

WSR 24-03-048

EXPEDITED RULES

BELLEVUE COLLEGE

[Filed January 10, 2024, 9:35 a.m.]

Title of Rule and Other Identifying Information: Chapter 132H-169 WAC, Access to public records at Bellevue Community College.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Housekeeping; the proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Reasons Supporting Proposal: Bellevue Community College changed its name to Bellevue College. Also, one listed address is no longer a valid location for Bellevue College; needs deletion.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140.

Statute Being Implemented: RCW 34.05.353.

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

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Loreen M. Keller, 3000 Landerholm Circle S.E., A-201, Bellevue, WA 98007, 425-564-6155.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: College name change, invalid physical address, website link error.

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 Loreen McRea Keller, Bellevue College, 3000 Landerholm Circle S.E., phone 425-564-6155, email loreen.keller@bellevuecollege.edu, AND RECEIVED BY April 9, 2024.

January 10, 2024
Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-5147.1

**Chapter 132H-169 WAC
ACCESS TO PUBLIC RECORDS AT BELLEVUE ((COMMUNITY)) COLLEGE**

AMENDATORY SECTION (Amending WSR 19-05-067, filed 2/19/19, effective 3/22/19)

WAC 132H-169-025 Description of college. (1) **Governance.** Bellevue College is a public institution of higher education established under chapter 28B.50 RCW as a community college, which offers associate and baccalaureate degrees. The college is governed by a board of trustees appointed by the governor. The board appoints a president who serves as the chief executive officer responsible for the administration of the college.

(2) **Main campus.** The main campus of the college is located at 3000 Landerholm Circle S.E., Bellevue, Washington. (~~The college also offers educational programs online and at another campus located at 14673 N.E. 29th Place, Bellevue, Washington.~~)

(3) **Policies and procedures.** College policies meeting the definition of a "rule" under the Administrative Procedure Act, chapter 34.05 RCW, are adopted by the board of trustees and published in Title 132H of the Washington Administrative Code (WAC). Other college policies approved by the administration are published in policies and procedures available on the college website.

(4) **Documents index.** As an institution of higher education, the college generally does not have occasion to issue nonexempt "final orders," "declaratory orders," "interpretive statements," or "policy statements" as those terms are defined and used in the Public Records Act. The secretary of the college's board of trustees does maintain and publish on the college website a documents index of the board's approved meeting minutes, motions, and resolutions. Inquiries may be directed to the secretary of the board in the office of the president.

(5) **College website.** The college's official website, available at (~~(<http://www.bellevuecollege.edu/>)~~) <https://www.bellevuecollege.edu> provides general information about the college and its board of trustees, administration, educational programs, and policies and procedures. Persons seeking public records of the college are encouraged to view the records available on the website prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 19-05-067, filed 2/19/19, effective 3/22/19)

WAC 132H-169-035 Public records officer. (1) **Designation.** A public records officer designated by the college shall be responsible for responding to public records requests in accordance with the provisions of this chapter and applicable provisions of the Public Records Act, chapter 42.56 RCW. The duties of the public records officer under this chapter may be delegated to one or more public records assistants designated by the college.

(2) **Duties.** The public records officer shall oversee the college's compliance with the Public Records Act. The records officer (or designee) and the college are responsible for providing the fullest assistance to requestors of public records, for ensuring that public records are protected from damage or disorganization, and for preventing records requests from excessively interfering with essential institutional functions or unreasonably disrupting the operations of the college. The college may take reasonable precautions to prevent a re-

questor from being unreasonably disruptive or disrespectful to college staff.

(3) Records office. Inquiries regarding public records of the college may be addressed to the public records officer at the following address:

Public Records Officer
Bellevue College
3000 Landerholm Circle S.E.
Bellevue, WA 98007
(~~425-564-2451~~) 425-564-2477
recordsofficer@bellevuecollege.edu

(4) Office hours. The customary office hours of the public records office are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

WSR 24-03-089
EXPEDITED RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 17, 2024, 11:32 a.m.]

