments shall))~~ will be due on the date the land is withdrawn or removed from its classification. This amount ~~((shall))~~ will be a lien on the land prior and superior to any other lien whatsoever except for general taxes and ~~((shall))~~ will be enforceable in the same manner as special benefit assessments are collected by local governments.

Designation as forest land under RCW 84.33.130(1) as a result of a merger pursuant to RCW 84.34.400 that terminates the timber land classification is not considered a removal or withdrawal of timber land under this rule.

(6) **Notice of withdrawal or removal to local government and land owner.** When farm and agricultural land or timber land is withdrawn or removed from classification, the assessor of the county in which the land is located ~~((shall))~~ must send a written notice of the withdrawal or removal to the local government, or its successor, that filed the original notice regarding creation of a district with the assessor. After receiving this notice, the local government ~~((shall))~~ must mail a written statement ~~((setting forth))~~ to the owner indicating the amount of the special benefit assessment~~((s))~~ due ~~((to the owner of))~~ because the farm and agricultural land or timber land was withdrawn or removed from classification. This amount ~~((shall be))~~ is delinquent if ~~((it is))~~ not paid within one hundred eighty days of the date the statement is mailed and is subject to the same interest, penalties, lien, priority, and enforcement procedures that are applicable to delinquent assessments on the final assessment roll from which the land was exempted, except the rate of interest charged ~~((shall))~~ must not exceed the rate provided in RCW 84.34.330.

(7) **Partial withdrawal or removal of land exempt from special benefit assessments.** If a portion of classified farm and agricultural land or timber land ~~((exempt))~~ exempted from a special benefit assessment~~((s))~~ is withdrawn or removed from classification, the previously exempt special benefit assessment~~((s shall))~~ will be due only on the portion of the land being withdrawn or removed.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-30-700 Designated forest land—Removal—Change in status—Compensating tax. (1) **Introduction.** This ~~((section))~~ rule describes what events ~~((trigger the))~~ cause removal of land from designated forest land status under chapter 84.33 RCW, the procedures followed for removal, and the resulting compensating tax.

(2) **Events ~~((triggering))~~ causing the removal of designated forest land status.** The assessor must remove forest land from its designated forest land status when:

(a) The owner submits a written request to remove the ~~((owner's))~~ land from designated forest land status;

(b) The owner sells or transfers the land to an individual or entity exempt from property tax because of that individual's or entity's ownership;

(c) The assessor determines that the land is no longer primarily devoted to and used for growing and harvesting timber;

(d) The owner has failed to comply with a final administrative or judicial order made because of the violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or the rules that implement Title 76 RCW;

(e) Restocking has not occurred to the extent or within the time specified in the application for designation of the land;

(f) The owner sells or transfers forest land to a new owner who has not signed a notice of continuance, except ~~((when the))~~ for a transfer by a transfer on death deed or a transfer to a new owner who is the heir or devisee of a deceased owner. RCW 84.33.140(5). Land may also be removed if a new owner signs the notice of continuance but the assessor determines the land does not continue to qualify in its designated status; ~~((of))~~

(g) The assessor discovers that the land was designated under chapter 84.33 RCW in error; or

(h) The owner submitted a two-year withdrawal notice pursuant to RCW 84.34.070(1) and the county merges its timber land classification, pursuant to RCW 84.34.400, with its designated forest land program. Once two assessment years have elapsed following the receipt of this notice, the assessor will remove the land under the provisions of chapter 84.33 RCW.

(3) **How to retain designated forest land status when the land is sold or transferred.** When designated forest land is sold or transferred, the new owner may retain designated forest land status by filing a signed notice of continuance with the deed. The notice of continuance may be signed as part of the real estate excise tax (REET) affidavit or as a separate form if the county has decided it will require owners to submit both the REET affidavit and ~~((an attached))~~ attach a separate notice of continuance. If multiple owners own the land, all owners or their agent(s) must sign the notice of continuance. A notice of continuance is not required for a transfer to a new owner who is an heir or devisee of a deceased owner or for a transfer by a transfer on death deed to retain designated forest land status ~~((when the new owner inherits the property)).~~

(a) The owner may obtain the notice of continuance form and a real estate excise tax (REET) affidavit from the county. The county assessor's office has the notice of continuance form and the county treasurer's office has the REET affidavit.

