

WSR 24-14-009

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 21, 2024, 11:16 a.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 84.33.091 requires the stumpage values in WAC 458-40-660 to be updated on or before July 1st for use the following July 1st through December 31st.

Purpose: WAC 458-40-660 contains the stumpage values used by timber harvesters to calculate the timber excise tax; this rule is being revised to provide updated stumpage values for the period from July 1, 2024, through December 31, 2024.

Citation of Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Other Authority: RCW 84.33.091, 84.33.140.

Adopted under notice filed as WSR 24-10-072 on April 29, 2024.

A final cost-benefit analysis is available by contacting Tiffany Do, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1558, fax 360-534-1606, TTY 1-800-451-7985, email TiffanyD@dor.wa.gov, website dor.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2024.

Brenton Madison
Rules Coordinator

OTS-5355.2

AMENDATORY SECTION (Amending WSR 24-01-027, filed 12/8/23, effective 1/1/24)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((January 1 through June 30, 2024))~~ July 1 through December 31, 2024:

Washington State Department of Revenue
WESTERN WASHINGTON STUMPAGE VALUE TABLE
 ((January 1 through June 30, 2024))
 July 1 through December 31, 2024

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir ⁽²⁾	DF	1	((511)) <u>523</u>
		2	((528)) <u>530</u>
		3	((579)) <u>598</u>
		4	((585)) <u>606</u>
		5	((549)) <u>487</u>
		9	((497)) <u>509</u>
Western Hemlock and Other Conifer ⁽³⁾	WH	1	((261)) <u>240</u>
		2	((315)) <u>291</u>
		3	((333)) <u>286</u>
		4	((312)) <u>253</u>
		5	((327)) <u>302</u>
Western Redcedar ⁽⁴⁾	RC	1-5	((1,173)) <u>1,013</u>
		9	((1,159)) <u>999</u>
Ponderosa Pine ⁽⁵⁾	PP	1-5	((163)) <u>159</u>
		9	((149)) <u>145</u>
Red Alder	RA	1-5	((511)) <u>383</u>
		9	((497)) <u>369</u>
Black Cottonwood	BC	1-5	((6)) <u>1</u>
		9	<u>1</u>
Other Hardwood	OH	1-5	((170)) <u>92</u>
		9	((156)) <u>78</u>
Douglas-fir Poles & Piles	DFL	1-5	((975)) <u>964</u>
		9	((961)) <u>950</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Redcedar Poles	RCL	1-5	((1,918)) 1,967
		9	((1,904)) 1,953
Chipwood ⁽⁶⁾	CHW	1-5	((15)) 1
		9	((13)) 1
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-9	389
Posts ⁽⁸⁾	LPP	1-9	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-9	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-9	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

Washington State Department of Revenue
EASTERN WASHINGTON STUMPAGE VALUE TABLE
 ((January 1 through June 30, 2024))
 July 1 through December 31, 2024

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir ⁽²⁾	DF	6	((360)) 308
		7	((374)) 322
Western Hemlock and Other Conifer ⁽³⁾	WH	6	((256)) 225
		7	((270)) 239
Western Redcedar ⁽⁴⁾	RC	6	((879)) 735
		7	((893)) 749
Ponderosa Pine ⁽⁵⁾	PP	6	((149)) 145
		7	((163)) 159

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Other	OH	6	1
Hardwood		7	9
Western Redcedar	RCL	6	((1,486)) <u>1,538</u>
Poles		7	((1,500)) <u>1,552</u>
Chipwood ⁽⁶⁾	CHW	6	1
		7	1
Small Logs ⁽⁶⁾	SML	6	((14)) <u>12</u>
		7	((16)) <u>14</u>
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	6-7	389
Posts ⁽⁸⁾	LPP	6-7	0.35
DF Christmas Trees ⁽⁹⁾	DFX	6-7	0.25
Other Christmas Trees ⁽⁹⁾	TFX	6-7	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.

(4) Includes Alaska-Cedar.

(5) Includes Western White Pine in SVA 6-7.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.

(9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50 percent) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total

acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over two acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from (~~January 1 through June 30, 2024~~) July 1 through December 31, 2024:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
 (~~January 1 through June 30, 2024~~)
July 1 through December 31, 2024

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table

Stumpage Value Areas 6 and 7
 ((January 1 through June 30, 2024))
July 1 through December 31, 2024

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
	A limited removal of timber described in WAC 458-40-610 (28)	-\$60.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00
Note:	This adjustment only applies to published MBF sawlog values.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

WSR 24-14-032

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed June 25, 2024, 1:54 p.m., effective July 26, 2024]

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

Purpose: Substance abuse monitoring program language updates for osteopathic physicians and surgeons. The board of osteopathic medicine and surgery (board) has adopted amendments to WAC 246-853-290, 246-853-300, 246-853-310, and 246-853-320 to update the rules regarding health profession monitoring programs. The adopted changes align existing rule language with the changes made in SSB 5496 (chapter 43, Laws of 2022). Changes have replaced "substance abuse" with "substance use disorder."

The department of health (department) has also adopted technical amendments to WAC 246-853-990 Osteopathic fees and renewal cycle, to align with the language changes made by SSB 5496.

These changes align the rules with currently accepted language for substance use disorders and related monitoring programs.

Citation of Rules Affected by this Order: Amending WAC 246-853-290, 246-853-300, 246-853-310, 246-853-320, and 246-853-990.

Statutory Authority for Adoption: RCW 18.57.005; and SSB 5496 (chapter 43, Laws of 2022).

Adopted under notice filed as WSR 24-05-036 on February 14, 2024.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: June 25, 2024.

Lisa Galbraith, DO, Chair
Board of Osteopathic Medicine and Surgery
Kristin Peterson JD
Chief of Policy
for Umair A. Shah MD, MPH
Secretary

OTS-4302.5

AMENDATORY SECTION (Amending WSR 23-19-059, filed 9/15/23, effective 10/16/23)

WAC 246-853-290 Intent of substance use disorder monitoring. It is the intent of the legislature that the board of osteopathic medi-

cine and surgery seek ways to identify and support the rehabilitation of osteopathic physicians and surgeons where practice or competency may be impaired due to ~~((the abuse of drugs or alcohol))~~ an applicable impairing health condition. The legislature intends that ~~((these practitioners))~~ osteopathic physicians be treated so that they can return to or continue to practice osteopathic medicine and surgery in a way which safeguards the public. The legislature specifically intends that the board of osteopathic medicine and surgery establish an alternate program to the traditional administrative proceedings against osteopathic physicians and surgeons.

In lieu of disciplinary action under RCW 18.130.160 and if the board of osteopathic medicine and surgery determines that the unprofessional conduct may be the result of ~~((substance abuse))~~ an applicable impairing health condition, the board may refer the registrant/licensee to a voluntary substance ~~((abuse))~~ use disorder monitoring program approved by the board.

AMENDATORY SECTION (Amending WSR 23-19-059, filed 9/15/23, effective 10/16/23)

WAC 246-853-300 Definitions used relative to ~~((substance abuse))~~ monitoring of an applicable impairing health condition. ~~((1))~~ "Ap-

proved substance abuse monitoring program" or "approved monitoring program" is a program the board has determined meets the requirements of the law and rules established by the board, according to the Washington Administrative Code, which enters into a contract with osteopathic practitioners who have substance abuse problems. The approved substance abuse monitoring program oversees compliance of the osteopathic practitioner's recovery activities as required by the board. Substance abuse monitoring programs may provide evaluation and/or treatment to participating osteopathic practitioners.

(2) "Impaired osteopathic practitioner" means an osteopathic physician and surgeon who is unable to practice osteopathic medicine and surgery with judgment, skill, competence, or safety due to chemical dependence, mental illness, the aging process, loss of motor skills, or any other mental or physical condition.

~~((3))~~ The definitions in this section apply throughout WAC 246-853-290 through 243-853-320 and 243-853-990 unless the context clearly requires otherwise.

(1) "Aftercare" means that period of time after intensive treatment that provides the osteopathic physician and the osteopathic physician's family with group, or individualized counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment program staff.

(2) "Contract" is a comprehensive, structured agreement between the recovering osteopathic ~~((practitioner))~~ physician and the ~~((ap-))~~ approved monitoring program wherein the osteopathic ~~((practitioner))~~ physician consents to comply with the monitoring program and the required components for the osteopathic ~~((practitioner's))~~ physician's recovery activity.

~~((4))~~ "Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services as specified in RCW 18.130.175.

~~(5) "Chemical dependence/substance abuse" means a chronic progressive illness which involves)~~ (3) "Drug" means a chemical substance alone or in combination, including alcohol.

~~(4) "Impairing health condition" means a mental or physical health condition that impairs or potentially impairs the osteopathic physician's ability to practice with reasonable skill and safety which may include a substance use disorder characterized by the inappropriate use of either alcohol ((and/or)) or other drugs, or both to a degree that it interferes in the functional life of the ((registrant/licensee)) licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.~~

~~((6) "Drug" means a chemical substance alone or in combination, including alcohol.~~

~~(7) "Aftercare" means that period of time after intensive treatment that provides the osteopathic practitioner and the osteopathic practitioner's family with group, or individualized counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment program staff.~~

~~(8))~~ (5) "Monitoring program" means an approved voluntary substance use disorder monitoring program or physician health monitoring program that the board has determined meets the requirements of the law and rules established by the board, according to the Washington Administrative Code, which enters into a contract with osteopathic physicians who have an impairing health condition. The substance monitoring program oversees compliance of the osteopathic physician's recovery activities as required by the board. Monitoring programs may provide either evaluation or treatment, or both to participating osteopathic physicians.

~~(6) "((Practitioner)) Osteopathic physician support group" is a group of either osteopathic ((practitioners and/or)) physicians or other health care professionals, or both meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.~~

~~((9) "Twelve-step groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and similar organizations.~~

~~(10))~~ (7) "Random drug screens" are laboratory tests to detect the presence of drugs of ((abuse)) use disorder in body fluids which are performed at irregular intervals not known in advance by the person to be tested. The collection of the body fluids must be observed by a treatment or health care professional or other board or monitoring program-approved observer.

~~((11))~~ (8) "Recovering" means that ((a chemically dependent)) an osteopathic ((practitioner)) physician with an impairing health condition is in compliance with a treatment plan of rehabilitation in accordance with criteria established by ((an approved treatment facility and an approved substance abuse)) the monitoring program.

~~((12))~~ (9) "Rehabilitation" means the process of restoring ((a chemically dependent)) an osteopathic ((practitioner)) physician to a level of professional performance consistent with public health and safety.

~~((13) "Reinstatement" means the process whereby a recovering osteopathic practitioner is permitted to resume the practice of osteopathic medicine and surgery.)~~

(10) "Treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services as specified in RCW 18.130.175.

(11) "Twelve-step groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy of anonymity, belief in a power greater than oneself, peer group association, and self-help.

AMENDATORY SECTION (Amending WSR 91-10-043, filed 4/25/91, effective 5/26/91)

WAC 246-853-310 Approval of ~~((substance abuse))~~ monitoring programs. The board will approve the monitoring program ~~((s) which will participate in))~~ to facilitate the recovery of osteopathic ~~((practitioners))~~ physicians. The board will enter into a contract with the ~~((approved substance abuse))~~ monitoring program ~~((s))~~ on an annual basis.

(1) ~~((An approved))~~ A monitoring program may provide evaluations ~~((and/or))~~ or treatment, or both to the participating osteopathic ~~((practitioners))~~ physicians.

(2) ~~((An approved))~~ A monitoring program staff must have the qualifications and knowledge of both ~~((substance abuse))~~ impairing health conditions and the practice of osteopathic medicine and surgery as defined in chapter 18.57 RCW to be able to evaluate:

(a) Drug screening laboratories;

(b) Laboratory results;

(c) Providers of ~~((substance abuse))~~ treatment for impairing health conditions, both individual and facilities;

(d) Osteopathic ~~((practitioner))~~ physician support groups;

(e) Osteopathic ~~((practitioners'))~~ physicians' work environment; and

(f) The ability of the osteopathic ~~((practitioners))~~ physicians to practice with reasonable skill and safety.

(3) ~~((An approved))~~ A monitoring program will enter into a contract with the osteopathic ~~((practitioner))~~ physician and the board to oversee the osteopathic ~~((practitioner's))~~ physician's compliance with the requirement of the program.

(4) The program staff of the ~~((approved))~~ monitoring program will evaluate and recommend to the board, on an individual basis, whether an osteopathic ~~((practitioner))~~ physician will be prohibited from engaging in the practice of osteopathic medicine and surgery for a period of time and restrictions, if any, on the osteopathic ~~((practitioner's))~~ physician's access to controlled substances in the work place.

(5) ~~((An approved))~~ A monitoring program shall maintain records on participants.

(6) ~~((An approved))~~ A monitoring program will be responsible for providing feedback to the osteopathic ~~((practitioner))~~ physician as to whether treatment progress is acceptable.

(7) ~~((An approved))~~ A monitoring program shall report to the board any osteopathic ~~((practitioner))~~ physician who fails to comply with the requirements of the monitoring program.

(8) ~~((An approved))~~ A monitoring program shall provide the board with a statistical report on the program, including progress of participants, at least annually, or more frequently as requested by the board.

(9) The board shall provide the ~~((approved))~~ monitoring program guidelines on treatment, monitoring, ~~((and/or))~~ or limitations on the practice of osteopathic medicine and surgery for those participating in the program.

(10) ~~((An approved))~~ A monitoring program shall provide for the board a complete financial breakdown of cost for each individual osteopathic ~~((practitioner))~~ physician participant by usage at an interval determined by the board in the annual contract.

(11) ~~((An approved))~~ A monitoring program shall provide for the board a complete annual audited financial statement.

(12) ~~((An approved))~~ A monitoring program shall enter into a written contract with the board and submit monthly billing statements supported by documentation.

AMENDATORY SECTION (Amending WSR 91-10-043, filed 4/25/91, effective 5/26/91)

WAC 246-853-320 Participation in ~~((approved))~~ substance ~~((abuse))~~ use disorder monitoring program. (1) The osteopathic ~~((practitioner))~~ physician who has been investigated by the board may accept board referral into the ~~((approved substance abuse))~~ monitoring program. This may occur as a result of disciplinary action.

(a) The osteopathic ~~((practitioner))~~ physician shall undergo a complete physical and psychosocial evaluation before entering the ~~((approved))~~ monitoring program. This evaluation is to be performed by a health care professional(s) with expertise in ~~((chemical dependency))~~ impairing health conditions. The person(s) performing the evaluation shall not be the provider of the recommended treatment.

(b) The osteopathic ~~((practitioner))~~ physician shall enter into a contract with the board and the ~~((approved substance abuse))~~ monitoring program to comply with the requirements of the program which ~~((shall))~~ may include, but not be limited to:

(i) The osteopathic ~~((practitioner))~~ physician will undergo ~~((intensive substance abuse))~~ treatment ~~((in an approved))~~ of an impairing health condition by a treatment facility.