Title of Rule and Other Identifying Information: Title 314 WAC, Liquor and cannabis board (LCB). LCB is amending WAC 314-35-075 to implement section 4 of ESSB 5365 (chapter 398, Laws of 2023).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2023 legislative session, the Washington state legislature passed ESSB 5365 (chapter 398, Laws of 2023), signed into law by Governor Inslee on May 9, 2023. This legislation increases monetary penalties LCB can impose on licensed retailers under RCW 70.155.100 for violations of RCW 26.28.080 pertaining to selling or giving cigarette, tobacco, or vapor products to persons under 21 years of age. This increase in penalties was aimed at ensuring better retailer compliance with tobacco and vapor product possession laws. Penalties are increased to the following:

- A monetary penalty of \$1,000 for the first violation within any three-year period (up from \$200).
- A monetary penalty of \$2,500 for the second violation within any three-year period (up from \$600).
- A monetary penalty of \$5,000 and suspension of the license for a period of six months for the third violation within any three-year period (up from \$2,000).
- A monetary penalty of \$10,000 and suspension of the license for a period of 12 months for the fourth violation within any three-year period (up from \$3,000).
- Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any three-year period (no change).

Reasons Supporting Proposal: ESSB 5365 directs LCB to increase penalties for violations under RCW 70.155.100. LCB is using expedited rule making to amend penalties under WAC 314-35-075 that are explicitly and specifically dictated by Washington state statute RCW 70.155.100.

Statutory Authority for Adoption: RCW 70.155.110, 70.345.020.

Statute Being Implemented: RCW 70.155.100.

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

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Denise Laflamme, Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, 360-974-9336; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1726.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: ESSB 5365 (section 4, chapter 398, Laws of 2023) directs LCB to increase penalties for violations under RCW 26.28.080 that are explicitly and specifically dictated by RCW 70.155.100.

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 Denise Laflamme, Policy and Rules Coordinator, LCB, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-974-9336, fax 360-704-5027, email rules@lcb.wa.gov, AND RECEIVED BY March 26, 2024.

January 17, 2024
David Postman
Chair

OTS-5152.1

AMENDATORY SECTION (Amending WSR 20-01-074, filed 12/11/19, effective 1/1/20)

WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both.

Category I: Violations that create a direct or immediate threat to public health, safety, or both.

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Sales to persons under twenty-one. <u>RCW 26-28-080</u>	<u>\$1,000 monetary penalty</u>	<u>\$2,500 monetary penalty</u>	<u>\$5,000 monetary penalty and a 6-month license suspension</u>	<u>\$10,000 monetary penalty and a 12-month license suspension</u>	<u>Cancellation of license with no possibility of reinstatement for 5 years</u>
((Sales to persons under twenty-one,)) Allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. ((RCW 26.28.080)) RCW 70.345.100 WAC 314-35-040	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	\$200 monetary penalty	\$600 monetary penalty	\$2,000 monetary penalty and a 6-month license suspension	\$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
<p>Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law.</p> <p>RCW 70.345.030 WAC 314-35-055</p>	<p>\$200 monetary penalty</p>	<p>\$600 monetary penalty</p>	<p>\$2,000 monetary penalty and a 6-month license suspension</p>	<p>\$3,000 monetary penalty and a 12-month license suspension</p>	<p>Cancellation of license with no possibility of reinstatement for 5 years</p>
<p>Conduct violations: Permitting or engaging in criminal conduct, or both.</p> <p>Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045</p>	<p>\$200 monetary penalty</p>	<p>\$600 monetary penalty</p>	<p>\$2,000 monetary penalty and a 6-month license suspension</p>	<p>\$3,000 monetary penalty and a 12-month license suspension</p>	<p>Cancellation of license with no possibility of reinstatement for 5 years</p>
<p>Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer.</p> <p>RCW 26.28.080</p>	<p>\$50 monetary penalty</p>	<p>\$100 monetary penalty</p>	<p>\$100 monetary penalty</p>	<p>\$100 monetary penalty</p>	<p>\$100 monetary penalty</p>

WSR 24-03-152
EXPEDITED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-05—Filed January 23, 2024, 4:27 p.m.]

Title of Rule and Other Identifying Information: Hydraulic project approval (HPA) rule making in response to SHB 1085 regarding flotation in overwater structures. This rule amends chapter 220-660 WAC, Hydraulic code rules.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A rule amendment is necessary to align the hydraulic code rules with SHB 1085 (chapter 135, Laws of 2023). The hydraulic code rules govern the administration of HPA permits. The relevant portion of SHB 1085, section 3, establishes legal standards for the sale, distribution, and installation of flotation materials in overwater structures (e.g., docks and swim floats).