~~((The notice of continuance may also be obtained on the internet at <http://dor.wa.gov> under property tax, "forms.")~~

(b) After the new owner signs the notice of continuance as part of the REET affidavit and, if required, the separate notice, the REET affidavit and notice must be submitted to

the assessor for approval. The assessor may also require the owner to submit a timber management plan before approving the notice of continuance.

(i) The assessor signs the REET affidavit and indicates whether the land will or will not qualify to continue as designated forest land.

(ii) An assessor signs the REET affidavit and approves the land for continued ~~((classification))~~ designation if:

(A) The ~~((owner provides))~~ assessor is provided with a complete and accurate notice of continuance signed by the new owner demonstrating that the forest land will continue to qualify as designated forest land; and

(B) At the assessor's option, the new owner provides a timber management plan for the property.

(iii) The assessor is allowed up to fifteen days to confirm that the information upon the notice is complete and accurate. The assessor may use this time to confirm that the timber management plan provides:

(A) The correct legal description for the forest land;

(B) The new owner's statement that the forest land is ~~((owned by the same person,))~~ a parcel of land that consists of ~~((twenty))~~ five or more acres or multiple parcels that are contiguous and total five or more acres and is primarily devoted to and used to grow and harvest timber;

(C) A statement about whether the land is used to graze livestock;

(D) A brief description of the timber stands located on the land;

(E) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(F) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years.

A timber management plan may contain, but is not required to contain, any other information that the harvester needs for its own business purposes (i.e., a statement of goals for managing the land or identifying resource protection areas on the land ~~((t))~~, like riparian buffer areas along a stream or an unstable slope ~~((t))~~, that limit harvesting activities).

(iv) If the assessor determines that the notice of continuance or the timber management plan is not accurate or complete, the owner may resubmit the corrected information to the assessor.

(v) If the assessor determines that the land does not qualify to continue as designated forest land, the assessor removes the land upon the date of the conveyance and provides the owner with a notice of removal containing reason(s) for the removal and the amount of compensating taxes owed.

(c) Once the assessor signs the notice of continuance as part of the REET affidavit and the separate notice of continuance, if required, the notice(s) are then submitted to the treasurer. Before the treasurer can stamp the REET affidavit as approved for recording, the treasurer collects any REET due because of the sale or transfer, and collects all compensating tax if the land does not qualify for continuance as designated forest land because it was denied continuance by the assessor.

The county recording clerk must not accept any deeds or other transfer documents unless the treasurer has stamped the REET affidavit.

(d) A notice of continuance is not required when the transfer of the forest land is to a new owner who is an heir or devisee of a deceased owner or is a transfer by a transfer on death deed, however, the ~~((new owner))~~ land must continue to meet the requirements of designated forest land to avoid removal from designation. The treasurer determines that a transfer is by inheritance because the claim for the inheritance exemption is filled out on the REET affidavit with supporting documentation. The treasurer should notify the assessor when forest land has been transferred by inheritance without a notice of continuance.

(4) **Assessor decisions and procedures.** Before removing the land from its designated forest land status, the assessor follows certain procedures and takes into account circumstances that may delay or prevent removal.

(a) The assessor must determine:

(i) The actual area of land to be removed from forest land status;

(ii) Whether the land has been exempted from ~~((an unrefined))~~ a special benefit assessment;

(iii) The true and fair value of the area being removed as of January 1st of the year of removal from designation;

(iv) Forest land value ~~((for))~~ of the area to be removed as of January 1st of the year of removal from designation;

(v) The last levy rate that applied for that area; and

(vi) The amount of time the land has been designated as forest land, including the number of days up to the date of removal for the current year of removal.

(b) The assessor may require the owner to provide a legal description of the land area intended for removal when the landowner requests removal of owner's land from designated forest land status.

(c) The remaining land outside of the affected removal area continues to be designated as forest land if the owner retains ~~((twenty or more contiguous acres))~~ a parcel of land that consists of five or more acres or multiple parcels that are contiguous and total five or more acres, primarily devoted to and used for growing and harvesting timber. If the remaining land fails to meet ~~((the forest land definition because there are less than twenty contiguous acres primarily devoted to and used for growing and harvesting timber, the owner may request reclassification as timber land under the open space program in chapter 84.34 RCW))~~ this requirement, it will be subject to removal.