(ii) ~~((The osteopathic practitioner shall agree))~~ An agreement to abstain from the use of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101. ~~((Said))~~ The prescriber shall notify the monitoring program of all drugs prescribed within ~~((fourteen))~~ 14 days of the date care was provided.

(iii) ~~((The osteopathic practitioner must complete the))~~ Completion of any prescribed aftercare program of the ~~((intensive))~~ treatment facility. This may include individual ~~((and/or))~~ or group psychotherapy, or both.

(iv) ~~((The osteopathic practitioner must cause))~~ Directing the treatment counselor(s) and authorized prescriber(s) to provide reports to the appropriate monitoring program at specified intervals. Reports shall include treatment prognosis, goals, drugs prescribed, etc.

(v) ~~((The osteopathic practitioner shall submit))~~ Submitting to random drug screening, with observed specimen collection, as specified by the ~~((approved))~~ monitoring program.

(vi) ~~((The osteopathic practitioner shall attend osteopathic practitioner))~~ Attending osteopathic physician support groups facili-

tated by health care professionals (~~(and/or)~~) or twelve-step group meetings, or both as specified by the contract.

(vii) (~~The osteopathic practitioner shall comply~~) Complying with specified employment conditions and restrictions as defined by the contract.

(viii) (~~The osteopathic practitioner shall sign~~) Signing a waiver allowing the (~~approved~~) monitoring program to release information to the board if the osteopathic (~~practitioner~~) physician does not comply with the requirements of the contract.

(c) The osteopathic (~~practitioner~~) physician is responsible for paying the costs of the physical and psychosocial evaluation, (~~substance abuse~~) treatment of the impairing health condition, random urine screens, and other personal expenses incurred in compliance with the contract.

(d) The osteopathic (~~practitioner~~) physician may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 if the osteopathic (~~practitioner~~) physician does not consent to be referred to the (~~approved~~) monitoring program, does not comply with specified practice restrictions, or does not successfully complete the program.

(2) An osteopathic (~~practitioner~~) physician who is not being investigated by the board or subject to current disciplinary action, or not currently being monitored by the board for (~~substance abuse~~) an impairing health condition, may voluntarily participate in the (~~approved substance abuse~~) monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for their (~~substance abuse~~) impairing health condition, and shall not have their participation made known to the board if they continue to satisfactorily meet the requirements of the (~~approved~~) monitoring program:

(a) The osteopathic (~~practitioner~~) physician shall undergo a complete physical and psychosocial evaluation before entering the (~~approved~~) monitoring program. This evaluation will be performed by a health care professional with expertise in (~~chemical dependency~~) impairing health conditions. The person(s) performing the evaluation shall not also be the provider of the recommended treatment.

(b) The osteopathic (~~practitioner~~) physician shall enter into a contract with the (~~approved substance abuse~~) monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) (~~The osteopathic practitioner will undergo intensive substance abuse treatment in an approved~~) Treatment for an impairing health condition by a treatment facility.

(ii) (~~The osteopathic practitioner will agree~~) Agreeing to abstain from the use of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101. Said prescriber shall notify the monitoring program of all drugs prescribed within (~~fourteen~~) 14 days of the date care was provided.

(iii) (~~The osteopathic practitioner must complete the~~) Completion of any prescribed aftercare program of the (~~intensive~~) treatment facility. This may include individual (~~and/or~~) or group psychotherapy, or both.

(iv) (~~The osteopathic practitioner must cause~~) Directing the treatment counselor(s) and authorized prescriber(s) to provide reports to the (~~approved~~) monitoring program at specified intervals. Reports shall include treatment prognosis, goals, drugs prescribed, etc.

(v) ~~((The osteopathic practitioner shall submit))~~ Submitting to random drug screening, with observed specimen collection, as specified by the ~~((approved))~~ monitoring program.

(vi) ~~((The osteopathic practitioner will attend practitioner))~~ Attending osteopathic physician support groups facilitated by a health care professional ~~((and/or))~~ or twelve-step group meetings, or both as specified by the individual's contract.

(vii) ~~((The osteopathic practitioner will comply))~~ Complying with specified employment conditions and restrictions as defined by the contract.

(viii) ~~((The osteopathic practitioner shall sign))~~ Signing a waiver allowing the ~~((approved))~~ monitoring program to release information to the board if the osteopathic ~~((practitioner))~~ physician does not comply with the requirements of the contract. The osteopathic ~~((practitioner))~~ physician may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for noncompliance with the contract or if ~~((he/she does))~~ they do not successfully complete the program.

(c) The osteopathic ~~((practitioner))~~ physician is responsible for paying the costs of the physical and psychosocial evaluation, ~~((substance abuse))~~ treatment of impairing health condition, random urine screens, and other personal expenses incurred in compliance with the contract.

AMENDATORY SECTION (Amending WSR 23-19-059, filed 9/15/23, effective 10/16/23)

WAC 246-853-990 Osteopathic fees and renewal cycle. (1) Licenses must be renewed every year on the ~~((practitioner's))~~ physician's birthday as provided in chapter 246-12 WAC, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
Original application	
Endorsement application	\$375.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	375.00
Late renewal penalty	190.00
Expired license reissuance	250.00
UW online access fee (HEAL-WA)	16.00
Substance ((abuse)) <u>use disorder</u> monitoring surcharge	50.00
Inactive license renewal	
Renewal	310.00
Expired license reissuance	225.00
Late renewal penalty	155.00
UW online access fee (HEAL-WA)	16.00
Substance ((abuse)) <u>use disorder</u> monitoring surcharge	50.00

Title of Fee	Fee
Retired active license renewal	
Renewal	195.00
Late renewal penalty	100.00
UW online access fee (HEAL-WA)	16.00
Substance ((abuse)) <u>use disorder</u> monitoring surcharge	50.00
Endorsement/state exam application	500.00
Reexam	100.00
Verification of license	50.00
Limited license	
Application	285.00
Renewal	265.00
UW online access fee (HEAL-WA)	16.00
Substance ((abuse)) <u>use disorder</u> monitoring surcharge	50.00
Temporary permit application	70.00
Duplicate certificate	20.00

WSR 24-14-040

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed June 26, 2024, 7:37 a.m., effective July 27, 2024]

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

Purpose: The health care authority is amending WAC 182-550-1500 to allow for the payment of outpatient services in the following revenue code categories: "Partial hospitalization—Less intensive," "Partial hospitalization—Intensive," and "Intensive outpatient services—Psychiatric."

Citation of Rules Affected by this Order: Amending WAC 182-550-1500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: SB 5736, section 1 (1) (a) (ix); RCW 71.24.385.

Adopted under notice filed as WSR 24-11-146 on May 21 [22], 2024.

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

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

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

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

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

Date Adopted: June 26, 2024.

Wendy Barcus
Rules Coordinator

OTS-5394.1

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-1500 Covered and noncovered revenue code categories and subcategories for outpatient hospital services. (1) The medicaid agency pays for an outpatient hospital covered service in the following revenue code categories and subcategories when the hospital provider accurately bills:

(a) "Pharmacy," only subcategories "general classification," "generic drugs," "nongeneric drugs," "drugs incident to other diagnostic services," "drugs incident to radiology," "nonprescription," and "IV solutions";

(b) "IV therapy," only subcategories "general classification," "infusion pump," "IV therapy/pharmacy services," "IV therapy/drug/supply delivery," and "IV therapy/supplies";

(c) "Medical/surgical supplies and devices," only subcategories "general classification," "nonsterile supply," "sterile supply,"

"pacemaker," "intraocular lens," and "other implant," and "other supplies/devices";

(d) "Oncology," only subcategory "general classification";

(e) "Durable medical equipment (other than renal)," only subcategory "general classification";

(f) "Laboratory," only subcategories "general classification," "chemistry," "immunology," "renal patient (home)," "nonroutine dialysis," "hematology," "bacteriology and microbiology," and "urology";

(g) "Laboratory pathology," only subcategories "general classification," "cytology," "histology," and "biopsy";

(h) "Radiology - Diagnostic," only subcategories "general classification," "angiocardiology," "arthrography," "arteriography," and "chest X-ray";

(i) "Radiology - Therapeutic and/or chemotherapy administration," only subcategories "general classification," "chemotherapy - injected," "chemotherapy - oral," "radiation therapy," and "chemotherapy - IV";

(j) "Nuclear medicine," only subcategories "general classification," "diagnostic," and "therapeutic," "diagnostic radiopharmaceuticals," and "therapeutic radiopharmaceuticals";

(k) "CT scan," only subcategories "general classification," "head scan," and "body scan";

(l) "Operating room services," only subcategories "general classification" and "minor surgery";

(m) "Anesthesia," only subcategories "general classification," "anesthesia incident to radiology," and "anesthesia incident to other diagnostic services";

(n) "Administration, processing and storage for blood and blood components," only subcategories "general classification" and "administration";

(o) "Other imaging," only subcategories "general classification," "diagnostic mammography," "ultrasound," "screening mammography," and "positron emission tomography";

(p) "Respiratory services," only subcategories "general classification," "inhalation services," and "hyperbaric oxygen therapy";

(q) "Physical therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";

(r) "Occupational therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";

(s) "Speech therapy - Language pathology," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";

(t) "Emergency room," only subcategories "general classification" and "urgent care";

(u) "Pulmonary function," only subcategory "general classification";

(v) "Audiology," only subcategories "general classification," "diagnostic," and "treatment";

(w) "Cardiology," only subcategories "general classification," "cardiac cath lab," "stress test," and "echocardiology";

(x) "Ambulatory surgical care," only subcategory "general classification";

(y) "Magnetic resonance technology (MRT)," only subcategories "general classification," "MRI - Brain (including brainstem)," "MRI -

Spinal cord (including spine)," "MRI-other," "MRA - Head and neck," "MRA - Lower extremities" and "MRA-other";

(z) "Medical/surgical supplies - Extension," only subcategories "supplies incident to radiology," "supplies incident to other diagnostic services," and "surgical dressings";

(aa) "Pharmacy - Extension," only subcategories "single source drug," "multiple source drug," "restrictive prescription," "erythropoietin (EPO) less than ten thousand units," "erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";

(bb) "Cast room," only subcategory "general classification";

(cc) "Recovery room," only subcategory "general classification";

(dd) "Labor room/delivery," only subcategories "general classification," "labor," "delivery," and "birthing center";

(ee) "EKG/ECG (Electrocardiogram)," only subcategories "general classification," "holter monitor," and "telemetry";

(ff) "EEG (Electroencephalogram)," only subcategory "general classification";

(gg) "Gastro-intestinal services," only subcategory "general classification";

(hh) "Specialty room - Treatment/observation room," only subcategories "treatment room," and "observation room";

(ii) "Telemedicine," only subcategory "other telemedicine";

(jj) "Extra-corporeal shock wave therapy (formerly lithotripsy)," subcategory "general classification";

(kk) "Acquisition of body components," only subcategories "general classification," "living donor," and "cadaver donor";

(ll) "Hemodialysis - Outpatient or home," only subcategory "general classification";

(mm) "Peritoneal dialysis - Outpatient or home," only subcategory "general classification";

(nn) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home," only subcategory "general classification";

(oo) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home," only subcategory "general classification";

(pp) "Miscellaneous dialysis," only subcategories "general classification," and "ultra filtration";

(qq) "Behavioral health treatments/services," only subcategory "electroshock treatment"; ((and))

(rr) Behavioral health treatment/services," subcategories "intensive outpatient services - psychiatric";

(ss) Behavioral health treatment/services," subcategories "partial hospitalization - less intensive," "partial hospitalization - intensive"; and

(tt) "Other diagnostic services," only subcategories "general classification," "peripheral vascular lab," "electromyelogram," "pap smear," and "pregnancy test."

(2) The agency pays for an outpatient hospital covered service in the following revenue code subcategories only when the outpatient hospital provider is approved by the agency to provide the specific service:

(a) "Clinic," subcategories "general classification," "dental clinic," and "other clinic"; and

(b) "Other therapeutic services," subcategories, "general classification," "education/training," "cardiac rehabilitation," and "other therapeutic service."

- (3) The agency does not pay for outpatient hospital services in the following revenue code categories and subcategories:
- (a) "All-inclusive rate";
 - (b) "Room & board - Private (one bed)";
 - (c) "Room & board - Semi-private (two beds)";
 - (d) "Room & board - Semi-private (three and four beds)";
 - (e) "Room & board - Deluxe private";
 - (f) "Room & board - Ward";
 - (g) "Room & board - Other";
 - (h) "Nursery";
 - (i) "Leave of absence";
 - (j) "Subacute care";
 - (k) "Intensive care unit";
 - (l) "Coronary care unit";
 - (m) "Special charges";
 - (n) "Incremental nursing charge rate";
 - (o) "All-inclusive ancillary";
 - (p) "Pharmacy," subcategories "take home drugs," "experimental drugs," and "other pharmacy";
 - (q) "IV therapy," subcategory "other IV therapy";
 - (r) "Medical/surgical supplies and devices," subcategories "take home supplies," "prosthetic/orthotic devices," and "oxygen - take home";
 - (s) "Oncology," subcategory "other oncology";
 - (t) "Durable medical equipment (other than renal)," subcategories "rental," "purchase of new DME," "purchase of used DME," "supplies/drugs for DME effectiveness (home health agency only)," and "other equipment";
 - (u) "Laboratory," subcategory "other laboratory";
 - (v) "Laboratory pathology," subcategory "other laboratory pathological";
 - (w) "Radiology - Diagnostic," subcategory "other radiology - diagnostic";
 - (x) "Radiology - Therapeutic and/or chemotherapy administration," subcategory "other radiology - therapeutic";
 - (y) "Nuclear medicine," subcategory "other nuclear medicine";
 - (z) "CT scan," subcategory "other CT scan";
 - (aa) "Operating room services," subcategories "organ transplant - other than kidney," "kidney transplant," and "other operating room services";
 - (bb) "Anesthesia," subcategories "acupuncture" and "other anesthesia";
 - (cc) "Blood and blood components";
 - (dd) "Administration, processing and storage for blood and blood component," subcategory "other processing and storage";
 - (ee) "Other imaging," subcategory "other imaging service";
 - (ff) "Respiratory services," subcategory "other respiratory services";
 - (gg) "Physical therapy services," subcategory "other physical therapy";
 - (hh) "Occupational therapy services," subcategory "other occupational therapy";
 - (ii) "Speech therapy - Language pathology," subcategory "other speech-language pathology";
 - (jj) "Emergency room," subcategories "EMTALA emergency medical screening services," "ER beyond EMTALA screening" and "other emergency room";

(kk) "Pulmonary function," subcategory "other pulmonary function";

(ll) "Audiology," subcategory "other audiology";

(mm) "Cardiology," subcategory "other cardiology";

(nn) "Ambulatory surgical care," subcategory "other ambulatory surgical care";

(oo) "Outpatient services";

(pp) "Clinic," subcategories "chronic pain center," "psychiatric clinic," "OB-GYN clinic," "pediatric clinic," "urgent care clinic," and "family practice clinic";

(qq) "Free-standing clinic";