The Washington department of fish and wildlife (WDFW) already regulates the installation and use of flotation materials through chapter 77.55 RCW and the hydraulic code rules. The following sections of the hydraulic code rules are being amended: WAC 220-660-140 and 220-660-380. These sections contain rules for overwater structures in freshwater and saltwater, respectively. Amendments will incorporate the language from SHB 1085, section 3 that contains standards for the encapsulation of foam flotation. The existing rules already require the encapsulation of flotation materials but are less detailed. Additionally, erroneous language regarding plastic "wrap" will be eliminated in WAC 220-660-140. That language contains a standard that does not actually exist.

The anticipated effect is that HPA permits will align with standards from SHB 1085 and provide project proponents with information that is detailed enough to build a legal overwater structure. SHB 1085, section 3 went into effect on January 1, 2024.

Note: Water crossing structures such as bridges and culverts are addressed in a different section of the hydraulic code rules and are not part of this amendment.

Reasons Supporting Proposal: WDFW has long regulated the installation of flotation materials through HPA permits. HPA standards are similar to the new law. However, differences in the language may cause confusion. The proposed amendment will align the language for freshwater flotation, marine flotation, and the new law. Amending the rules provides more clarity to the regulated community. Expedited rule making allows the updates to be made efficiently and quickly.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.55.021, and 34.05.328.

Statute Being Implemented: Chapter 77.55 RCW.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Nation, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2562; Implementation: Matt Curtis, 1111 Washington Street S.E., Olympia, WA 98501, 360-972-0190; and Enforcement: Kelly Still, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2605.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect. Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making is appropriate because the proposed rule incorporates language that is specifically dictated by statute (SHB 1085, codified in RCW 70A.245.130). The proposal also contains a clarification without changing the rule's effect.

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 Scott Bird, WDFW, P.O. Box 43200, Olympia, WA 98501-3200, phone 360-995-2442, fax 360-902-2155, email rules.coordinator@dfw.wa.gov or hydrauliccodeflotation@publicinput.com, <https://publicinput.com/hydrauliccodeflotation>, comment by phone 855-925-2801, project code 4505, AND RECEIVED BY March 25, 2024.

January 23, 2024
 Scott Bird
 Rules Coordinator

OTS-5137.3

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-140 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas. The requirements in this section apply to location, design, and construction of permanent and seasonal docks, piers, ramps (gangways), floats, watercraft lifts, and mooring buoys.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, piling-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a structure that connects a pier or shoreline to a float and provides access between the two. Pilings usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven, jacked, or cast vertically into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) **Fish life concerns:**

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and

water quality. However, light reduction is a main impact to fish life at critical life stages. Light reduction, or shading, by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead, and other fish species. Structures grounding on the bed can physically block migration and cause other impacts. The light/dark contrast of shading/no shading of over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation. These structures may increase the exposure of juvenile salmon, steelhead, and other small fish to predators by providing predator habitat.

(3) Residential and public recreational dock, pier, ramp, float, watercraft lift and buoy design - General:

(a) The design and location of structures must follow the mitigation sequence to protect freshwater habitats of special concern.

(b) Design and locate structures to protect fish spawning areas.

(c) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(i) Limit the width of residential piers and docks to six feet for the first (~~(thirty)~~) 30 feet from the shoreline (measured from mean low water). Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(A) In certain river systems alternative residential pier and dock criteria may apply.

(B) For the Columbia River, limit the width of residential piers and docks to six feet for the first (~~(fifty)~~) 50 feet from the shoreline. Docks must have (~~(twenty)~~) 20 feet of water depth below them (both criteria measured at mean low water).

(ii) Piers must extend far enough from the shoreline so floats do not impact juvenile salmonid migration, feeding, and rearing areas. Grounding of floats is approved in reservoirs and impoundments only at times of the year when the water level is dropped.

(iii) The underside of pier must be at least one and one-half feet above the OHWL elevation unless prohibited by local land use regulations.

(iv) The department will require residential pier, dock, ramp and float designs to include grating. The department may require public recreational pier, dock, ramp and float designs to include grating.

(A) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least (~~(thirty)~~) 30 percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(B) Northeast/southwest, northwest/southeast and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least (~~(fifty)~~) 50 percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(C) In water bodies with a high density of piers and docks, the department may require that grating cover entire deck surface of the pier or dock.

(D) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to

accommodate the intended use. Cover the entire ramp surface with grating.

(E) A dock or float six feet wide or narrower must have at least ~~((thirty))~~ 30 percent of the deck surface covered in functional grating. A dock or float wider than six feet (up to eight feet wide) must have at least ~~((fifty))~~ 50 percent of the deck surface covered in functional grating. The grating material's open area must be at least ~~((sixty))~~ 60 percent. In some water bodies the department may require a higher proportion of grating. Locate flotation under the solid decked area only. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration.