(d) The assessor must provide the owner with a written notice and an opportunity to be heard by the assessor, or the assessor's deputy, when the assessor intends to remove the land because it is no longer primarily devoted to and used for growing and harvesting timber. RCW 84.33.140 (5) ~~((d))~~ (e). Each county assessor may set his or her own procedure for giving a landowner this notice and opportunity to be heard so long as it is done in a reasonable and consistent manner that ensures due process for each owner.

(e) An assessor may not remove forest land merely because an owner subdivides the land into separate parcels, if the contiguous parcels of the subdivided land still ~~((add up to))~~ consist of at least ~~((twenty contiguous))~~ five acres and

~~remain in the same ownership,~~) and continues to be primarily devoted to and used for growing and harvesting timber. An assessor may ask an owner of designated forest land if the use of the land has changed when the owner subdivides a tract of designated forest land into separate parcels.

(f) If the assessor determines the land is no longer primarily devoted to and used for growing and harvesting timber, but there is a pending acquisition by an entity that would qualify for exemption from compensating tax under subsection (6)(e) of this ~~((section))~~ rule, the assessor must not remove the land from its designated forest land status. RCW 84.33.140 (5)~~((d))~~ (e)(i). ~~((In order))~~ To prevent removal, the government entity or other qualified recipient must provide written proof to the assessor of its intent to acquire the land or documentation that demonstrates the transaction will qualify for an exemption from compensating tax under subsection (6)(e) of this ~~((section))~~ rule. The entity acquiring the land must provide this written proof within sixty days of a request by the assessor. Thereafter, once a year, the governmental entity or other recipient must provide the assessor of the county in which the land is located written evidence of its intent to acquire the land. This written evidence must be provided on or before December 31st of each year or at an earlier date if the assessor makes a written request for such information. ~~((RCW 84.33.140 (5)(d)(i).))~~ Upon the assessor's written request, the information must be provided within sixty days from the postmark date the assessor mails ~~((or hands))~~ the request to the owner ~~((or the postmark date of the request, if later)).~~

(g) The assessor must not remove forest land from its designation if a governmental restriction is imposed on the land that prohibits, in whole or in part, the harvesting of timber.

(i) If only a portion of the forest land is impacted by the governmental restriction, the assessor cannot use the restriction as a basis to remove the remainder of the land from its designated forest land status.

(ii) A governmental restriction includes:

(A) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or

(B) The land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(h) If the assessor has reason to believe that forest land less than twenty acres is no longer primarily used for the growing and harvesting of timber, the assessor may require a timber management plan to assist with determining continuing eligibility.

(5) **Removal proceedings.** ~~((After determining that a triggering event causing removal has occurred))~~ If the forest land no longer qualifies for designation, the assessor must provide timely written notice(s) to the ~~((taxpayer))~~ owner. RCW 84.33.140 (5)~~((d))~~ (e) (written notice and opportunity to be heard), and RCW 84.33.140(9) (notice of removal). Upon receiving the notice that the land has been removed (notice of removal), the ~~((landowner))~~ owner may appeal the removal and/or apply for reclassification of the land ~~((to the open space program))~~ under chapter 84.34 RCW. If the owner chooses to appeal the removal, the appeal must be filed within thirty days (or up to sixty days if such a time limit

has been adopted by the county legislative authority) of the postmark date ~~((or))~~ the notice was mailed by the assessor, electronically transmitted by the assessor, the assessor electronically notified the owner or person responsible for payment of taxes that the notice was available to be accessed by the owner or other person, or ((by)) on or before July 1st of the year of removal, whichever is later. RCW 84.40.038. If the owner chooses to apply for reclassification, they must do so within thirty days of the postmark date of the notice.

(a) **When does the land get removed from ~~((the))~~ designated forest land status?** If the removal is a result of a sale or transfer, the assessor removes the land on the date of sale or transfer provided in the legal conveyance. If the removal is based upon a determination or discovery made about the land by the assessor or at the request of the owner, the assessor removes the land on the date shown on the notice of removal mailed to the owner.

(b) **Notice of removal.** The assessor uses the notice of removal to notify the owner that the land has been removed from designated forest land status. Within thirty days of removing land from designated forest land status, the assessor must mail ~~((a))~~ the notice of removal to the owner with the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

(i) If the property is being removed because the assessor has determined the land is no longer primarily devoted to and used for growing and harvesting timber, the assessor provides two notices. First, the assessor must notify the taxpayer of his or her intent to remove the property and give the owner an opportunity to be heard. The assessor may require the owner to provide pertinent information about the land and its use in the response to the assessor's first notice. When the assessor determines that the property still does not qualify as designated forest land after the first notice is sent, the assessor mails the owner the second notice, the notice of removal, but only after:

(A) The owner declines the opportunity to be heard;

(B) The owner fails to timely respond to the first notice; or

(C) The assessor has received and considered the owner's timely response to the notice of intent to remove and nevertheless concludes that the property is no longer primarily devoted to growing and harvesting timber.