(rr) "Osteopathic services";

(ss) "Ambulance";

(tt) "Home health (HH) - Skilled nursing";

(uu) "Home health (HH) - Medical social services";

(vv) "Home health (HH) - Aide";

(ww) "Home health (HH) - Other visits";

(xx) "Home health (HH) - Units of service";

(yy) "Home health (HH) - Oxygen";

(zz) "Magnetic resonance technology (MRT)," subcategory "other MRT";

(aaa) "Medical/surgical supplies - Extension," only subcategory "FDA investigational devices";

(bbb) "Home IV therapy services";

(ccc) "Hospice services";

(ddd) "Respite care";

(eee) "Outpatient special residence charges";

(fff) "Trauma response";

(ggg) "Cast room," subcategory "other cast room";

(hhh) "Recovery room," subcategory "other recovery room";

(iii) "Labor room/delivery," subcategories "circumcision" and "other labor room/delivery";

(jjj) "EKG/ECG (Electrocardiogram)," subcategory "other EKG/ECG";

(kkk) "EEG (Electroencephalogram)," subcategory "other EEG";

(lll) "Gastro-intestinal services," subcategory "other gastro-intestinal";

(mmm) "Speciality room - Treatment/observation room," subcategories "general classification" and "other speciality rooms";

(nnn) "Preventive care services";

(ooo) "Telemedicine," subcategory "general classification";

(ppp) "Extra-corporal shock wave therapy (formerly lithotripsy)," subcategory "other ESWT";

(qqq) "Inpatient renal dialysis";

(rrr) "Acquisition of body components," subcategories "unknown donor," "unsuccessful organ search - donor bank charges," and "other donor";

(sss) "Hemodialysis - Outpatient or home," subcategories "hemodialysis/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient hemodialysis (home)";

(ttt) "Peritoneal dialysis - Outpatient or home," subcategories "peritoneal/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient peritoneal dialysis (home)";

(uuu) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home," subcategories "CAPD/composite or other rate," "home

supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient CAPD (home)";

(vvv) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home," subcategories "CCPD/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient CCPD (home)";

(www) "Miscellaneous dialysis," subcategories "home dialysis aid visit" and "other miscellaneous dialysis";

(xxx) "Behavioral health treatments/services," subcategories "general classification," "milieu therapy," "play therapy," "activity therapy," (~~"intensive outpatient services - psychiatric,"~~) "intensive outpatient services - (~~chemical dependency~~) substance use disorder (SUD)," and "community behavioral health program (day treatment)";

(yyy) "Behavioral health treatment/services (extension)";

(zzz) "Other diagnostic services," subcategories "allergy test" and "other diagnostic services";

(aaaa) "Medical rehabilitation day program";

(bbbb) "Other therapeutic services - extension," subcategories "recreational therapy," "drug rehabilitation," "alcohol rehabilitation," "complex medical equipment - routine," "complex medical equipment - ancillary," "athletic training," and "kinesiotherapy";

(cccc) "Professional fees";

(dddd) "Patient convenience items"; and

(eeee) Revenue code categories and subcategories that are not identified in this section.

WSR 24-14-044

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed June 26, 2024, 11:45 a.m., effective July 27, 2024]

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

Purpose: In response to SB 5228, section 2, chapter 113, Laws of 2023, the health care authority (HCA) is amending WAC 182-545-200 to state that HCA pays for outpatient rehabilitation services provided to eligible clients when provided by licensed or certified behavioral health agencies as part of a mental health or substance use disorder treatment program. HCA is also amending this rule to add separate limits for clients needing occupational therapy to treat behavioral health conditions.

Citation of Rules Affected by this Order: Amending WAC 182-545-200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 71.24.385.

Adopted under notice filed as WSR 24-11-134 on May 21, 2024.

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

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

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

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

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

Date Adopted: June 26, 2024.

Wendy Barcus
Rules Coordinator

OTS-5359.1

AMENDATORY SECTION (Amending WSR 18-09-052, filed 4/13/18, effective 5/14/18)

WAC 182-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy). (1) The following health professionals may enroll with the medicaid agency, as defined in WAC 182-500-0010, to provide outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy) within their scope of practice to eligible clients:

- (a) A psychiatrist;
- (b) A licensed occupational therapist;
- (c) A licensed occupational therapy assistant (OTA) supervised by a licensed occupational therapist;
- (d) A licensed physical therapist;

- (e) A physical therapist assistant supervised by a licensed physical therapist;
 - (f) A licensed speech-language pathologist; and
 - (g) A licensed optometrist to provide vision occupational therapy only.
- (2) Clients covered by one of the Washington apple health programs listed in the table in WAC 182-501-0060 or receiving home health care services as described in chapter 182-551 WAC (subchapter II) are eligible to receive outpatient rehabilitation as described in this chapter.
- (3) Clients enrolled in an agency-contracted managed care organization (MCO) must arrange for outpatient rehabilitation directly through their agency-contracted MCO.
- (4) The agency pays for outpatient rehabilitation when the services are:
- (a) Covered;
 - (b) Medically necessary;
 - (c) Within the scope of the eligible person's medical care program;
 - (d) Ordered by:
 - (i) A physician, physician assistant (PA), or an advanced registered nurse practitioner (ARNP); or
 - (ii) An optometrist, if the ordered services are for occupational therapy only.
 - (e) Within currently accepted standards of evidence-based medical practice;
 - (f) Authorized, as required within this chapter, under chapters 182-501 and 182-502 WAC and the agency's published billing instructions;
 - (g) Begun within (~~(thirty)~~) 30 calendar days of the date ordered;
 - (h) Provided by one of the health professionals listed in subsection (1) of this section;
 - (i) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions; and
 - (j) Provided as part of an outpatient treatment program:
 - (i) In an office or outpatient hospital setting;
 - (ii) In the home, by a home health agency as described in chapter 182-551 WAC;
 - (iii) In a neurodevelopmental center, as described in WAC 182-545-900; (~~(or)~~)
 - (iv) For children with disabilities, age two or younger, in natural environments including the home and community setting in which children without disabilities participate, to the maximum extent appropriate to the needs of the child; or
 - (v) When provided by licensed and certified behavioral health agencies as part of a mental health or substance use disorder treatment program.
- (5) For eligible clients age (~~(twenty)~~) 20 and younger, the agency covers unlimited outpatient rehabilitation.
- (6) For clients age (~~(twenty-one)~~) 21 and older, the agency covers a limited outpatient rehabilitation benefit.
- (7) Outpatient rehabilitation services for clients age (~~(twenty-one)~~) 21 and older must:
- (a) Restore, improve, or maintain the person's level of function that has been lost due to (~~(medically)~~) a clinically documented (~~(injury or illness)~~) condition; and

(b) Include an ongoing management plan for the client or the client's caregiver to support timely discharge and continued progress.

(8) For eligible clients age (~~(twenty-one)~~) 21 and older, the agency limits coverage of outpatient rehabilitation as follows:

(a) Occupational therapy, per person, per year:

(i) Without authorization:

(A) For clients needing occupational therapy to treat physical conditions:

(I) One occupational therapy evaluation;

~~((B))~~ (II) One occupational therapy reevaluation at time of discharge; and

~~((C))~~ (III) Twenty-four units of occupational therapy, which is approximately six hours; and

(B) For clients needing occupational therapy to treat behavioral health conditions:

(I) One occupational therapy evaluation;

(II) One occupational therapy reevaluation at time of discharge; and

(III) Twenty-four units of occupational therapy, which is approximately six hours.

(ii) With expedited prior authorization, up to (~~(twenty-four)~~) 24 additional units of occupational therapy to treat either the client's physical or behavioral health conditions may be available to continue treatment initiated under the original (~~(twenty-four)~~) 24 units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The client's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

(II) Behavioral health conditions;

~~(four)~~ (III) Brain injury, which occurred within the past (~~(twenty-~~

~~(four))~~ (IV) Burns - Second or third degree only;

~~((IV))~~ (V) Cerebral vascular accident, which occurred within the past (~~(twenty-four)~~) 24 months, with residual cognitive or functional deficits;

~~((V))~~ (VI) Lymphedema;

~~((VI))~~ (VII) Major joint surgery - Partial or total replacement only;

~~((VII))~~ (VIII) Muscular-skeletal disorders such as complex fractures that required surgical intervention, or surgery involving the spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

~~((VIII))~~ (IX) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polynneuritis (Guillain-Barre));

~~((IX))~~ (X) Reflex sympathetic dystrophy;

~~((X))~~ (XI) Swallowing deficits due to injury or surgery to the face, head, or neck;

~~((XI))~~ (XII) Spinal cord injury that occurred within the past (~~(twenty-four)~~) 24 months, resulting in paraplegia or quadriplegia; or

~~((XII))~~ (XIII) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.

(b) Physical therapy, per person, per year:

(i) Without authorization:

(A) One physical therapy evaluation;

(B) One physical therapy reevaluation at time of discharge; and

(C) Twenty-four units of physical therapy, which is approximately six hours.

(ii) With expedited prior authorization, up to (~~twenty-four~~) 24 additional units of physical therapy may be available to continue treatment initiated under the original (~~twenty-four~~) 24 units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

(II) Brain injury, which occurred within the past (~~twenty-four~~) 24 months, with residual functional deficits;

(III) Burns - Second or third degree only;

(IV) Cerebral vascular accident, which occurred within the past (~~twenty-four~~) 24 months, with residual functional deficits;

(V) Lymphedema;

(VI) Major joint surgery - Partial or total replacement only;

(VII) Muscular-skeletal disorders such as complex fractures that required surgical intervention, or surgery involving the spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(VIII) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(IX) Reflex sympathetic dystrophy;

(X) Spinal cord injury, which occurred within the past (~~twenty-four~~) 24 months, resulting in paraplegia or quadriplegia; or

(XI) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.

(c) Speech therapy, per person, per year:

(i) Without authorization:

(A) One speech language pathology evaluation;

(B) One speech language pathology reevaluation at the time of discharge; and

(C) Six units of speech therapy, which is approximately six hours.

(ii) With expedited prior authorization, up to six additional units of speech therapy may be available to continue treatment initiated under the original six units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Brain injury, which occurred within the past (~~twenty-four~~) 24 months, with residual cognitive or functional deficits;

(II) Burns of internal organs such as nasal oral mucosa or upper airway;

(III) Burns of the face, head, and neck - Second or third degree only;

(IV) Cerebral vascular accident, which occurred within the past (~~twenty-four~~) 24 months, with residual functional deficits;

(V) Muscular-skeletal disorders such as complex fractures that require surgical intervention or surgery involving the vault, base of the skull, face, cervical column, larynx, or trachea;

(VI) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infection polyneuritis (Guillain-Barre));

(VII) Speech deficit due to injury or surgery to the face, head, or neck;

(VIII) Speech deficit that requires a speech generating device;

(IX) Swallowing deficit due to injury or surgery to the face, head, or neck; or

(X) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.

(d) Durable medical equipment (DME) needs assessments, two per person, per year.

(e) Orthotics management and training of upper or lower extremities, or both, two program units, per person, per day.

(f) Orthotic or prosthetic use, two program units, per person, per year.

(g) Muscle testing, one procedure, per person, per day. Muscle testing procedures cannot be billed in combination with each other. These procedures can be billed alone or with other physical and occupational therapy procedures.

(h) Wheelchair needs assessment, one per person, per year.

(9) For the purposes of this chapter:

(a) Each ((fifteen)) 15 minutes of timed procedure code equals one unit; and

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(10) For expedited prior authorization (EPA):

(a) A provider must establish that:

(i) The person's condition meets the clinically appropriate EPA criteria outlined in this section; and

(ii) The services are expected to result in a reasonable improvement in the person's condition and achieve the person's therapeutic individual goal within ((sixty)) 60 calendar days of initial treatment;

(b) The appropriate EPA number must be used when the provider bills the agency;

(c) Upon request, a provider must provide documentation to the agency showing how the person's condition met the criteria for EPA; and

(d) A provider may request expedited prior authorization once per year, per person, per each therapy type.

(11) If the client does not meet the EPA clinical criteria in this section, the agency uses the process in WAC 182-501-0165 to consider prior authorization requests and approves services that are medically necessary.

(12) The agency evaluates limitation extension (LE) requests regarding scope, amount, duration, and frequency of covered health care services under WAC 182-501-0169. Providers may submit LE requests for additional units when:

(a) The criteria for an expedited prior authorization does not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits; or

(c) A new qualifying condition arises after the initial six visits are used.

(13) Duplicate services for outpatient rehabilitation are not allowed for the same person when both providers are performing the same or similar procedure(s).

(14) The agency does not pay separately for outpatient rehabilitation that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

(15) The agency does not reimburse a health care professional for outpatient rehabilitation performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.

WSR 24-14-060

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed June 27, 2024, 10:01 a.m., effective July 28, 2024]

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

Purpose: The health care authority is adopting this new rule to establish eligibility criteria for the civil transition program, which is a state-funded, fee-for-service program that requires the department of social and health services (DSHS) to provide wraparound services and supports in community-based settings, which may include residential supports, to persons who have been found not competent to stand trial due to an intellectual or developmental disability, dementia, or traumatic brain injury. This apple health program is for persons who are not eligible for any other apple health program and will provide state-funded categorically needy coverage.

Citation of Rules Affected by this Order: New WAC 182-508-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 10.77.202.

Adopted under notice filed as WSR 24-11-065 on May 14, 2024.

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

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

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

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

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

Date Adopted: June 27, 2024.

Wendy Barcus
Rules Coordinator

OTS-5101.3

NEW SECTION

WAC 182-508-0200 Civil transition program (CTP)—Overview. (1) The civil transition program (CTP) is a state-funded, fee-for-service program that requires the department of social and health services (department) to provide wraparound services and supports in community-based settings, which may include residential supports, to persons who have been found not competent to stand trial due to an intellectual or developmental disability, dementia, or traumatic brain injury. This apple health program is for persons who are not eligible for any other federal or state-funded medical coverage.

(2) **Definitions.** The following definitions and those found in chapter 388-106 WAC apply to this section unless otherwise stated.

"**Participation**" has the same meaning given in WAC 182-513-1100.

"Room and board" has the same meaning given in WAC 182-513-1100.

"Wraparound services" means coordination of services between the individual and service providers.

(3) **General eligibility.** Effective December 1, 2023, a person is eligible for the CTP when the person:

(a) Has been referred to the home and community services (HCS) division or the developmental disabilities administration (DDA) by the behavioral health administration and found not competent to stand trial due to dementia, traumatic brain injury, or an intellectual or developmental disability as described in WAC 388-106-2005;

(b) Applies for apple health coverage as described in WAC 182-503-0005; and

(c) Is not eligible for other federal or state-funded medical coverage.

(4) HCS long-term services and supports (LTSS) for persons 18 years and older are governed by chapter 388-106 WAC when LTSS services are authorized by the department.

(5) DDA services are governed by chapter 388-825 WAC.

(6) **Client participation.**

(a) A person who is not otherwise eligible for a noninstitutional medical program must have client participation and room and board.