(F) If only the minimum deck surface area described in (c)(iv) of this subsection is grated, the grating material's open area must be at least ~~((sixty))~~ 60 percent unless the grating covers more than the minimum deck area. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced to at least ~~((forty))~~ 40 percent open area.

(d) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints.

(e) ~~((Fully enclose and contain))~~ Flotation for the structure must be fully enclosed and contained in a shell ((~~tub~~) or 20—25 mm polyethylene or polyurethane wrap)). Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~((or wrap))~~ must prevent breakup or loss of the flotation material into the water. The shell ~~((or wrap))~~ must not be readily subject to damage by ultraviolet radiation and abrasion.

(f) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless approved by the department.

(g) Embedded anchor(s) or other approved anchor(s) or piling may hold floats in place.

(h) The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features to minimize abrasion of the wood.

(i) The structure must have been usable at the site within the ~~((twelve))~~ 12 months immediately before the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

(j) Replacement of more than ~~((thirty-three))~~ 33 percent or ~~((two hundred fifty))~~ 250 square feet of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only. The grating must conform to the requirements in this section.

(4) Piling design:

(a) Use the smallest diameter and number of pilings required to construct a safe structure.

(b) Steel piling used to construct residential docks should not exceed six inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum width needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, and/or untreated or department-approved treated wood.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) All pilings must be fitted with devices to prevent perching by fish-eating birds.

(5) Watercraft lift design:

(a) The design of the watercraft lift/grid must follow the mitigation sequence to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(b) The bottom of the watercraft lift/grid must be at least one foot above the bed.

(c) Use the minimum number of pilings needed to support the watercraft lift/grid.

(6) Mooring buoy design:

(a) In water bodies where mooring buoy systems might damage the bed and native submerged aquatic vegetation, locate and design the buoy system to minimize damage.

(i) Locate the buoy deep enough to prevent vessel grounding.

(ii) Design and install the buoy system with mid-water floats so that anchor lines do not drag.

(iii) In areas with native submerged aquatic vegetation, use an embedment-style mooring anchor instead of a surface-style mooring anchor.

(iv) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

(b) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(c) The mooring buoy must have a shell that is not readily subject to damage by ultraviolet radiation and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(7) Residential and public recreational docks, pier, ramp, float, watercraft lift, and buoy construction:

(a) Operate and anchor vessels and barges during construction in a manner that protects native aquatic vegetation.

(b) Reestablish the pier or dock centerline during the construction phase using the same methodology used to establish the centerline on the construction drawings.

(c) When installing steel piling, a vibratory hammer or water jet to drive piling is preferred.

(d) If impact pile driving is needed, set the drop height to the minimum needed to drive the piling.

(e) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(f) To avoid attracting fish to lights at night, limit impact pile driving to daylight hours whenever feasible.

(g) The department may require the following when removing piling:

(i) Use a vibratory or water jet system to dislodge piling whenever feasible.

(ii) After removal, place the piling on a construction barge or other dry storage site. Piling removed from the substrate must be moved immediately from the water into a barge or other dry storage site. The piling must not be shaken, hosed off, left hanging to dry or

any other action intended to clean or remove adhering material from the piling.

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cut it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material.

(iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible.

(h) Securely anchor docks, floats, and mooring buoys.

(i) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(j) Dispose of removed docks, piers, ramps, floats, lines, chains, cables, and mooring anchors in an upland disposal site.

(k) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-380 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in saltwater areas. This section applies to the design and construction of permanent, seasonal or temporary docks, piers, ramps (gangways), floats, watercraft lifts, and mooring.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, piling-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a gangway that connects a pier or shoreline to a float and provides access between the two. Pilings usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven or jacked into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) **Fish life concerns:**

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. Light reduction is the main impact to fish life at critical life stages. Light reduction or shading by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead and other fish species. Structures grounding on the bed can physically block migration and damage forage fish spawning beds. The light/dark contrast of shading/no shading caused by over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation.

(3) **Residential and public recreational pier, ramp, float, watercraft lift and buoy design - Generally:**

(a) The department requires that new structures are designed with a pier and ramp to span the intertidal beach, whenever feasible.

(b) The design and location of structures must follow the mitigation sequence to protect salt water habitats of special concern.