(ii) If the removal is based upon an owner's request for removal, upon receipt of a request for removal from an owner, the assessor sends the notice of removal to the owner showing the compensating tax and recording fee due.

(iii) The notice of removal provides the reason(s) for removing the land from designation and the date of the removal. ~~((RCW 84.33.140(9).))~~ The notice includes the compensating tax calculated in subsection (6) of this ~~((section))~~ rule and the necessary recording fees to be paid. It also includes the due date for payment, along with the ~~((landowner's))~~ owner's rights to appeal the removal or appeal the true and fair value at the time of removal, and the owner's right to apply for the land to be reclassified under chapter 84.34 RCW. The county must use the notice of removal form ~~((prepared))~~ provided by the department.

(iv) The assessor must also provide written notice of the removal to any local government filing a notice regarding a

special benefit assessment under RCW 84.33.210 within a reasonable time after the assessor's decision to remove the land. The assessor may provide a simple statement with the legal description of the land, the name of the landowner, and the date of removal, if he or she includes a copy of the notice sent to the landowner. RCW 84.33.230.

(c) **What happens when an owner chooses to appeal the removal?** Unless the removal is reversed ~~((upon))~~ on appeal, the assessor continues the process to remove the property from designated forest land status. The assessor may choose to delay collection of the compensating tax and recording fee until the appeal is decided. However, if the assessor postpones the collection of the compensating tax and recording fee, the assessor must notify the treasurer to temporarily delay collection. The assessor must also notify the owner that if the determination to remove is upheld, then interest will be due from the date the compensating tax and recording fee were due.

(i) If the removal is reversed ~~((upon))~~ on appeal, the assessor ~~((shall))~~ must reinstate the land as designated forest land, discharge any lien placed against the land, revise any assessments made against the property during the interim, refund the recording fee paid, and refund or cancel any compensating taxes and interest paid or owing.

(ii) If the removal is upheld ~~((upon))~~ on an appeal ~~((in which the assessor has delayed collection))~~ and the compensating tax and recording fee have not been paid, the compensating tax and recording fee are due immediately with interest accrued from the date ~~((the tax and fee))~~ they were originally due. Upon receiving notice of the decision upholding the removal, the assessor must immediately notify the treasurer to collect any unpaid compensating taxes, fees, and interest on the land.

(d) **What happens when an owner applies to have the land reclassified under chapter 84.34 RCW?** If an application for reclassification is submitted by the owner no later than thirty days after the postmark date the notice of removal was mailed, the forest land is not removed from ~~((classification))~~ designation until the application for reclassification under chapter 84.34 RCW is denied or later removed from classification under RCW 84.34.108. RCW 84.33.145(1).

(i) An application for reclassification is processed in the same manner as an initial application for classification under chapter 84.34 RCW.

(ii) If an owner is reclassifying forest land under chapter 84.33 RCW into the timber land classification under chapter 84.34 RCW, a timber management plan must be filed with the county legislative authority within sixty days of the date the application for reclassification ~~((under this chapter or from designated forest land under chapter 84.33 RCW))~~ is received. The application for reclassification will be accepted, but may not be processed until this plan is received.

(A) If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(B) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for this plan, the

~~((county legislative))~~ granting authority may delay processing the application until the plan is received. If the timber management plan is not received by the date set by the assessor, the application for reclassification will be automatically denied.

(iii) When the owner sells or transfers forest land (or a portion of the forest land) while an application for reclassification under chapter 84.34 RCW is pending, ~~((and))~~ the assessor may accept a notice of continuation, and allow the owner to revise the application for reclassification to reflect the name of the new owner of the ~~((property))~~ forest land.

(iv) If the application for reclassification under chapter 84.34 RCW is approved, the assessor ~~((shall))~~ will transfer the property to its new classification. The assessed value of reclassified land will be based on the new classification as of January 1st of the assessment year following the year the reclassification application was submitted.