Home and community-based services waiver eligibility and cost of care calculations are under:

(i) WAC 182-515-1508 and 182-515-1509 for HCS services; and

(ii) WAC 182-515-1513 and 182-515-1514 for DDA services.

(b) Changes in income or deductions may affect the amount a person pays toward LTSS including room and board in an alternate living facility based on chapter 182-515 WAC.

(7) **Effective dates.**

(a) Eligibility for the CTP begins on the date the person:

(i) Does not meet financial or functional eligibility for LTSS that is covered under another apple health coverage group; or

(ii) Meets the criteria described in WAC 388-106-2000 through 388-106-2040.

(b) Eligibility for the CTP ends the earlier of:

(i) When the person moves out-of-state;

(ii) When the person dies;

(iii) The date the person becomes eligible for federal or state-funded medical coverage;

(iv) Six months after the start date of the first CTP-eligible service; or

(v) When CTP services end.

(c) CTP effective dates are subject to WAC 182-504-0120 and 388-106-2030.

(8) **Administrative hearings.** A person who disagrees with an agency or the agency's designee action under this section may request an administrative hearing under chapter 182-526 WAC.

WSR 24-14-067
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-15—Filed June 27, 2024, 2:49 p.m., effective July 28, 2024]

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

Purpose: The Washington state legislature adopted ESSB 5371 in the 2023 legislative session. The bill changes the commercial whale watching license structure: It defines a paddle tour business license and separates the licensing of paddle tour businesses and guides from commercial watching businesses (where they were previously lumped together) and changes other licensing requirements. The bill also modifies the fee structure, changing some fees and eliminating others. Following the original legislation creating the commercial whale watching licenses in 2019 (2SSB 5577), the Washington department of fish and wildlife (WDFW) initiated the rule-making process directed in the bill, which resulted in the creation of chapter 220-460 WAC on the commercial whale watching license and rules applicable to license holders. This language was updated in 2021 due to ESB 5330. With the passage of ESSB 5371, some language in sections in chapter 220-460 WAC once again was no longer in alignment with RCW 77.65.615. In the drafting of the revisions to chapter 220-460 WAC, WDFW also edited typographical errors and clarified existing rule language.

Citation of Rules Affected by this Order: Amending WAC 220-460-010, 220-460-020, 220-460-030, 220-460-040, 220-460-050, 220-460-060, 220-460-070, 220-460-080, 220-460-090, 220-460-100, 220-460-140, and 220-460-150.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.65.620.

Adopted under notice filed as WSR 24-09-019 on April 8, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 12, Repealed 0.

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

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

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

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

Date Adopted: June 27, 2024.

Kelly Susewind
Director

OTS-4836.2

Chapter 220-460 WAC
COMMERCIAL WHALE WATCHING AND PADDLE TOURS

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-010 Definitions. For the purposes of this chapter, the following definitions apply:

(1) **Commercial whale watching.**

"Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a motorized or sailing vessel (~~(or guided kayak tour in order)~~) to view marine mammals in their natural habitat for a fee.

(2) **Commercial whale watching business.**

"Commercial whale watching business" means a business that engages in the activity of commercial whale watching.

(3) **Commercial whale watching operator.**

"Commercial whale watching operator" means a person who operates a motorized or sailing vessel engaged in the business of whale watching.

(4) ~~(**Kayak guide.**~~

~~"Kayak guide" means a person who conducts guided kayak tours on behalf of a commercial whale watching business. The term kayak guide includes anyone who directs the movement or positioning of any nonmotorized commercial whale watching vessel(s) involved in a tour.~~

~~(5))~~ **Paddle tour.**

"Paddle tour" means the act of guiding or offering to take people aboard nonmotorized or human-powered vessels, such as kayaks or paddle boards, on a trip, tour, or guided lesson that involves viewing marine mammals in their natural habitat for a fee.

(5) **Paddle tour business.**

"Paddle tour business" means a business that conducts paddle tours.

(6) **Paddle guide.**

"Paddle guide" means a person who conducts guided tours on behalf of a paddle tour business. The term paddle guide includes anyone who directs the movement or positioning of any nonmotorized commercial whale watching vessel(s) involved in a tour.

(7) **Commercial whale watching license.**

"Commercial whale watching license" means a commercial whale watching business license(~~(r)~~) or a commercial whale watching operator license(~~(r or a kayak guide license)~~) as defined in this section.

(a) "Commercial whale watching business license" means a department-issued license to operate a commercial whale watching business.

(b) "Commercial whale watching operator license" means a department-issued license to operate a commercial motorized or sailing vessel on behalf of a commercial whale watching business.

~~((c) "Kayak guide license" means a department-issued license to conduct commercial guided kayak tours on behalf of a commercial whale watching business.~~

~~(6) **Commercial whale watching vessel.**~~

~~"Commercial whale watching vessel" means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.)~~ (8) **Paddle tour license.**

"Paddle tour license" means a paddle tour business license or a paddle guide license as defined in this section.

(a) "Paddle tour business license" means a department-issued license to operate a business that conducts paddle tours.

(b) "Paddle guide license" means a department-issued license to conduct commercial guided paddle tours on behalf of a paddle tour business.

(9) Vessel.

"Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water.

(a) "Commercial whale watching vessel" means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

(b) "Motorized commercial whale watching vessel" shall be defined as any vessel with an engine being used as a means of transportation for individuals to engage in commercial whale watching, regardless of whether the engine is in use. This definition includes sailboats with inboard or outboard motors.

~~((b))~~ (c) "Nonmotorized (~~commercial whale watching~~) vessel" or "paddle tour vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in (~~commercial whale watching~~) a paddle tour. This definition includes human-powered watercraft such as kayaks and paddleboards. (~~In this chapter, the terms "kayak," "kayak guide," and "kayak tour" encompass any nonmotorized vessels used for whale watching.~~

~~(7))~~ (10) Group of southern resident killer whales.

"Group of southern resident killer whales" is defined as a single southern resident killer whale or an assemblage of southern resident killer whales wherein each member is within one nautical mile of at least one other southern resident killer whale. Any individual(s) farther than one nautical mile constitutes a separate group.

~~((8))~~ (11) Vicinity.

"Vicinity" is defined as one-half nautical mile from all southern resident killer whales in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident killer whale closer than the statutorily defined distances in RCW 77.15.740.

~~((9))~~ (12) Vicinity instance. Each time any commercial whale watching vessel or nonmotorized vessel operating under a license enters within one-half nautical mile of a southern resident killer whale will count as one vicinity instance associated with that license.

~~((10))~~ (13) Automatic identification system (AIS). AIS refers to a maritime navigation safety communications system standardized by the International Telecommunication Union, adopted by the International Maritime Organization, that:

(a) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(b) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(c) Exchanges data with shore-based facilities.

~~((11))~~ (14) Inland waters of Washington.

"Inland waters of Washington" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-020 Commercial whale watching and paddle tour licenses—Application process and deadline. (1) License requirements.

(a) A commercial whale watching business license is required for commercial whale watching businesses (~~(, motorized and sailing vessel operators, and kayak guides)~~) as defined in this chapter.

(b) A paddle tour business license is required for paddle tour businesses as defined in this chapter.

(c) A commercial whale watching operator license is required for commercial whale watching operators as defined in this chapter.

(d) A paddle guide license is required for paddle guides as defined in this chapter.

(2) Applicants must be at least (~~(sixteen)~~) 16 years of age and possess a driver's license or other government-issued identification number and jurisdiction of issuance.

(3) Applicants for a commercial whale watching business license or paddle tour business license must be authorized to conduct business within the state of Washington. However, the residency and business requirements of RCW 77.65.040 (2) and (3) do not apply to Canadian individuals or corporations applying for and holding Washington commercial whale watching licenses.

(4) The commercial whale watching or paddle tour business license application must include the following information regarding the whale watching or paddle tour business:

(a) The applicant must identify the (~~(whale watching)~~) business name, type of business (i.e., sole proprietor, partnership, corporation), and for all associated business owner(s): Full name, association to the business, email address, telephone number, and Social Security number if the business owner is a United States citizen or resident.

(b) The applicant must identify and confirm the (~~(whale watching)~~) business is registered to conduct business within the state by providing the unified business identifier (UBI) number. Canadian commercial whale watching businesses are exempt from this requirement.

(5) (~~(The commercial whale watching)~~) Any business license applicant must also designate, as applicable, all commercial whale watching operators authorized to operate a motorized or sailing vessel (~~(and all kayak)~~) or all paddle guides authorized to guide a (~~(kayak)~~) paddle tour on behalf of the business. The applicant must identify (~~(the)~~) each operator's or (~~(kayak)~~) paddle guide's full name and date of birth.

(6) On the commercial whale watching business license application, the applicant must designate all commercial whale watching vessels to be used while engaging in commercial whale watching.

(a) The applicant must indicate either motorized or sailing vessels (~~(or kayaks)~~) on the application.

(b) (~~(If motorized or sailing vessels are selected, then)~~) The applicant must select the appropriate option for the passenger capacity on (~~(the)~~) each designated vessel.

(7) Commercial whale watching operator license applicants and (~~(kayak)~~) paddle guide license applicants must provide their full name, date of birth, Social Security number (U.S. citizens and residents only), gender, hair, eyes, weight, height, physical address, mailing address, email address, and telephone number.

(8) An application submitted to the department shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(9) Applications must be completed and submitted online through the department-provided commercial licensing system, or by mailing the application to:

Washington Department of Fish and Wildlife
Attn: Commercial License Sales
P.O. Box 43154
Olympia, WA 98504-3154

(10) If the required fields are blank or omitted from the application, then the department will consider the application to be incomplete, and it will not be processed.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-030 Commercial whale watching and paddle tour license cards—Replacements. (1) Upon lawful application, a commercial whale watching license or paddle tour license in the form of a license card or certificate will be issued by the department.

(2) The fee to replace a license card that has been lost or destroyed is (~~twenty dollars~~) \$20.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-040 Commercial whale watching (~~licensing business organizations~~) and paddle tour businesses—Operator or guide designation. (1) Any person that holds a commercial whale watching business license or paddle tour business license may designate other persons associated with the business to act on behalf of the license holder to update the business information within the organization's account.

(2) A commercial whale watching business license holder or paddle tour business license holder may designate an unlimited number of operators or (~~kayak~~) paddle guides, respectively, so long as each individual obtains the license required under WAC 220-460-070.

(3) A commercial whale watching business license holder or paddle tour business license holder must maintain an accurate record with the department of operators authorized to operate motorized vessels (~~and kayak~~) or paddle guides authorized to guide (~~kayak~~) paddle tours on behalf of the business. Commercial whale watching or paddle tour business license holders may add operators (~~and kayak~~) or paddle guides to the list associated with the business license by entering the operator's or (~~kayak~~) paddle guide's full name and date of birth in the business account through the commercial licensing system.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-050 Whale watching vessel designation requirements and required operator and paddle guide documentation. (1) RCW

77.65.615 requires commercial whale watching businesses to designate the motorized vessel(s) ~~((and indicate if kayaks))~~ that will be used for commercial whale watching. It is unlawful to engage in commercial whale watching activities unless:

(a) The licensee has designated all commercial whale watching motorized, including sailing, vessels to be used ~~((, and has designated if kayaks will be used))~~;

(b) The department has issued a commercial license to the licensee showing the motorized vessel ~~((or kayaks))~~ so designated; and

(c) The person conducting commercial whale watching activities on behalf of the business has the appropriate documentation in physical possession.

~~((i))~~ The operator of a motorized or sailing vessel must have both the commercial whale watching business license listing the vessel and their individual operator license for the current calendar year in physical possession.

~~((ii))~~ ~~The guide of a commercial kayak tour must have their individual kayak guide license in physical possession and must have either the commercial whale watching business license for the current calendar year or a printed or digital scan thereof.)~~

(2) The licensee does not have to own the vessel being designated on the license.

(3) For motorized or sailing vessels, the commercial whale watching business licensee must provide applicable documentation numbers such as a hull identification number (HIN), current United States Coast Guard or Transport Canada certification inspection documentation, and/or a vessel registration number.

(4) It is unlawful to engage in paddle tour activities unless the person conducting paddle tour activities on behalf of the business has the appropriate documentation in physical possession.

The guide of a commercial paddle tour must have their individual paddle guide license in physical possession and must have either the commercial whale watching business license for the current calendar year or a printed or digital scan thereof.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-060 Whale watching vessel ~~((substitutions—Fees))~~ changes.

The holder of a commercial whale watching business license may ~~((add or substitute a vessel designated on))~~ designate an additional vessel on the license within the calendar year if the license holder ~~((:~~

~~(1) Surrenders the previously issued license to the department;~~

~~(2))~~ submits to the department ((a substitution)) an application ((and application fee)) that identifies the ((currently assigned vessel, and the)) vessel proposed to be designated((; and

~~(3) Submits vessel substitution fees corresponding to the size of the vessel))~~ and any other information required by the department.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-070 Whale watching operator and ((kayak)) paddle guide license requirements. (1) A person may operate a motorized or sailing vessel designated on the commercial whale watching business license only if:

(a) The person holds a valid commercial whale watching operator license issued from the department;

(b) The operator is designated on the underlying commercial whale watching business license; and

(c) The person has both the commercial whale watching business license listing the vessel and their individual operator license for the current calendar year in physical possession.

(2) A person may lead a guided ((kayak)) paddle tour on behalf of the commercial whale watching business only if:

(a) The person holds a valid ((kayak)) paddle guide license issued from the department;

(b) The ((kayak)) paddle guide is designated on the underlying ((~~commercial whale watching~~)) paddle tour business license; and

(c) The person has their individual ((kayak)) paddle guide license in physical possession and must have either the ((~~commercial whale watching~~)) paddle tour business license for the current calendar year or a printed or digital scan thereof.

(3) Only an individual at least ((~~sixteen~~)) 16 years of age may hold an operator license or ((kayak)) paddle guide license.

(4) An individual may hold only one commercial whale watching operator license. Holders of an operator license may be designated on an unlimited number of commercial whale watching business licenses.

(5) An individual may hold only one ((kayak)) paddle guide license. Holders of a ((kayak)) paddle guide license may be designated on an unlimited number of ((~~commercial whale watching~~)) paddle tour business licenses.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-080 Expiration and renewal of licenses. Commercial whale watching and paddle tour licenses expire at midnight on December 31st of the calendar year for which they are issued. Licenses may be renewed annually upon application and payment of the prescribed license fees.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-090 Commercial whale watching of southern resident killer whales and paddle tours operating near southern resident killer whales—General. (1) It is unlawful for a commercial whale watching operator or ((kayak)) paddle guide to violate any of the restrictions in RCW 77.15.740.

(2) (~~(A commercial whale watching license is)~~) Licenses issued by the department under this chapter are not an exemption under RCW 77.15.740 (2) (c).