(i) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas.

(ii) Design and locate structures to protect documented Pacific herring, Pacific sand lance, and surf smelt spawning beds; and rockfish and lingcod settlement and nursery areas.

(iii) The department will require a seagrass/macroalgae habitat survey for all new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate. A survey is not required for replacement of an existing structure within its original footprint.

(A) Structures must be located at least (~~twenty-five~~) 25 feet (measured horizontally from the nearest edge of the structure) and four vertical feet away from seagrass and kelp beds (measured at extreme low water).

(B) In documented herring spawning areas, structures must be located at least (~~twenty-five~~) 25 feet (measured horizontally from the nearest edge of the structure) and four vertical feet from macroalgae beds on which herring spawn (measured at extreme low water).

(iv) If artificial nighttime lighting is used in the project, use low-intensity lights that are located and shielded to prevent light from attracting fish or disrupting fish migration behavior, unless there are safety constraints.

(v) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless approved by the department. The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features such as rub strips to minimize abrasion of the wood.

(c) The structure must have been usable at the site within the past (~~twelve~~) 12 months of the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

(d) Replacement of more than (~~thirty-three~~) 33 percent or (~~two hundred fifty~~) 250 square feet of decking or replacement of decking substructure requires installation of functional grating in the replaced section only. The grating must conform to the requirements in this section.

(4) Pier and ramp design:

(a) Design piers to maximize height over the bed to improve light transmission. The bottom of the pier must be at least six feet above the bed at the landward end.

(b) Limit the width of residential piers to no more than six feet wide. Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(c) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least (~~thirty~~) 30 percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(d) Northeast/southwest, northwest/southeast, and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least

((fifty)) 50 percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(e) If only the minimum pier deck surface described in (c) or (d) of this subsection is covered, the grating material's open area must be at least ((sixty)) 60 percent open area unless grating covers more than the minimum pier deck area of the pier. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced down to at least ((forty)) 40 percent open area.

(f) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(5) **Float design (floats connected to a pier):**

(a) Whenever feasible, place float so that the largest dimension is oriented north/south.

(b) Limit the width of residential floats to eight feet. Limit the width of public recreational floats to the minimum width needed to accommodate the intended use.

(c) Whenever feasible, limit the length of single-family dock floats to ((thirty)) 30 feet and joint-use dock floats to ((sixty)) 60 feet.

(d) If the design has a float positioned perpendicular to the ramp to serve as a ramp landing, this float must not be more than six feet wide and ((ten)) 10 feet long.

(e) Design floats in intertidal areas with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom.

(f) A float six feet wide or less must have at least ((thirty)) 30 percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least ((fifty)) 50 percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only.

(g) The grating material's open area must be at least ((sixty)) 60 percent.

(h) Flotation for the structure must be fully enclosed and contained in a shell ((~~tub~~)). Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ((~~or wrap~~)) must prevent breakup or loss of the flotation material into the water. The shell ((~~or wrap~~)) must not be readily subject to damage by ultraviolet radiation and abrasion.

(i) Embedded anchor(s), pilings (with stops), and float support/stub pilings may be used to hold floats in place.

(j) If a project uses anchors to hold the float in place, the anchor lines must not rest on the substrate at any time.

(6) **Piling design:**

(a) Use the smallest diameter and number of pilings required to construct a safe structure.

(b) Steel piling used to construct residential docks should not exceed ((~~twelve~~)) 12 inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum diameter needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, or untreated or treated wood approved by the department.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) Fit all pilings with devices to prevent perching by fish-eating birds.

(7) **Watercraft lift/grid design:**

(a) Design the watercraft lift/grid to minimize shading caused by the structure.

(b) The bottom of the watercraft lift/grid must be at least one foot above the bed.

(c) Use the minimum number of piling needed to support the watercraft lift/grid.

(8) **Buoy design:** ((+a)) In water bodies where buoy systems might damage submerged aquatic vegetation, locate and design the buoy system to minimize damage.

((+i)) (a) Whenever feasible, use an embedded anchor.

((+A)) (i) A seagrass/macroalgae habitat survey is not required if an embedment-style mooring anchor is installed. The department will require the diver/installer to locate the anchor so the mooring buoy system will not damage seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate.

((+B)) (ii) A seagrass/macroalgae habitat survey is required if a surface style mooring anchor is installed. The survey is needed to ensure the mooring buoy system is installed at a location where seagrass, kelp, and in herring spawning beds other macroalgae used as spawning substrate will not be damaged.