(v) If the application for reclassification under chapter 84.34 RCW is denied, the assessor must ~~((record the removal notice))~~ submit the notice of removal to the county recording authority and inform the treasurer's office to immediately begin collection of the compensating tax and the recording fee. When an application for reclassification is denied, the owner may appeal the denial in accordance with RCW 84.34.035, 84.34.037, or 84.34.041, depending on the classification applied for.

(6) **Compensating tax.** Compensating tax is imposed when land is removed from its designated forest land status. This tax recaptures taxes that would have been paid on the land if it had been assessed and taxed at its true and fair value instead of the forest land value.

(a) **Calculating the compensating tax.** The assessor uses the ~~((current year's))~~ last levy rate extended against the land, the forest land value as of January 1st of the removal year, and the true and fair value as of January 1st of the removal year for the area to be removed from forest land status to calculate the compensating tax. The compensating tax consists of two parts: The recapture of taxes for previous years that the land was designated as forest land, up to a maximum of nine years; and the recapture of taxes ~~((for the portion of the current))~~ from January 1st of the removal year up to the date of removal ~~((in the year the land is removed))~~ from designation. RCW 84.33.140 (10) and (11).

(i) The compensating tax for the previous years is calculated by determining the difference between the amount of taxes assessed at the forest land value for the removal area and the amount of taxes that would have been paid if the land had been valued at its true and fair value as of January 1st in the year of removal. That difference is multiplied by the number of years the land was designated as forest land up to a maximum of nine years.

For the purpose of counting the number of years land was assessed as forest land under this chapter, if the forest land being removed was once classified as timber land under chapter 84.34 RCW but is designated under this chapter because of a merger pursuant to RCW 84.34.400, the date the land was classified as timber land is considered to be the date the property was designated as forest land.

(ii) The compensating tax for the portion of the year of removal from January 1st to the date of removal is calculated

by determining the difference between the amount of taxes assessed at the forest land value as of January 1st of the year of removal and the taxes that would have been paid if the land had been valued at its true and fair value ((for the portion of

the year up to the removal date)) as of January 1st of the year of removal.

(b) **Formulas for calculating taxes after removal:**

(i) Calculation of prior year's compensating tax:

True and Fair Value of Land (Jan 1st of year removed)	Less	Forest Land Value ((at time of removal)) (Jan 1st of year removed)	Multiplied by	Last levy Rate Extended Against Land	Multiplied by	Years (not to exceed 9)	Equals	Compensating Tax
\$ _____	-	\$ _____	x	\$ _____	x	_____	=	\$ _____

(ii) Calculation of current year's taxes to date of removal:

$$\begin{array}{r}
 \frac{\text{No. of days designated as forest land in the year of removal}}{\text{No. of days in year}} = \text{Proration factor (To items (A) and (B))} \\
 \text{(A) } \$ \text{ _____} \times \frac{\text{Last Levy Rate Extended Against Land}}{\text{Proration factor}} = \$ \text{ _____} \\
 \text{(B) } \$ \text{ _____} \times \frac{\text{Last Levy Rate Extended Against Land}}{\text{Proration factor}} = \$ \text{ _____} \\
 \text{(C) Amount of compensating tax for current year ((A) minus (B))} = \$ \text{ _____}
 \end{array}$$

(c) **The assessor notifies the treasurer of the amount of compensating tax and the due date for the tax by providing the treasurer a copy of the removal notice.** Compensating tax is due and payable to the county treasurer thirty days after the ((assessor mails to the owner the notice of removal informing the owner of the reasons for removal and the amount of compensating tax due)) owner is notified of the amount due. The treasurer will mail a notice to the owner of the amount of compensating tax owed and the due date on which this amount must be paid. RCW 84.33.140(11). However, when property is sold or transferred, any compensating tax owed must be paid to the county treasurer before recording the conveyance. The county recording authority will not accept any instrument transferring the land, unless the compensating tax was paid or was not owed.

(d) **What happens if the compensating tax is not paid on the due date?** If the compensating tax is not paid by the due date, the tax is considered delinquent. Interest, set at the statutory rate for delinquent property taxes specified in RCW 84.56.020, will accrue against the amount of the ((outstanding taxes)) unpaid compensating tax from the due date until the entire amount owing is paid. Unpaid compensating tax and interest becomes a lien on the land. RCW 84.60.020.

(i) This lien attaches at the time the forest land is removed from designation.

(ii) The lien has priority over any recognizance, mortgage, judgment, debt, obligation, or responsibility against the land.