(3) The rules and requirements outlined in this chapter regarding southern resident killer whales apply to commercial whale watching and paddle tour activity in the inland waters of Washington.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-100 Areas closed to commercial whale watching. (1)

It is unlawful for operators of motorized commercial whale watching vessels to operate one-quarter nautical mile from shore from Mitchell Point to Cattle Point on the west side of San Juan Island or within one-half nautical mile of Lime Kiln Point State Park. (~~(Kayak)~~) Paddle guides and all vessels on guided (~~(kayak)~~) paddle tours must stay within (~~(one hundred)~~) 100 yards of shore within this zone except when safety conditions preclude it.

(2) Modifications or additions to closed areas may be issued by the department by rule. Violation of such rules shall be unlawful.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-130 Nonmotorized (~~(commercial whale watching)~~) paddle tour vessels. (1) Tours involving any nonmotorized watercraft used for the purposes of (~~(commercial whale watching)~~) paddle tours, such as kayaks, are subject to these requirements. Such watercraft constitute (~~(commercial whale watching)~~) paddle tour vessels and are referred to as "vessels" in this chapter. Regardless of the type of nonmotorized watercraft involved, the person operating on behalf of the business to conduct the tour is referred to as a "~~(kayak)~~ paddle guide" in this chapter.

(2) (~~(Kayak)~~) Paddle guides must prevent all vessels in their tour group from disturbing southern resident killer whales. All vessels in the tour group must adhere to the following requirements:

(a) It is unlawful to launch if southern resident killer whales are within one-half nautical mile of the launch location.

(b) Vessels are prohibited from being paddled, positioned, or waiting in the path of a southern resident killer whale. If a southern resident killer whale is moving towards a vessel, the vessel must immediately be moved out of the path of the whale.

(c) If a vessel or vessels inadvertently encounter a southern resident killer whale, they must immediately be moved as close to shore as possible and secured, or be rafted up close to shore or in a kelp bed, and paddling shall cease until any and all killer whales have moved to at least (~~(four hundred)~~) 400 yards away from the vessels. Rafting up is defined as manually holding vessels close together, maintaining a tight grouping.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-140 Commercial whale watching and paddle tour compliance and reporting. (1) An automatic identification system (AIS) must be fitted aboard all motorized commercial whale watching vessels. The AIS must be capable of providing information about the vessel (including the vessel's identity, type, position, course, speed, and navigational status) to state and federal authorities automatically. Operators must maintain the AIS in operation at all times that the vessel is conveying passengers for a fee.

(2) All commercial whale watching and paddle tour license holders must complete annual training from the department on marine mammals, distances on the water, impacts of whale watching on marine mammals, and southern resident killer whale-related rules and reporting.

(a) At completion of training, license holders must demonstrate adequate understanding of course materials.

(b) It is unlawful to operate a commercial whale watching vessel or guide a tour of nonmotorized vessels without completing the training for the current calendar year.

(c) Naturalists and others who work upon commercial whale watching vessels but are not license holders are encouraged to participate in the annual training.

(3) All commercial whale watching and paddle tour license holders shall maintain accurate logs on each instance a vessel operating under a license enters within one-half nautical mile vicinity of southern resident killer whales and submit copies of the logs to the department.

(a) Logs must include business license holder name; vessel operator or (~~kayak~~) paddle guide name; other staff names and roles; vessel name; port(s) of departure; departure time(s); return time(s); number of passengers; location(s) (Lat/Long) of southern resident killer whales encountered; time(s) entering and departing the one-half nautical mile vicinity of southern resident killer whales; time(s) entering and departing within (~~four hundred~~) 400 yards of southern resident killer whales; and qualitative details of southern resident killer whale encounters including whale identification, whale behavior and health, other vessel behavior, and any operator behavior, including contact with other boaters or government entities, and resulting outcomes.

(b) Information from the logs shall be submitted to the department on the following schedule:

(i) All vicinity instances in July must be reported by August 15th.

(ii) All vicinity instances in August must be reported by September 15th.

(iii) All vicinity instances in September must be reported by October 15th.

(iv) Operators of motorized commercial whale watching vessels must report vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 within (~~twenty-four~~) 24 hours.

(v) (~~Kayak~~) Paddle guides must report vicinity instances that happen October through June within one week.

(c) It is unlawful to fail to report a vicinity instance or to fraudulently report the details of a vicinity instance.

(d) Logs must be provided for inspection on request of department law enforcement.

(4) All motorized commercial whale watching license holders must log accurate, complete sighting information to the WhaleReport application for the whale report alert system (WRAS), or to a successor transboundary notification system designated by the department that is adopted by the international shipping community in the Salish Sea, immediately upon entering within one-half nautical mile of a southern resident killer whale.

AMENDATORY SECTION (Amending WSR 21-23-070, filed 11/15/21, effective 12/16/21)

WAC 220-460-150 Penalties. (1) Commercial whale watching or paddle tour license holders in violation of WAC 220-460-090 may be issued a notice of infraction punishable under chapter 7.84 RCW that carries a fine of (~~five hundred dollars~~) \$500, not including statutory assessments added pursuant to RCW 3.62.090.

(2) Commercial whale watching or paddle tour license holders out of compliance with WAC 220-460-100, 220-460-110, 220-460-120, 220-460-130, or 220-460-140 may be issued a notice of infraction that carries a fine of up to (~~five hundred dollars~~) \$500, not including statutory assessments added pursuant to RCW 3.62.090.

(3) Nothing in this chapter prohibits the filing of criminal charges for violations of RCW 77.15.815 in lieu of issuance of a notice of infraction.

WSR 24-14-071

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 28, 2024, 9:11 a.m., effective July 29, 2024]

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

Purpose: WAC 458-20-182: The purpose of this rule-making effort is to update the definitions for "storage warehouse" and "warehouse" to match the definitions in RCW 82.04.280 and 82.08.820. Additionally, this rule-making effort adds subsections regarding dry stack storage, portable self-storage containers, prescription drug warehousing, and provides references to other relevant rules. Other changes have been made to enhance readability of the rule.

Citation of Rules Affected by this Order: Amending WAC 458-20-182 Warehouse businesses.

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

Adopted under notice filed as WSR 24-09-053 on April 15, 2024.

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

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

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

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

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

Date Adopted: June 28, 2024.

Brenton Madison
Rules Coordinator

OTS-5209.1

AMENDATORY SECTION (Amending WSR 87-05-042, filed 2/18/87)

WAC 458-20-182 Warehouse and other storage businesses. (1) **Introduction.** This rule explains the application of the business and occupation (B&O) tax and retail sales and use taxes to warehouse and other storage businesses. It also clarifies the taxability for some specific storage-related activities.

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

(a) WAC 458-20-115 Sales of packing materials and containers;

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

(c) WAC 458-20-133 Frozen food lockers;

(d) WAC 458-20-180 Motor carriers;

(e) WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington;

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

(g) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(3) Definitions. ~~((For purposes of this section))~~ The following terms and meanings ((will)) apply to this rule:

~~(a) ("Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.~~

~~(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities whereby customers have direct access to individual storage areas by separate access.~~

~~(c) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.~~

~~(b) "Cold storage warehouse" means a storage warehouse used to store either fresh ((and/)) or frozen, or both types of perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination ((thereof)), at a desired temperature to maintain the quality of the product for orderly marketing. RCW 82.04.280. This term does not include freezer space or frozen food lockers. See WAC 458-20-133.~~

~~((d) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.~~

~~(2) (c) "Storage warehouse" means any part of a building or structure in which goods, wares, or merchandise are received for storage for compensation. "Storage warehouse" does not include field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, automobile storage garages, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities where customers have direct access to individual storage areas by a separate entrance. RCW 82.04.280. "Storage warehouse" also does not include a building or structure, or that part of the building or structure, in which an activity taxable under RCW 82.04.272, warehousing and reselling prescription drugs, is conducted. RCW 82.04.280.~~

~~(d) "Warehouse" means every structure where facilities are used for the storage of tangible personal property.~~

(4) Business and occupation tax. ~~((Warehouse))~~ The B&O tax is imposed on privilege of engaging in business in Washington. The measure of the B&O tax is the gross income of the business (gross income) or gross proceeds of sale (gross proceeds) as the case may be. RCW 82.04.080 and 82.04.090. Businesses that provide storage services are taxable under the B&O tax classification according to the nature of their ((operations)) activities and the specific kinds of goods stored, as follows:

(a) Warehousing classification.

(i) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined ((herein)) in subsection (3) of this rule, are subject to B&O tax under the warehousing classification ((, measured by the gross income of the business)). ((+)) See RCW 82.04.280. ((+))

~~((b))~~ (ii) Types of activities that fall within the warehousing classification include dry stack storage and storing a third-party's items within a storage container in the person's warehouse. The fact that the third party lacks dominion and control over the warehouse storage area distinguishes, in part, a warehousing activity from activities taxable under other B&O tax classifications.

Example 1.

Facts: Safe Harbor, LLC (Safe Harbor) is a Washington business engaged in providing dry stack storage. Dave purchases a boat storage space from Safe Harbor for the boating season. When Dave wishes to use his boat, he contacts Safe Harbor and the Safe Harbor operator removes Dave's boat from its storage slot and places it in the water. When Dave is finished using his boat, he leaves it in Safe Harbor's dock where the operator lifts the boat from the water and returns it to the stack. The haul-out service is included as part of the dry stack storage.

Result: Dave lacks dominion and control over the stacking berth. Consequently, the charge for the use of a stacking berth is a warehousing activity and not a rental of real estate. The haul-out service is taxable under the warehousing B&O tax classification because it is performed with respect to the dry stack storage of Dave's boat. Safe Harbor must report and pay warehousing B&O tax on its gross income from operating a dry stack storage warehouse. RCW 82.04.080 and 82.04.280.

Example 2.

Facts: Your PNW Storage, LLC (YPS) is engaged in the business of storing a third-party's items within a storage container in YPS' warehouse. YPS maintains control over the storage container when it is stored at YPS' warehouse.

Result: YPS is subject to B&O tax under the warehousing classification. The third party lacks dominion or control over the warehouse storage area which distinguishes, in part, a warehousing activity from activities taxable under other B&O tax classifications.

(iii) If a person is engaged in warehousing and also provides related services including handling, sorting, weighing, measuring, and loading or unloading tangible personal property for storage, the gross income from these services is included in the person's gross income from warehousing.

(iv) A person storing third-party goods, incidental to the person's provision of order fulfillment services to the third party, is not operating a storage warehouse or cold storage warehouse for purposes of the warehousing B&O tax classification.

(b) Retailing classification.

(i) Persons engaged in operating any automobile storage garage for consumers are generally subject to B&O tax under the retailing classification (, measured by gross proceeds of such operations). ~~((See))~~ RCW 82.04.050 ~~((3)(d).))~~ and 82.04.250.

~~((c) Persons engaged in operating any warehouse business, other than those of (a) and (b) of this subsection, are subject to tax under the service classification, measured by the gross income of the business. (See RCW 82.04.290.) This includes cold storage and frozen food lockers, field warehouses, fruit warehouses, agricultural commodities warehouses, and freight storage warehouses.~~

~~(d) Effective July 1, 1986, no warehouse business or operation of any kind is subject to tax under the public utility tax of chapter 82.16 RCW.~~

~~(3) **Tax measure.** The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.~~

~~(4)) However, amounts received for the rental of designated parking spaces are derived from the rental of real estate and are not subject to retail sales tax or B&O tax. See (4) (e) of this rule for more information on the exemption for rental of real estate.~~

~~(ii) Persons renting or leasing to a consumer tangible personal property used to store goods are making retail sales. See RCW 82.04.040 and 82.04.050 and WAC 458-20-211.~~

Example 3.

Facts: Porta-Closet, LLC (Porta-Closet) is engaged in renting portable self-storage containers to customers that are stored at the customer's site rather than in a warehouse.

Result: Porta-Closet is subject to B&O tax under the retailing classification on the gross proceeds of sales from the activity. B&O tax under the retailing classification also applies to any transportation charges for delivery or pick-up of the portable storage containers to or from the customer's site. See WAC 458-20-211. However, public utility tax applies to transportation charges for moving the portable storage containers between the customer's different sites.

(c) Prescription drug warehousing classification. Persons engaged in warehousing and reselling drugs for human use under a prescription are subject to B&O tax under the warehousing and reselling prescription drugs classification. See RCW 82.04.272.

(i) A person qualifies for the prescription drug warehousing classification only if it satisfies all of the following requirements:

(A) Purchases prescription drugs from a manufacturer or wholesaler;

(B) Warehouses and resells the prescription drugs directly to a qualified buyer;

(C) Is registered with the Federal Drug Enforcement Administration;

(D) Is licensed as either a wholesaler or retailer by the state pharmacy quality assurance commission established by RCW 18.64.001; and

(E) Resells the prescription drugs directly to a retailer with a pharmacy facility license or nonresidential pharmacy license issued by the department of health under RCW 18.64.043 or 18.64.370, respectively, or to a hospital, clinic, health care provider, or other provider of health care services.

(ii) While the person must be engaged in both the warehousing and reselling of prescriptions drugs to be eligible for the preferential B&O tax rate, it is not necessary for the person's warehouse to be located in Washington to qualify.

(d) Wholesaling. A person engaged as a lessor of storage equipment or containers is not required to pay retail sales or use tax on purchases of storage containers and other related equipment that are leased to a customer and subsequently leased to other customers without intervening use. The original rental is subject to wholesaling B&O tax and the subsequent rental is subject to the retailing B&O tax. The original seller is required to obtain a reseller permit (WAC 458-20-102) to substantiate the wholesale nature of the transaction. WAC 458-20-211.

(e) Service and other classification.

(i) Persons engaged in storage activities not described in subsection (4) (a), (b), (c), or (d) of this rule, and that are not otherwise addressed in any other specific B&O tax classification, are subject to B&O tax under the service and other B&O classification.

(ii) Granting of a license to use real estate is taxable under the service and other B&O tax classification unless specifically classified otherwise by statute. RCW 82.04.290 and WAC 458-20-118(1). A license to use real estate grants merely a right to use the real property of another but does not confer exclusive control or dominion over the same.

(iii) Storage activities that fall within the service and other classification include freezer space and frozen food lockers, field warehouses, agricultural commodities warehouses, and freight storage warehouses.

Example 4.

Facts: South Pole Storage (South Pole) is engaged in the business of renting frozen food lockers. Cara rents a frozen food locker from South Pole for the purpose of storing large cuts of beef, which she purchases from a local cattle ranch for her family's consumption. South Pole does not alter the meat in any way; it merely provides storage.

Result: South Pole's gross income from the rental of the frozen food lockers is taxable under the service and other activities classification. See WAC 458-20-133.

(f) Exempt from B&O tax. Amounts derived from the sale and rental of real estate are exempt from B&O tax. See RCW 82.04.390 and WAC 458-20-118. A transaction will be considered the rental of real estate if all of the following five elements are met:

(i) A rental period of 30 days or longer;

(ii) The lessee has the right to exclusive use of the rented space;

(iii) The lessee has the right of continuous possession over the space;

(iv) The lessee has dominion and control of the rented space; and

(v) A landlord/tenant relationship exists between the lessor and lessee. See WAC 458-20-118.