((+ii)) (b) Place the buoy deep enough to prevent vessel grounding.

((+iii)) (c) Locate the buoy to avoid damage from vessel propellers to submerged aquatic vegetation.

((+iv)) (d) Design the buoy system with a mid-water float so that anchor lines do not drag.

((+v)) (e) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

((+vi)) (f) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

((+vii)) (g) The buoy must have a shell that is resistant to ultraviolet radiation (sunlight) and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(9) **Replacement floating docks:** The department will authorize replacement floating docks, if:

(a) The area of replaced floating dock structure is not expanded;

(b) The replaced floating dock is not relocated within waters of the state without written authorization from the department. The replaced structure must be removed and disposed of upland so it will not reenter state waters;

(c) Floats are designed with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom;

(d) A float six feet wide or less must have at least ((thirty)) 30 percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least ((fifty)) 50 percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light

penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only;

(e) The grating material's open area must be at least ~~((sixty))~~ 60 percent;

(f) Flotation for the structure must be fully enclosed and contained in a shell ~~((~~tub~~))~~. Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~((~~or wrap~~))~~ must prevent breakup or loss of the flotation material into the water. The shell ~~((~~or wrap~~))~~ must not be readily subject to damage by ultraviolet radiation and abrasion.

(10) Residential and public recreational dock, pier, ramp, float, floating dock, watercraft lift, and buoy construction:

(a) The dock or pier centerline must be reestablished during construction using the same methodology used to establish the centerline during the seagrass/macroalgae habitat survey.

(b) When installing steel piling, a vibratory hammer is preferred.

(c) If impact pile driving is used, set the drop height to the minimum needed to drive the piling.

(d) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(e) To avoid attracting fish to light at night, limit impact pile driving to daylight hours whenever feasible.

(f) The department may require the following during piling removal:

(i) Use of a vibratory system to dislodge piling whenever feasible;

(ii) Place the piling on a construction barge or other dry storage site after the piling is removed. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling;

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material;

(iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible;

(v) When removing creosote piling:

(A) Containment booms and absorbent booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All accumulated debris must be collected and disposed upland at an approved disposal site; and

(B) Creosote logs and timbers must be fully suspended during removal so no portion of the log drags through the water or onto the beach.

(g) Securely anchor dock, floats, and mooring buoys.

(h) Dispose of replaced piers, ramps, floats, docks, lines, chains, cables, or mooring anchors in an upland disposal site; and

(i) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

WSR 24-03-155
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 23, 2024, 4:45 p.m.]

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-437-0001 Disaster food stamp program.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The title of this rule and the rule itself refer to the "food stamp program." The current name of the program is the "supplemental nutrition assistance program." This amendment updates the wording to reflect current usage.

Reasons Supporting Proposal: These amendments meet the criteria for expedited adoption as set forth in RCW 34.05.353 (1)(c): "The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.["]

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carolyn Horlor, P.O. Box 45470, Olympia, WA 98504-5470, 360-764-0676.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: These amendments update outdated language of a rule without changing its effect.

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 Katherine I. Vasquez, DSHS, P.O. Box 45850, Olympia, WA 98504, phone 360-664-6097, fax 360-664-6185, email DSHSRPAURulesCoordinator@dshs.wa.gov, AND RECEIVED BY March 26, 2024.

January 23, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5013.2

Chapter 388-437 WAC
EMERGENCY FOOD ASSISTANCE ((FOR FOOD STAMPS))

AMENDATORY SECTION (Amending WSR 05-23-028, filed 11/8/05, effective 12/9/05)

WAC 388-437-0001 Disaster ((~~food stamp~~)) supplemental nutrition assistance program. (1) In the event of a disaster, the department works with the United States Department of Agriculture, Food and Nutrition ((~~Services~~)) Service (FNS) to change some requirements for the Washington Basic Food program and help ensure that people in a disaster area have access to food. This is known as the disaster ((~~food stamp~~)) supplemental nutrition assistance program.

(2) If the President of the United States has declared a portion of the state as a federal disaster area, we ask FNS to allow use of the disaster ((~~food stamp~~)) supplemental nutrition assistance program for the areas impacted by the disaster. Both of the following conditions must be met:

- (a) People's normal access to buy food has been disrupted; and
- (b) These commercial channels have since been restored with reasonable access and sufficient food supplies as determined by FNS.