(iii) This lien must be fully paid before any other recognizance, mortgage, judgment, debt, obligation, or responsibility may be charged against the land.

(iv) The lien can be foreclosed upon expiration of the same period after delinquency and in the same manner as liens for delinquent real property taxes are foreclosed under RCW 84.64.050. RCW 84.33.140(12).

(e) **Compensating tax is not imposed on land removed from ((the)) forest land designation if the removal resulted solely from any of the following:**

(i) A transfer to a government entity in exchange for other forest land within Washington state;

(ii) A transfer under either the power of eminent domain or upon the threat of eminent domain by an entity with the power of eminent domain that intends to exercise this power. The entity must threaten to exercise eminent domain in writing or demonstrate this threat by some other official action;

(iii) A donation of fee title, development rights, or the right to harvest timber in order to protect, preserve, maintain, improve, restore, limit the future use, or conserve the property for public use or enjoyment (((see)) RCW 84.34.210 and 64.04.130)((-)), provided, this donation is made to a:

- (A) State agency;
- (B) Federal agency;
- (C) County;
- (D) City;
- (E) Town;
- (F) Metropolitan park district (see RCW 35.61.010);
- (G) Metropolitan municipal corporation (see RCW 35.58.020);
- (H) Nonprofit historic preservation corporation as defined in RCW 64.04.130; ((or))
- (I) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250; or

(J) Federally recognized Indian tribe.

However, when the land is no longer being used for one of the purposes listed ~~((above))~~ in RCW 84.34.210 or 64.04.-130, compensating tax will be imposed on the owner of the land at that time;

(iv) The sale or transfer of fee title to a government entity (see the governmental entities listed in subsection (6)(e)(iii) of this ~~((section))~~ rule) or a nonprofit nature conservancy corporation as defined in RCW 64.04.130 exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage advisory council under its established natural heritage plan as defined in chapter 79.70 RCW (natural area preserves) or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. However, if the land is no longer used ~~((to protect and conserve the area for state natural area preserve))~~ for these purposes, ~~((or fails to comply with the terms of a natural heritage plan.))~~ compensating tax will be imposed on the owner of the land at that time;

(v) A sale or transfer of fee title to the state's parks and recreations commission for park and recreation purposes;

(vi) An official action of an agency of the state of Washington or the county or city in which the land is located disallowing the ~~((current))~~ present use of the land. "Official action" includes city ordinances, zoning restrictions, the Growth Management Act, the Shoreline Management Act, and the Environmental Policy Act;

(vii) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(viii) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(ix) The sale or transfer of forest land within two years after the death of an owner who held at least a fifty percent interest in the land if:

(A) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and

(B) The land has been continuously assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer. For example, an owner who holds at least a fifty percent interest in designated forest land dies on March 1, 2012. The land was designated on January 1, 1989, and is still designated on the date of death of the owner. The heir (new owner) does not want to continue growing and harvesting timber and sells the land on January 20, 2014. At the time of sale, the buyer does not sign the notice of continuance because they will not be using the land for growing and harvesting timber. The assessor will remove the land at the time of sale and the removal would not be subject to compensating tax;

(x) The assessor discovers that the land was designated under chapter 84.33 RCW in error through no fault of the owner;

(A) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for designation or the failure of the assessor to remove the land from designation;

(B) This exception does not apply if an independent basis for removal exists. An example of an independent basis for removal includes the land is no longer devoted primarily to and used for the growing and harvesting of timber; or

(xi) In a county with a population of more than six hundred thousand((;)) inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax will not be imposed if there is a transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation (as these corporations are defined in RCW 64.04.130) and the property interest being transferred is to:

(A) Protect or enhance public resources; or

(B) Preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve the land for public use or enjoyment. When the land is no longer being used for any of these purposes, the owner of the land at the time will be required to pay compensating tax. ((RCW 84.33.140(12) and (13));-

(x) The sale or transfer of forest land within two years after the death of an owner who held at least a fifty percent interest in the land if:

(A) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and

(B) The land has been continuously assessed and valued as designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer; or

(xi) The assessor discovers that the land was designated under chapter 84.33 RCW in error through no fault of the owner;

(A) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for designation or the failure of the assessor to remove the land from designation;

(B) This exception does not apply if an independent basis for removal exists. An example of an independent basis for removal includes the land is no longer devoted to and used for the growing and harvesting of timber.))