Example 5.

Facts: More Space Company (MSC) rents self-service storage units. All of the storage units have separate entrances. Carter enters into a six-month contract with MSC for an individual storage unit for his furniture while he works in Denmark.

Result: Carter likely has dominion and control of the rented space. Thus, MSC's gross income received from the rental of its storage unit to Carter is exempt from B&O tax because it is a rental of real estate.

(5) **Grain warehouses storing own grain.** Where a grain ((warehouseman)) warehouser purchases or owns grain stored in such warehouse, ((there shall be included in)) taxable gross income includes:

(a) An amount equal to the charges at the customary rate for all services ((rendered)) given in connection with ((such)) the grain((s)) up to the time of purchase by the ((warehouseman)) warehouser; and

(b) The amount of any charges for services that are ((rendered)) given during the period of the ((warehouseman's)) warehouser's ownership ((thereof)) of the grain, billed and stated((, as such,)) separately from the price of the grain((s)) on the invoice to the purchaser at the time of the sale by the ((warehouseman)) warehouser.

~~((5))~~ (6) Retail sales tax and use tax. ~~((Persons operating automobile garage storage businesses must collect and report retail sales tax upon the gross selling price of such parking/storage services.~~

~~(6) Consumables.~~ Retail sales tax is due on the sale of tangible personal property or retail services to a consumer as provided in chapter 82.04 RCW. Persons ((engaged in)) operating any of the business activities ((covered by)) described in this ((section)) rule must pay retail sales tax ((upon)) on their purchases of their consumable supplies, equipment, and materials for their own use as consumers in operating ((such)) the businesses. ~~((7) Use tax. The)~~ Use tax is due ((upon)) on the value of all tangible personal property used as consumers by persons operating warehouse businesses, upon which the retail sales tax has not been paid.

~~((For specific provisions covering temporary holding of goods in foreign or interstate movement by water, see WAC 458-20-193D respecting stevedoring and associated activities.))~~ (a) Portable storage containers. A person engaged in the business of providing portable self-storage containers to customers for temporary storage must pay retail sales tax upon their purchases of property used in the operation of the business. A purchase of a storage container is subject to retail sales tax when the container is used for storage at the purchaser's warehouse rather than rented to customers for use at the customer's location. A reseller permit may not be used to purchase consumable supplies, equipment, and materials used in the operation of a business. See WAC 458-20-211.

(b) Automobile garage parking/storage. Persons operating any automobile storage garage must collect and report retail sales tax upon the gross selling price of the parking/storage services to consumers.

WSR 24-14-074
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 28, 2024, 9:31 a.m., effective July 29, 2024]

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

Purpose: In alignment with 2SHB 1550, passed by the Washington state legislature in 2023, the office of superintendent of public instruction is adopting rules concerning transition to kindergarten programs. The rule revisions provide for program administration, allocation of state funding, and minimum standards and requirements for transition to kindergarten programs. In addition, technical changes to apportionment sections have been incorporated.

Citation of Rules Affected by this Order: New chapter 392-425 WAC; and amending WAC 392-121-106, 392-121-107, 392-121-122, 392-121-137, 392-121-182, 392-122-430, 392-122-435, 392-122-440, 392-122-450, 392-122-500, 392-122-505, 392-122-510, 392-122-515, 392-122-520, 392-122-605, 392-122-805, and 392-122-810.

Statutory Authority for Adoption: RCW 28A.300.072, 28A.150.290.

Adopted under notice filed as WSR 24-09-026 on April 10, 2024.

Changes Other than Editing from Proposed to Adopted Version: WAC 392-425-005, 392-425-030, 392-425-045, and 392-425-060 were edited to clarify references to additional guidance provided for in the "minimum standards and requirements established by the office of superintendent of public instruction." WAC 392-425-025 was edited to clarify language (i.e., "notification of intent"), in addition to including a submission deadline for submission of the notification of intent. WAC 392-425-035 was changed to clarify the recommendation for certificated educators with experience in early childhood education. WAC 392-425-045 was changed to read, in part, that "[b]ased on individual student need, a district may allow a child to participate in a transition to kindergarten program as a part-time student (partial day)."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 17, Repealed 0.

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

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

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

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

Date Adopted: June 28, 2024.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4751.2

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-106 Definition—Enrolled student. As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250);

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260; or

(g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through ~~((twelve))~~ 12 and transition to kindergarten program;

(3) Is under ~~((twenty-one))~~ 21 years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

AMENDATORY SECTION (Amending WSR 23-16-093, filed 7/31/23, effective 8/31/23)

WAC 392-121-107 Definition—Course of study. As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school

administration and charter school board, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4) (a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Worksite learning - Training provided in accordance with WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(j) Dropout reengagement program - Enrollment in a state approved dropout reengagement program pursuant to RCW 28A.175.100 and chapter 392-700 WAC.

(k) Paid work experience - Training provided in accordance with WAC 392-410-316 and reported as provided in WAC 392-121-139.

(l) Transition to kindergarten - Pursuant to RCW 28A.300.072 and chapter 392-425 WAC.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-1885;

(h) Enrollment for residents of the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-121-122 Definition—Full-time equivalent student. As used in this chapter, "full-time equivalent student" means each enrolled student in the school district or charter school as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts and charter schools which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as annual average hours for the purposes of compliance with this chapter.

~~(1) ((a) Prior to the 2018-19 school year, the minimum hours for each grade are as follows:~~

~~(i) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;~~

~~(ii) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;~~

~~(iii) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;~~

~~(iv) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.~~

~~(b) Beginning with the 2018-19 school year,~~) The minimum hours for all grades and transition to kindergarten programs are 27 hours and 45 minutes each week (1,665 weekly minutes), or 5 hours and 33 minutes (333 minutes) for each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student. ~~((a) Prior to the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled hours divided by the minimum hours for the student's grade level set forth in subsection (1)(a) of this section.~~

~~(b) Beginning with the 2018-19 school year,)~~ A student's partial full-time equivalent is the student's weekly enrolled minutes divided by 1,665.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district or charter school and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-121-137 Full-time equivalent enrollment of students with a disability. In determining the full-time equivalent enrollment of students reported as students with a disability pursuant to chapter 392-172A WAC, the following rules apply:

(1) If the student is enrolled exclusively in an ungraded special education program, the student's grade level shall be based on the typical grade level of students of the same age (e.g., a student who is six years old at the beginning of the school year shall be counted as a first grader).

(2) If the student is enrolled in a grade level below the typical grade level of students of the same age, the school district or charter school shall have the option of counting the student in the grade enrolled or the typical grade level of students of the same age.

(3) A student with a disability who is five years old at the beginning of the school year may be counted as a kindergarten student only if the student is enrolled in a kindergarten program and is provided special education services in addition to the kindergarten program.

(4) A student with a disability and enrolled in a transition to kindergarten program may be counted for transition to kindergarten funding.

AMENDATORY SECTION (Amending WSR 20-15-062, filed 7/10/20, effective 8/10/20)

WAC 392-121-182 Alternative learning experience requirements.

(1) **Scope.** This section applies solely to school districts and charter

schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience.

(2) **Requirements.** A school district or charter school must meet the requirements of this section and chapter 392-550 WAC to count an alternative learning experience as a course of study pursuant to WAC 392-121-107.

(3) **Student eligibility.** A student enrolled in an alternative learning experience course must meet the following conditions:

(a) The student must meet the definition of an enrolled student under WAC 392-121-106;

(b) The student is enrolled in grades K-12;

(c) The student must not meet any of the enrollment exclusions in WAC 392-121-108;

~~((e))~~ (d) The student's residence must be in Washington state as provided in WAC 392-137-115; and

~~((d))~~ (e) For students whose residence is not located in the school district providing an alternative learning experience course (nonresident student), the district must:

(i) Document the school district in which the nonresident student's residence is located;

(ii) Establish procedures that address, at a minimum, the coordination of student counting for state funding so that no enrolled student is counted for more than one full-time equivalent in the aggregate. The procedure must include, but not be limited to, the following:

(A) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts must execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(B) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC, the district may not claim funding for the student until after a release transfer is completed by the resident district and the nonresident serving district.

(4) **Enrollment count dates.**

(a) Alternative learning experience enrollment is claimed based on the monthly count dates as defined in WAC 392-121-119.

(b) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan pursuant to WAC 392-550-025(1) has an ending date that is the last school day in May.

(c) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May; and

(ii) The student's written student learning plan pursuant to WAC 392-550-025(1) includes an end date that is the last day of school for graduating students in May.

(5) **Reporting of student enrollment.**

(a) For the first time a student's alternative learning experience enrollment is claimed for state funding, the following requirements must be met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place with a start date that is before the monthly count day; and

(ii) There is documented evidence of student participation as required by WAC 392-121-106(4).

(b) On subsequent monthly count dates, a student's alternative learning experience course(s) can be claimed for state funding if the following requirements are met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place on the monthly count date;

(ii) The contact requirement pursuant to WAC 392-550-025(2) was met in the prior month;

(iii) The monthly progress evaluation requirement pursuant to WAC 392-550-025(3) was met in the prior month; and

(iv) If the monthly progress evaluation showed unsatisfactory progress, the intervention plan requirement pursuant to WAC 392-550-025(4) is met.

(c) Students must be excluded from the monthly count including students who have not had contact with a certificated teacher for (~~twenty~~) 20 consecutive school days. Any such student must be excluded from the monthly count until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107.

(d) The student count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date.

(6) Student full-time equivalency.

(a) The full-time equivalency of students enrolled in alternative learning experiences is based on the estimated average weekly hours of learning activity described in the written student learning plan.

(b) Pursuant to WAC 392-121-122, (~~twenty-seven~~) 27 hours and (~~forty-five~~) 45 minutes each week (~~((one thousand six hundred sixty-five))~~ 1,665 weekly minutes) equal one full-time equivalent.

(c) Enrollment of part-time alternative learning experience students is subject to the provisions of chapter 392-134 WAC and generates a pro rata share of full-time funding based on the estimated average weekly minutes of learning activity described in the written student learning plan divided by (~~((one thousand six hundred sixty-five))~~ 1,665 weekly minutes).

(d) Kindergarten students claimed for more than a 0.50 full-time equivalent must meet the state-funded full-day kindergarten requirements, as provided for in RCW 28A.150.315.

(e) The full-time equivalent limitations outlined in WAC 392-121-136 and the nonstandard school year limitations outlined in WAC 392-121-123 apply to alternative learning enrollment.

OTS-4752.2

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-430 Physical, social, and emotional support (PSES) staff—Apportionment of state moneys. (1) State moneys for PSES staff shall be allocated as provided in this chapter.

(2) PSES staff allocations based on the prototypical school formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for PSES staff will be based upon budgeted assumptions as provided in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated PSES staffing penalty units, if applicable, for purposes of funding from September through December.

(4) Enrollment will only include student full-time equivalent (FTE) enrolled in the general education program 01 as defined in RCW 28A.150.260 and transition to kindergarten program 09 as defined in RCW 28A.300.072 and chapter 392-425 WAC.

(5) Funded ratios starting with January apportionment will be based on actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of PSES staffing to generate the full allotment.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-435 Physical, social, and emotional support (PSES)—Student enrollment. (1) Grade level and transition to kindergarten enrollment reported on the P-223 will be considered in the compliance calculations for January, March, and June.

(2) Only students in program 01 - Basic education and program 09 - Transition to kindergarten will be included in the calculation. Enrollment in career and technical education, skill center, alternative learning experience, open doors, and running start programs will be excluded from the calculation.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff. (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01, 09, or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;
- Duty root 42 - All activities - Counselor;
- Duty root 43 - All activities - Occupational therapist;
- Duty root 44 - All activities - Social worker;
- Duty root 45 - All activities - Speech, language pathology/ audio;

- Duty root 46 - All activities - Psychologists;
- Duty root 47 - All activities - Nurse;
- Duty root 48 - All activities - Physical therapist;
- Duty root 49 - All activities - Behavior therapist;
- Duty root 64 - All activities - Contractor ESA;
- Duty root 96 - Activity 24 - Family engagement coordinator;
- Duty roots 91 - 99 - Activity 25 - Pupil management and safety;
- Duty roots 91 - 99 - Activity 26 - Health/related services.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.

(4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction used in the determination of 3121 revenue for inclusion in the compliance calculation.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-450 Physical, social, and emotional support (PSES) compliance—Calculations. (1) Funded staffing units will be calculated using each grade level and transition to kindergarten funding formula calculations.

(2) Staffing units will be combined at the district level and compared to the staffing units generated using the prototypical funding model.

(3) Penalty units are determined by subtracting the prototypical funded staff units from the district's actual funded units.

(4) Staff in the S-275 or the supplemental tool not assigned to a valid grade grouping will be included into the high school funding formula.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-500 K-3 class size—Apportionment of state moneys.

(1) State moneys for K-3 class size including transition to kindergarten program 09 as defined in RCW 28A.300.072 and chapter 392-425 WAC shall be allocated as provided in this chapter.

(2) Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for grades K-3 and transition to kindergarten program (grade T) will be based upon budgeted grades K-3 and grade T enrollment as stated in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated grades K-3 and grade T class size for purposes of funding from September through December.

(4) K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs that meet the requirements of WAC 392-121-182.

(5) Funded class size starting with January apportionment will be based on the actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of K-3 class size funding in order to generate the full allotment.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-505 K-3 class size—Student enrollment. (1) Grade level K-3 and transition to kindergarten program enrollment reported on the P-223 will be considered in the compliance calculations for the months of January, March, and June.

(2) All students in alternative learning experience programs that meet the requirements of WAC 392-121-182 will be excluded from the compliance calculation.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-510 K-3 class size—Teachers. (1) The superintendent of public instruction will include in the calculation of K-3 class size compliance those teachers reported on the S-275 that are coded in programs 01 to grade group K, 1, 2, or 3, and program 09 for transition to kindergarten (grade T), and are reported in one of the following duty roots:

- Duty root 31 - Elementary homeroom teacher;
- Duty root 33 - Other teacher;
- Duty root 34 - Elementary specialist teacher;
- Duty root 52 - Substitute teacher;
- Duty root 63 - Contractor teacher.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Program 21 special education teachers coded to grade K, 1, 2, or 3, and grade T multiplied by the annual percentage of students receiving special education instruction used in determination of a district's, tribal compact school's, or charter school's 3121 revenue will be included.

(4) Teachers coded to program 02 alternative learning experience will be excluded.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-515 K-3 class size compliance—Supplemental FTE teachers. (1) Supplemental teacher full-time equivalent (FTE) teachers must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported

by individual grade level K, 1, 2, ((and)) 3, and transition to kindergarten (grade T).

(2) Supplemental FTE teacher reporting shows the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275 under WAC 392-122-510. Supplemental full-time equivalent teachers are determined as follows:

(a) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the most current report S-275.

(b) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-520 K-3 class size—Calculation. Funded class size will be calculated by dividing the total teachers and supplemental teacher FTE across all grades K-3 and transition to kindergarten (grade T) collectively as provided in WAC 392-122-510 into the calculated combined total enrollment in grade levels of T, K, 1, 2, or 3.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1)(a) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due.