(3) The department will implement any disaster ((~~food stamp~~)) supplemental nutrition assistance program as approved by FNS.

WSR 24-03-165

EXPEDITED RULES

DEPARTMENT OF LICENSING

[Filed January 24, 2024, 9:18 a.m.]

Title of Rule and Other Identifying Information: WAC 308-500-010 Semiautomatic assault rifle fee.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing (department) is removing the requirement for firearm dealers to charge a fee for semiautomatic assault rifle purchases. This change is pursuant to HB [E2SHB] 1143, passed during the 2023 legislative session, which now allows firearms dealers to charge a background check fee for the Secure Automated Firearm E-check system run by the Washington state patrol.

Reasons Supporting Proposal: These updates align with changes made by HB [E2SHB] 1143, including RCW 43.43.580 Firearms background check unit—Automated firearms background check system—Fee, and 9.41.090 Dealer deliveries regulated—Hold on deliver—Fees authorized.

Statutory Authority for Adoption: RCW 9.41.090 (7) (a) Dealer deliveries regulated—Hold on delivery—Fees authorized, and 43.43.580 (4) (a) Firearms background check unit—Automated firearms background check system—Fee.

Statute Being Implemented: HB [E2SHB] 1143 and RCW 43.43.580 Firearms background check unit—Automated firearms background check system—Fee.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Aaron Slavin, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-634-5081.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This requirement is specifically called out in RCW 43.43.580 which was approved in HB [E2SHB] 1143 during the 2023 legislative session.

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 Kelsey Stone, Department of Licensing, 1125 Washington Street S.E., Olympia,

WA 98504, phone 360-902-0131, email rulescoordinator@dol.wa.gov, AND
RECEIVED BY March 25, 2024.

January 24, 2024
Ellis Starrett
Rules and Policy Manager

OTS-5099.1

REPEALER

The following section of the Washington Administrative Code is
repealed:

WAC 308-500-010 Semiautomatic assault rifle fee.

WSR 24-03-166

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed January 24, 2024, 9:44 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-281 Petroleum product tax.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) intends to amend WAC 458-20-281 to incorporate changes enacted pursuant to HB [ESHB] 1175 (2023), specifically, the petroleum products tax rate imposed under RCW 82.23A.020.

Reasons Supporting Proposal: The update is to conform the rule to HB [ESHB] 1175, which passed during the 2023 legislative session.

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

Statute Being Implemented: RCW 82.23A.020.

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: Brett Granemann, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1532; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate for this rule update because the department is incorporating changes resulting from 2023 legislation.

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 Brett Granemann, Department of Revenue, 6400 Linderson Way S.W., Tumwater, WA, phone 360-534-1532, fax 360-534-1606, email brettg@dor.wa.gov, AND RECEIVED BY March 25, 2024.

January 24, 2024

Atif Aziz

Rules Coordinator

OTS-5159.1

AMENDATORY SECTION (Amending WSR 17-01-155, filed 12/21/16, effective 1/21/17)

WAC 458-20-281 Petroleum product tax. (1) Introduction. Under chapter 82.23A RCW (hereinafter referred to as the "law"), a petroleum product tax is imposed upon the wholesale value of petroleum products

in this state with specific credits and exemptions provided. The tax is an excise tax upon the privilege of first possessing petroleum products in this state. The tax is administered by the department of revenue.

(a) Chapter 82.23A RCW is administered exclusively under this rule. The application of the petroleum product tax with the exceptions noted below, is the same as the application of the hazardous substance tax explained in WAC 458-20-252 (1)(c).

(b) The petroleum product tax is imposed upon any possession of petroleum products in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall only upon the first such possession in this state just like the hazardous substance tax.

(2) Definitions. For purposes of this rule the following definitions will apply.

(a) "Tax" means the petroleum product tax imposed under chapter 82.23A RCW.

(b) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel oil, asphalt base, and every other product derived from the refining of crude oil, but the term does not include crude oil or liquefiable gases.

(c) "Possession" means control of a petroleum product located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(d) "Previously taxed petroleum product" means a petroleum product in respect to which the petroleum product tax has been paid and that has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(e) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price at the place of use of similar products of like quality and character.

(i) For purposes of determining the tax for petroleum products introduced at the rack, the wholesale value is determined when the petroleum product is removed at the rack unless the removal is to a properly licensed petroleum products exporter for direct delivery to a destination outside of the state. For all other cases, the wholesale value is determined upon the first nonbulk possession in the state.