(7) When will the land be assessed at its true and fair value and the taxes become payable? The land will be assessed at its true and fair value on the date it is removed from forest land status. The assessor revalues the land removed from designated forest land status with reference to its true and fair value on January 1st in the year of removal. RCW 84.33.140(10). The property tax for the remainder of the year following the date of removal is based on land's true and fair value as of January 1st of the removal year.

(a) To calculate the increase the assessor must determine the number of days remaining in the year from the date of removal. The increase in property tax is due on the same due

dates as all other property taxes are due for the year (~~generally~~) April 30th and October (~~1st~~) 31st of the current year. (~~See~~) RCW 84.56.020(~~g~~).

(b) Formula for calculating the increase in property taxes for the remainder of the year in which the land is being removed:

$$\begin{array}{l}
 \text{(i)} \quad \frac{\text{No. of days from date of removal to the end of the year}}{365} = \text{Proration factor for true and fair land value} \\
 \text{(ii)} \quad \$ \frac{\text{((Market value)) True and Fair Value of Land (Jan 1st of year removed)}}{\text{Last Levy Rate Extended Against Land}} \times \text{Proration factor} = \$ \text{ } \\
 \text{(iii)} \quad \$ \frac{\text{Forest Land Value (Jan 1st of year removed)}}{\text{Last Levy Rate Extended Against Land}} \times \text{Proration factor} = \$ \text{ } \\
 \text{(iv)} \quad \text{Total amount of increased taxes for current year ((ii) minus (iii))} = \$ \text{ }
 \end{array}$$

(c) If the taxes for the year of removal have not yet been billed, the tax should be recalculated based on the true and fair value of the land removed (~~for the portion of the year following the date of removal~~) as of January 1st of the removal year.

(d) An owner may appeal the true and fair value of the land which is used to calculate the compensating tax and the increase in the remaining current year's taxes (~~or the compensating taxes within thirty days of the notice (or up to sixty days if such time limit has been adopted by the county legislative authority) or on or before July 1st, whichever is later.~~) in accordance with RCW 84.40.038.

(8) **What happens when forest land reclassified under chapter 84.34 RCW is later removed from that classification before ten years have passed?** If reclassified forest land is later removed under chapter 84.34 RCW, a combination of compensating tax and additional tax will be imposed unless the basis for removal is one of the circumstances listed as exempt from additional tax under RCW 84.34.108(6).

(a) The amount of compensating tax is equal to the difference, if any, between the amount of property tax last levied on the land as designated forest land and an amount equal to the (~~new~~) true and fair value (~~of~~) as of January 1st of the year the land (~~when~~) is removed from classification under RCW 84.34.108, multiplied by the (~~dollar rate of the~~) last property tax levy rate extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was designated as forest land under chapter 84.33 RCW, if the total number of years the land was designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is at least ten.

WSR 14-22-112
EXPEDITED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed November 5, 2014, 10:55 a.m.]

Title of Rule and Other Identifying Information: WAC 182-526-0030 Contacting the board of appeals.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kevin Sullivan, Rules Coordinator, Health Care Authority, P.O. Box 42716, Olympia, WA 98504-2716, or deliver to Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, AND RECEIVED BY January 5, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule filing is necessary to update the address and telephone number for the board of appeals.

Reasons Supporting Proposal: The board of appeals is changing its physical location and telephone number.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting:
 Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716,
 (360) 725-1306; Implementation and Enforcement: Evelyn
 Cantrell, P.O. Box 45504, Olympia, WA 98504-5504, (360)
 725-9970.

November 5, 2014
 Kevin M. Sullivan
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-007,
 filed 12/19/12, effective 2/1/13)

WAC 182-526-0030 Contacting the board of appeals.

The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the health care authority's internet site, in person at the board of appeals (BOA) office, or by a telephone call to the BOA's main public number.

Board of Appeals	
Location	((Office Building 2 (OB 2) 2nd Floor 1115 Washington Street)) <u>626 8th Avenue S.E.</u> Olympia, Washington
Mailing address	P.O. Box ((45803)) <u>42700</u> Olympia, WA ((98504- 5803)) <u>98504-2700</u>
<u>Toll free telephone</u>	((360-664-6100)) <u>1-884-728-5212</u>
Fax	((360-664-6187)) <u>360-507-9018</u>
((Toll free	1-877-351-0002))
Internet web site	www.hca.wa.gov/appeals