(b) The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, charter school, or tribal compact school if the school district, charter school, or tribal compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include a district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 and transition to kindergarten program for the prior school year multiplied by the district's percentage of October comprehensive education data and research system (CEDARS) headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price

lunch shall be as reported in (~~the comprehensive education data and research system~~) CEDARS as of March 31st of the prior school year.

(b) (i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least (~~fifty~~) 50 percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October CE-DARS headcount enrollment in grades K-12 for free and reduced-price lunch as reported in (~~the comprehensive education data and research system~~) CEDARS as of March 31st of the prior school year.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 and transition to kindergarten program for the prior year.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program. A school district's or charter school's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

(1) Multiplying the reporting district's or charter school's average annual full-time equivalent students, as defined in WAC 392-121-133, excluding enrollment reported for transition to kindergarten program by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(2) The product is the district's or charter school's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-810 Distribution of state moneys for the state highly capable students education program. The superintendent of public instruction shall apportion to districts and charter schools for the state highly capable student education program the amount calculated per district or charter school in WAC 392-122-805 according to the apportionment schedule provided in RCW 28A.510.250. The amount apportioned may be adjusted intermittently to reflect changes in the district's or charter school's average annual full-time equivalent students as reported on the P223, monthly report of school district enrollment form, excluding enrollment reported for transition to kindergarten program.

OTS-4726.4

**Chapter 392-425 WAC
TRANSITION TO KINDERGARTEN**

NEW SECTION

WAC 392-425-005 Purpose and authority. The purpose of this chapter is to provide minimum standards and requirements for transition to kindergarten programs. The chapter is intended to ensure that transition to kindergarten programs serve eligible students of all abilities who need additional preparation to be successful in kindergarten and who lack access to other early learning group settings. The rules in this chapter establish expectations for local education agencies in implementing and administering transition to kindergarten programs in accordance with minimum standards and requirements established by the office of superintendent of public instruction.

The authority for this chapter is under RCW 28A.300.072, which requires the office of superintendent of public instruction to establish rules concerning transition to kindergarten programs.

NEW SECTION

WAC 392-425-010 Applicability. This chapter establishes the minimum administrative requirements and program standards for implementing and administering quality transition to kindergarten programs under RCW 28A.300.072 and this chapter.

NEW SECTION

WAC 392-425-015 Eligibility. A transition to kindergarten program may be implemented and administered by the following local education agencies, in accordance with RCW 28A.300.072:

- (1) Common school districts;
- (2) State tribal compact schools authorized under chapter 28A.715 RCW;
- (3) Beginning in school year 2023-24, only charter schools authorized under RCW 28A.710.080(2) may implement and administer a transition to kindergarten program.

NEW SECTION

WAC 392-425-020 Definitions. "Eligible local education agency" means a local education agency authorized to administer a transition to kindergarten program under WAC 392-425-015.

"Screening process and tool" means using one or more instruments or methods of assessing and measuring the ability and need of an individual student.

NEW SECTION

WAC 392-425-025 Notification of intent to offer a transition to kindergarten program. An eligible local education agency planning to implement and administer a transition to kindergarten program must submit notification of intent to the office of superintendent of public instruction no later than June 1st before the school year begins. The notice must be provided through a process established by the office of superintendent of public instruction.

NEW SECTION

WAC 392-425-030 Local area early learning coordination and determining program need. An eligible local education agency must conduct a local needs assessment before beginning or expanding a transition to kindergarten program that considers the existing availability and affordability of local and local tribal early learning providers in accordance with the minimum standards and requirements established by the office of superintendent of public instruction.

NEW SECTION

WAC 392-425-035 Staff qualifications. A person serving as a teacher in a transition to kindergarten program must hold a valid teaching certificate in accordance with Title 181 WAC. Certificated educators with experience in early childhood education are recommended. Paraeducators for transition to kindergarten programs must have met the minimum hiring requirements and must make progress on the paraeducator certificate program in accordance with Title 179 WAC.

NEW SECTION

WAC 392-425-040 Student eligibility. (1) Children meeting the following criteria are eligible to participate in a transition to kindergarten program offered by an eligible local education agency:

(a) A child who has been determined, by the local education agency, to benefit from additional preparation for kindergarten through a screening process and tool; and

(b) A child who is at least four years old by August 31st of the school year in which they enroll in a transition to kindergarten program.

(2) In determining student eligibility and admitting students to a transition to kindergarten program, local education agencies must:

(a) Give priority to children most in need of additional preparation to be successful in kindergarten, as demonstrated through a screening process and tool.

(b) Give priority to children with the lowest family income not otherwise eligible and not enrolled in another local program.

(c) Not exclude, nor establish a policy to prohibit from participation, an eligible child due only to the presence of a disability.

(d) Not charge tuition or other fees from state-funded eligible students for enrollment in a transition to kindergarten program.

NEW SECTION

WAC 392-425-045 Minimum instructional requirements (school year, days, and hours). (1) Eligible local education agencies offering a transition to kindergarten program must offer the program during the local education agency's school year in accordance with the minimum standards and requirements established by the office of superintendent of public instruction.

(a) The program may begin after the first day of the local education agency's school year.

(b) If a partial-year program is being offered, it must begin by January 31st of the school year.

(c) The program must conclude by the end of the school year.

(2) Transition to kindergarten programs must be offered as an all-day program.

Based on individual student need, a district may allow a child to participate in a transition to kindergarten program as a part-time student (partial day). A part-time student will be counted as a partial full-time equivalent student in accordance with WAC 392-121-122.

NEW SECTION

WAC 392-425-050 Transition to kindergarten apportionment procedures. The local education agency administering a transition to kindergarten program is subject to the apportionment procedures under chapters 392-121 and 392-122 WAC.

NEW SECTION

WAC 392-425-055 Assessment for transition to kindergarten students. In accordance with RCW 28A.655.080, the Washington kindergarten inventory of developing skills (WaKIDS) must be administered at the beginning of the program. Additionally, the WaKIDS whole-child assessment must be administered at least one more time during the school year.

NEW SECTION

WAC 392-425-060 Adherence to guidelines. An eligible local education agency planning to implement and administer a transition to kindergarten program is required to adhere to the minimum standards and requirements established by the office of public instruction, as developed by the office of superintendent of public instruction, related to:

(1) Best practices for site readiness of facilities that are used for the program;

(2) Developmentally appropriate curricula designed to assist in maintaining high quality programs in accordance with RCW 28A.320.230; and

(3) Professional development opportunities.

WSR 24-14-077
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed June 28, 2024, 10:16 a.m., effective July 29, 2024]

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

Purpose: Add a renewal date to newly issued educator certificates.

Citation of Rules Affected by this Order: Amending WAC 181-79A-117.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 24-08-029 on May 16 [March 26], 2024.

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

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

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

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

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

Date Adopted: June 28, 2024.

Michael Nguyen
Rules Coordinator

OTS-5117.1

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-79A-117 Uniform expiration and renewal application date.

(1) All certificates issued for one or more stated years shall expire on June 30th of the stated year and shall be calculated as follows:

(a) Certificates issued prior to June 30th of a calendar year, other than limited certificates issued under WAC 181-79A-231, shall have the expiration date of the certificate calculated on the basis such certificate was issued on June 30th of the same calendar year regardless of the date of issuance.

(b) Certificates issued July 1st or later in the calendar year, other than limited certificates issued under WAC 181-79A-231, shall have the expiration date of the certificate calculated on the basis such certificate was issued on June 30th of the next calendar year regardless of the date of issuance.

(c) Certificates subject to renewal under chapter 181-79A WAC shall have a renewal application submission deadline six months prior to the certificate's expiration date. Any application for renewal sub-

mitted after the January 1st submission deadline date is considered late.

(2) An applicant who holds a valid certificate, who submits an application for further certification prior to the expiration date of that certificate, and who meets all the requirements of WAC 181-79A-128, shall be granted a (~~one hundred eighty day~~) 180-day permit under chapter 181-79A WAC.

(3) Any educator in the National Guard, U.S. military branch reserves, or U.S. Coast Guard reserve who is called up to active duty by one of the U.S. military branches by order of an authorized agency or official of Washington state government, or by the U.S. Department of Homeland Security for more than (~~thirty~~) 30 consecutive days shall be granted an extension of the expiration date of their certificate. The extension shall be equal to the length of active duty service calculated to the next uniform expiration date.

WSR 24-14-081
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 28, 2024, 12:19 p.m., effective August 1, 2024]

Effective Date of Rule: August 1, 2024.

Purpose: The department of social and health services is adopting amendments to WAC 388-412-0040 Can I get my benefits replaced? Effective July 1, 2024, these amendments support funding provided in the operating budget (chapter 376, Laws of 2024) to replace cash benefits stolen by skimming, cloning, or other fraudulent methods up to two times per federal fiscal year. In addition, the amendments update WAC language to align with federal rules requiring a signed statement from a household prior to replacing food purchased with food assistance benefits that were destroyed in a household disaster or misfortune.

Once effective, this permanent filing supersedes the emergency rule filed under WSR 24-14-047.

Citation of Rules Affected by this Order: Amending WAC 388-412-0040.

Statutory Authority for Adoption: RCW 43.20A.550, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08A.120, and 74.08.090.

Other Authority: Operating budget (ESSB 5950, chapter 376, Laws of 2024) and 7 C.F.R. 274.6 (a)(4).

Adopted under notice filed as WSR 24-11-140 on May 21, 2024.

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

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

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

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

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

Date Adopted: June 28, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5030.1

AMENDATORY SECTION (Amending WSR 23-23-129, filed 11/17/23, effective 12/18/23)

WAC 388-412-0040 Can I get my benefits replaced? Under certain conditions, we may replace your benefits.

(1) You may get either your EBT cash_or food assistance, or both replaced if:

(a) We make a mistake that causes you to lose benefits;

- (b) The EBT card mailed to you is stolen from the mail, you never had the ability to use the benefits, and you lost benefits;
- (c) You left a drug or alcohol treatment facility on or before the 15th of the month and the facility does not have enough food assistance benefits in their EBT account for one-half of the allotment that they owe you;
- (d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake; or
- (e) The food that your household purchased with food assistance benefits was destroyed in a household disaster or misfortune((-)); and
- (i) ~~((For us to replace your benefits, you must report))~~ You reported the loss to the department within 10 days from the date of the loss((-)); and
- (ii) You submitted a signed statement attesting to the household's loss within 10 days from the date the loss was reported.
- (iii) We replace the amount of your loss up to a one-month benefit amount.
- ~~((iii))~~ (iv) There is no limit to the number of replacements for food destroyed in a household misfortune.
- (f) Your food benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method between October 1, 2022, and September 30, 2024; and
- (i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and
- (ii) You have not already received two food replacements in the current federal fiscal year.
- (iii) We replace the amount of your loss or the amount of twice your food assistance allotment that was issued immediately prior to the date of the theft, whichever is less.
- (iv) Retroactive claims for food assistance stolen between October 1, 2022, and August 22, 2023, must be reported no later than October 22, 2023.
- (v) Replacement of benefits stolen via card skimming, cloning, or other similar method is contingent upon federal approval.
- (g) Your cash benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method on or after July 1, 2024; and
- (i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and
- (ii) You have not already received two cash replacements in the current federal fiscal year; and
- (iii) You received cash benefits through one of these programs: temporary assistance for needy families (TANF), state family assistance (SFA), pregnant women assistance (PWA), refugee cash assistance (RCA), or aged, blind, or disabled (ABD) cash assistance.
- (iv) We replace the amount of your loss or the amount of twice your cash assistance allotment that was issued immediately prior to the date of the theft, whichever is less.
- (v) Replacement of cash benefits stolen via card skimming, cloning, or other similar method will end on September 30, 2024, or on the date that the federal government ends the requirement that food benefits must be replaced, whichever is later.
- (vi) Replacement of cash benefits stolen via card skimming, cloning, or other similar method will end if state funds appropriated for this purpose are exhausted.
- (2) We will not replace your benefits if:

(a) We decided that your request is fraudulent or skimming is not validated;

(b) Your EBT card was lost, stolen, or misplaced except for (1) (b) of this section;

(c) You are pending an administrative hearing decision regarding a denial of replacement benefits. You have the right to an administrative hearing if your request for replacement benefits is denied; or

(d) You received disaster supplemental nutrition assistance program (D-SNAP) benefits for the same month you requested a replacement for food assistance.

(3) It is your responsibility to keep track of your household's EBT card.

(a) If you have multiple EBT cards replaced, we may suspect you to be trafficking benefits as described under WAC 388-412-0046 (2) (d).

(b) If we suspect trafficking, we will refer your case for investigation by the office of fraud and accountability. Persons trafficking in food assistance benefits may be subject to fines, disqualification from food assistance, and legal action including criminal prosecution.

WSR 24-14-084

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 28, 2024, 1:07 p.m., effective July 29, 2024]

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

Purpose: This new rule seeks to clarify substantive aspects of the excise tax on capital gains by supplying additional definitions and examples related to this excise tax.

Citation of Rules Affected by this Order: New WAC 458-20-301 Capital gains excise tax—Definitions, deductions, exemptions, and allocation of gains and losses.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060

Adopted under notice filed as WSR 24-06-089 on March 6, 2024.

Changes Other than Editing from Proposed to Adopted Version: Corrected calculation error in result in Example 5.

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

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

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

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

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

Date Adopted: June 28, 2024.

Brenton Madison
Rules Coordinator

OTS-4743.9NEW SECTION

WAC 458-20-301 Capital gains excise tax—Definitions, deductions, exemptions, and allocation of gains and losses. (1) **Introduction.** Beginning January 1, 2022, Washington law imposes an excise tax on individuals who sell or exchange long-term capital assets. See chapter 82.87 RCW (capital gains excise tax). This rule provides interpretive guidance related to the tax, including definitions of terms and explanations regarding the treatment of specific transactions. This rule contains examples that identify a number of facts, and then it states a conclusion. The examples are provided only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Definitions and terms, and related information.**

(a) **Adjusted capital gain.** Adjusted capital gain means federal net long-term capital gain:

(i) Plus, any amount of long-term capital loss from a sale or exchange that is exempt from the capital gains excise tax, to the extent such loss was included in calculating federal net long-term capital gain;

(ii) Plus, any amount of long-term capital loss from a sale or exchange that is not allocated to Washington under RCW 82.87.100, to the extent such loss was included in calculating federal net long-term capital gain;

(iii) Plus, any amount of loss carryforward from a sale or exchange that is not allocated to Washington under RCW 82.87.100, to the extent such loss was included in calculating federal net long-term capital gain;

(iv) Less, any amount of long-term capital gain from a sale or exchange that is not allocated to Washington under RCW 82.87.100, to the extent such gain was included in calculating federal net long-term capital gain;

(v) Less, any amount of long-term capital gain from a sale or exchange that is exempt under chapter 82.87 RCW, to the extent such gain was included in calculating federal net long-term capital gain. See RCW 82.87.020; and

(vi) Plus, any amount of capital loss carryforward from a sale or exchange that occurred before January 1, 2022, to the extent such loss was included in calculating federal net long-term capital gain, and less any long-term capital gain from an installment sale that occurred before January 1, 2022, to the extent such gain was included in calculating federal net long-term capital gain. See subsection (3)(a) of this rule for additional information regarding the two adjustments described in this paragraph.