(ii) In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases, the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(f) "Selling price" has the same meaning as provided in WAC 458-20-252 (2)(h).

(g) "State," for purposes of the credit provisions of the petroleum product tax, means:

(i) A state of the United States other than Washington, or any political subdivision of such other state;

(ii) The District of Columbia;

(iii) Any foreign country or political subdivision thereof; and

(iv) Territories and possessions of the United States.

(h) "Rack" means a mechanism for delivering petroleum products from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer. For purposes of this definition:

(i) "Nonbulk transfer" means a transfer of a petroleum product that does not meet the definition of "bulk transfer" in (h)(ii) of this subsection;

(ii) "Bulk transfer" means a transfer of a petroleum product by pipeline or vessel; and

(iii) "Terminal" means a petroleum product storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which certain petroleum products are removed at a rack.

(3) Tax rate and measure. The tax is imposed upon the privilege of possession of a petroleum product in this state.

(a) The tax rate is thirty one-hundredths of one percent (.003). (~~Starting July 1, 2021, the rate will be decreased from thirty one-hundredths of one percent (.003) to fifteen one-hundredths of one percent (.0015).~~)

(b) The tax measure or base is the wholesale value of the petroleum product, as defined in this rule.

(c) The tax will apply for first possessions of any petroleum products in all periods after its effective date unless the department notifies taxpayers in writing of the department's determination that the pollution liability reinsurance program trust account contains a sufficient balance to cause a moratorium on the tax application. The department will again notify taxpayers in writing if and when the account balance requires reapplication of the tax.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed petroleum products are exempt in precisely the manner as the same exemption for the hazardous substance tax. (Additional information is provided in WAC 458-20-252 (4)(a).) If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(b) Any possession of a petroleum product by a natural person for use of a personal or domestic nature rather than a business nature is exempt in precisely the manner as the same exemption for the hazardous substance tax. (Additional information is provided in WAC 458-20-252 (4)(b).)

(c) Any possessions of the following substances are tax exempt:

(i) Natural gas, or petroleum coke;

(ii) Liquid fuel or fuel gas used in processing petroleum;

(iii) Petroleum products that are exported for use or sale outside this state as fuel.

(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the person possessing such product(s) must take from its buyer or transferee of the product(s) a written certification in substantially the following form:

Certificate of Tax Exempt Export Petroleum Products

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any petroleum product tax due upon all or any part of such products that are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No.
(If applicable)
Type of Business
Registered Name
(If different)
Authorized Signature
Title
Identity of Petroleum Product
(Kind and amount by volume)
Date:

(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur petroleum product tax liability by such sellers or transferors of petroleum products.

(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458-20-193C, parts A or B. Carriers who will purchase fuel in this state to be taken out-of-state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, information regarding the credit provisions is provided in WAC 458-20-252 (5)(b).)

(vii) Blanket export exemption certificates may never be accepted in connection with petroleum products exchanged under exchange agreements.

(d) Any possession of petroleum products packaged for sale to ultimate consumers. This exemption is limited to petroleum products that are prepared and packaged for sale at usual and ordinary retail outlets. Examples are containerized motor oil, lubricants, and aerosol solvents.

(5) Credits. There are two distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken in the amount of the petroleum product tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. The credit is applied in precisely the same manner as the hazardous substance tax in WAC 458-20-252 (5)(b).

The same form of certification as used for the fuel-in-tanks hazardous substance tax credit in WAC 458-20-252 (5)(b)(vi) may be used.

(b) A credit may be taken against the tax owed in this state in the amount of any other state's petroleum product tax that has been

paid by the same person measured by the wholesale value of the same petroleum product tax.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be on the act or privilege of possessing petroleum products and the tax must be of a kind that is not generally imposed on other activities or privileges; the tax purpose must be to fund pollution liability insurance; and the tax measure must be stated in terms of the wholesale value of the petroleum products, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) The credit is applied in precisely the same manner as the state credit for hazardous substance tax in WAC 458-20-252 (5)(c). The amount of the credit shall not exceed the petroleum product tax liability with respect to that petroleum product.

(6) General administration and tax reporting. The general administrative and tax reporting provisions for the hazardous substance tax contained in WAC 458-20-252 (8) through (14) apply as well for the petroleum product tax of this rule in precisely the same manner except the references to "hazardous substance(s)" or "substance(s)" should be replaced with the words, "petroleum products."

(7) Expiration date. The petroleum product tax expires July 1, 2030.