(b) **Another taxing jurisdiction.** Another taxing jurisdiction means a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country. See RCW 82.87.100. The United States is not "another taxing jurisdiction."

(c) **Domicile.** In general, domicile means a permanent place of abode, coupled with the intent to make the abode one's home. It is the place that you intend to return to even if you visit or temporarily reside elsewhere. Thus, actual presence in a location at any given time is not necessarily determinative of a person's domicile. An individual can have only one domicile at a time. A Washington domiciliary who intends to move at a future date is still considered domiciled in Washington. See subsection (6)(c) of this rule for more details.

(d) **Family.** Family means the same as "member of the family" in RCW 83.100.046. See RCW 82.87.070.

(e) **Federal net long-term capital gain.** Federal net long-term capital gain means the net long-term capital gain reportable for federal income tax purposes determined as if I.R.C. §§ 55 through 59, 1400Z-1, and 1400Z-2 did not exist. See RCW 82.87.020. This information is reported on Schedule D of the U.S. Individual Income Tax Return.

(f) **Grantor trust.** A grantor trust is any trust in which the grantor or another person is treated as the owner of any portion of the trust for federal income tax purposes under I.R.C. §§ 671-679. "Grantor trust" also includes any nongrantor trust where the grantor's transfer of assets to the trust is treated as an incomplete gift under I.R.C. § 2511 and accompanying regulations, to the extent that grantor's transfer of assets to the trust is treated as an incomplete

gift. The grantor of a nongrantor trust must include any long-term capital gain or loss from the sale or exchange of a capital asset attributable to the grantor's gift to the trust, to the extent such gift is incomplete, in the calculation of that individual's adjusted capital gain, if such gain or loss is allocated to this state under RCW 82.87.100.

(g) **Intangible personal property.** Intangible personal property means all personal property other than tangible personal property. For example, software is intangible personal property.

(h) **Internal Revenue Code/I.R.C.** Internal Revenue Code or I.R.C. means Title 26 U.S.C., i.e., the United States Internal Revenue Code of 1986, as amended, as of July 25, 2021, or as of such subsequent date as noted in this rule. See RCW 82.87.020.

(i) **Long-term capital asset.** Long-term capital asset means a capital asset held for more than one year. See RCW 82.87.020.

(j) **Materially participated.** Materially participated means an individual was involved in the operation of a business on a basis that is regular, continuous, and substantial. Materially participated generally has the same meaning as the term "material participation," as defined in I.R.C. § 469 and related treasury regulations, to the extent not inconsistent with the qualified family-owned small business deduction provided in RCW 82.87.070.

(k) **Nongrantor trust.** A nongrantor trust is any trust other than a grantor trust.

(l) **Permanent place of abode; place of abode.** A place of abode means a fixed dwelling or home maintained by an individual for occupancy. Permanency of a place of abode is determined by whether the place of abode serves more than a temporary purpose. Occupancy of the dwelling or home, ownership status, nature, characteristics, use, names, or labels of a dwelling are considered, but are not conclusive as to determining the permanency of a place of abode. For example, a rental apartment that an individual lives in for the tax year is indicative of a permanent place of abode, while a camp or vacation home that is suitable and in fact used only for vacations is not indicative of a permanent place of abode.

(m) **Principally directed or managed within the state of Washington.** Principally directed or managed within the state of Washington means that an organization's activities are primarily directed, controlled, and coordinated in Washington. An office location in Washington alone does not establish that the organization is principally directed or managed in Washington. For example, a Washington location is insufficient for this purpose if the organization's activities are not primarily directed, controlled, and coordinated from the Washington location. Organizations may submit an affidavit to the department attesting that the organization is principally directed or managed in Washington. The affidavit is available at the department website, dor.wa.gov.

(n) **Qualified organization.** A qualified organization means an organization that is eligible to receive a charitable contribution as defined in I.R.C. § 170(c), and is principally directed or managed within the state of Washington. See RCW 82.87.080.

(o) **Qualifying interest.** Qualifying interest means an interest in a business that meets one of the following characteristics:

(i) An interest as a proprietor in a business carried on as a sole proprietorship;

(ii) An interest in a business if at least 50 percent of the business is owned, directly or indirectly, by any combination of the taxpayer or members of the taxpayer's family, or both; or

(iii) An interest in a business if at least 30 percent of the business is owned, directly or indirectly, by any combination of the taxpayer or members of the taxpayer's family, or both, and:

(A) At least 70 percent of the business is owned, directly or indirectly, by members of two families; or

(B) At least 90 percent of the business is owned, directly or indirectly, by members of three families.

(p) **Real estate.** Real estate means land and fixtures affixed to land, and also includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land. See RCW 82.87.020.

(q) **Resident.**

(i) Resident generally includes any individual who is domiciled in Washington during the taxable year. However, the term does not include a Washington domiciliary if the domiciliary:

(A) Did not maintain a permanent place of abode in Washington at any time during the entire taxable year;

(B) Maintained a permanent place of abode outside of Washington during the entire taxable year; and

(C) Spent in the aggregate not more than 30 days of the taxable year in Washington. See RCW 82.87.020.

(ii) Resident also includes any individual not domiciled in Washington during the taxable year if the individual maintained a place of abode in Washington at any time during the taxable year and was physically present in Washington for more than 183 days during the taxable year. See RCW 82.87.020. A day, for purposes of this definition, means a calendar day or any portion of a calendar day.

(r) **Tangible personal property.** Tangible personal property means personal property that can be seen, weighed, measured, felt, or touched, but does not include steam, electricity, or electrical energy.

(s) **Taxpayer.** Taxpayer means an individual, i.e., a natural person, subject to the capital gains excise tax. In this rule, the taxpayer is also referred to as "you" and "your."

(t) **Washington capital gains.** Washington capital gains means an individual's adjusted capital gain, as modified in RCW 82.87.060, for each return filed under this chapter. See RCW 82.87.020 and subsection (5) of this rule for information on the deductions provided in RCW 82.87.060.

(3) **Tax imposed.**

(a) **The measure of tax; adjustments to federal net long-term capital gain.** The capital gains excise tax is imposed on the sale or exchange of long-term capital assets. The measure of the capital gains excise tax is Washington capital gains. Generally, Washington capital gains begins with the taxpayer's reportable federal net long-term capital gain, and this amount is then adjusted by certain statutory additions and subtractions to reach adjusted capital gain. For example, these adjustments remove exempt transactions or those not allocated to Washington from the taxable measure. Statutory deductions further modify adjusted capital gain to reach the taxpayer's Washington capital gains figure.

If your Washington capital gains are less than zero for a taxable year, no tax is due under this section, and you are not allowed to

carryover this amount for use in the calculation of your adjusted capital gain for any other taxable year.

To the extent that a loss carryforward is included in the calculation of your federal net long-term capital gain and that loss carryforward is directly attributable to losses from sales or exchanges allocated to this state under RCW 82.87.100, the loss carryforward is included in the calculation of your adjusted capital gain. However, you may not include any losses carried back for federal income tax purposes in the calculation of your adjusted capital gain for any taxable year. See RCW 82.87.040.

(i) **The effective date of the tax.** The capital gains excise tax is imposed on the sale or exchange of capital assets on and after January 1, 2022. Sales or exchanges occurring before the January 1, 2022, effective date of the tax, are not part of the taxable measure of the capital gains excise tax. There are at least two situations affected by this timing issue:

(A) Loss carryforwards prior to 2022. Although the measure of the capital gains excise tax is federal net long-term capital gain, you must add back any loss carryforwards from sales or exchanges of long-term capital assets that occurred prior to January 1, 2022, in calculating adjusted capital gain to the extent such loss was included in calculating federal net long-term capital gain because any pre-2022 loss arose from a sale or exchange prior to the effective date of the capital gains excise tax. See subsection (2)(a) of this rule for the definition of adjusted capital gain.

(B) Installment sales. Long-term capital gain recognized from an installment sale, as defined in I.R.C. § 453, is not subject to capital gains excise tax if the sale occurred before January 1, 2022, even if some installment payments occur on or after January 1, 2022. You should remove any gain recognized from installment sales that occurred prior to January 1, 2022, in calculating adjusted capital gain to the extent such gain was included in calculating federal net long-term capital gain. See subsection (2)(a) of this rule for the definition of adjusted capital gain. If the installment sale occurred on or after January 1, 2022, you must include the long-term capital gain in the measure of the Washington capital gains excise tax in the same manner as the gain is reportable for federal tax purposes.

(ii) **Sale or exchange of long-term capital assets.** The imposition of the capital gains excise tax is conditioned on the sale or exchange of a long-term capital asset. In other words, if you sell or exchange a capital asset resulting in a long-term capital gain or loss, that gain or loss is included in calculating your adjusted capital gain. Alternatively, if you have a long-term capital gain or loss that did not arise from a sale or exchange, then that gain or loss is not included in calculating your adjusted capital gain.

Example 1: Gifts.

Facts: In 2024, Jane received an old baseball card worth \$30,000 from her brother, Jim, as a gift. Jim has no reportable federal net long-term capital gain from this transaction or from any other source.

Result: Because the transaction results in no federal long-term capital gain, Jim has no capital gains excise tax liability from the gift.

Example 2: Expatriation.

Facts: In 2024, Zander properly had federal net long-term capital gain in the amount of \$500,000. A portion, \$100,000, is long-term cap-

ital gain recognized under I.R.C. § 877A(a) because Zander is expatriating.

Result: Long-term capital gain is recognized under I.R.C. § 877A(a) as a result of a deemed sale. Because \$100,000 of Zander's gain is not the result of a sale or exchange of a capital asset, that portion is not included in Zander's measure of Washington capital gains. He should subtract \$100,000 from his federal net long-term capital gain when calculating his Washington capital gains.

Example 3: Maturity of bonds.

Facts: In 2024, Zora had federal net long-term capital gain in the amount of \$500,000. A portion, \$100,000, is long-term capital gain recognized under I.R.C. § 1271 upon the retirement of bonds Zora had purchased at discount.

Result: Upon the retirement of the bonds, Zora receives cash and no longer holds the capital assets (i.e., the bonds). These circumstances indicate the transaction is an exchange for purposes of the capital gains excise tax, and Zora should include the long-term capital gain recognized from the bonds in her Washington capital gains amount.

Example 4: Excess partnership distribution.

Facts: In 2024, Zane had federal net long-term capital gain in the amount of \$500,000. A portion, \$100,000, is long-term capital gain recognized under I.R.C. § 731 because the partnership in which Zane is a partner distributed cash to him in an amount that exceeded Zane's basis in the partnership.

Result: The long-term capital gain that Zane recognizes from the excess distribution is not due to a sale or exchange of a capital asset. Therefore, Zane should subtract \$100,000 from his federal net long-term capital gain when calculating his Washington capital gains.

Example 5: Section 1256 contracts.

Facts: In 2023, Mavis, a Washington domiciliary, recognized both gains and losses from various Section 1256 contracts, as defined in I.R.C. § 1256. Mavis recognized a \$300 gain from the sale of an 18-month futures contract that she held for one year and three months, a \$400 loss from the sale of a three-month nonequity option contract that she held for one month, and a \$100 gain from a 24-month foreign currency contract that she continues to hold, but was deemed sold at the end of the year for federal tax purposes. Under I.R.C. § 1256, 60 percent of the gain or loss from Section 1256 contracts is treated as long-term capital gain or loss, and 40 percent is treated as short-term capital gain or loss. For federal tax purposes, Mavis had \$0 in net capital gain from these contracts for 2023.

Result: Although Mavis had \$0 in federal net long-term capital gain from the Section 1256 contracts in 2023, only long-term capital gains and losses from Section 1256 contracts that were held for more than one year and were sold are included in calculating an individual's Washington capital gains excise tax. Here, Mavis sold or exchanged only one contract that she held for more than one year, the 18-month contract. Therefore, Mavis should calculate her Washington capital gains from her Section 1256 contracts by including only the \$180 in long-term capital gain she recognized from her sale of the 18-month futures contract. The \$240 long-term capital loss she recognized for federal tax purposes on the three-month contract and the \$60 long-term capital gain she recognized on the 24-month contract are not part of her Washington capital gains.

(iii) Other examples on the measure of tax.

Example 6: Capital gain invested in qualified opportunity fund.

Facts: In 2023, Joseph, a Washington domiciliary, sold stock he had held for two years for \$2,000,000. His basis in the stock was \$700,000. He invests in the same year, \$1,300,000 in a qualified opportunity fund, as defined in I.R.C. § 1400Z-2, and elects to defer federal taxation of the gain from the sale of his stock as permitted under I.R.C. § 1400Z-2. Joseph sells no other capital assets in 2023. As a result of the deferral, Joseph recognizes in 2023 \$0 net long-term capital gain for federal tax purposes.

Result: An individual's Washington capital gains is based on their federal net long-term capital gain, which is defined as the net long-term capital gain reportable for federal income tax purposes determined as if Title 26 U.S.C. Secs. 55 through 59, 1400Z-1, and 1400Z-2 of the Internal Revenue Code did not exist. Because the definition of federal net long-term capital gain excludes Section 1400Z-2 of the Internal Revenue Code, Joseph must include the \$1,300,000 in long-term capital gain from his 2023 sale of stock in calculating his 2023 Washington capital gains.

Example 7: Sale of qualified opportunity fund.

Facts: Same facts as Example 6, and Joseph sells his investment in the qualified opportunity fund in 2025 for \$1,700,000. Under the basis and gain recognition rules in I.R.C. § 1400Z-2, Joseph must recognize \$1,300,000 in long-term capital gain on the sale of his interest in the qualified opportunity fund for federal tax purposes.

Result: The definition of federal net long-term capital gain for purposes of the Washington capital gains excise tax excludes Section 1400Z-2 of the Internal Revenue Code. Therefore, Joseph should ignore I.R.C. § 1400Z-2 when calculating the gain from the sale of his qualified opportunity fund investment for purposes of the Washington capital gains excise tax, and, in this case, calculate his gain or loss by applying I.R.C. §§ 1001, 1011, and 1012.

Example 8: Section 1244 stock loss.

Facts: In 2023, David, who is domiciled in Washington, sold stock he had held for several years. Some of the stock sold by David was Section 1244 stock, as defined under I.R.C. § 1244(c). The sale of the Section 1244 stock resulted in a \$50,000 loss, which David properly reported on his 2023 tax return as an ordinary loss. David's other stock sales in 2023 resulted in a net long-term capital gain of \$1,300,000 and a net short-term capital loss of \$20,000. David had no other capital gains or losses.

Result: Neither the \$50,000 ordinary loss nor the \$20,000 short-term capital loss David reported on his 2023 federal tax return are included in his federal net long-term capital gain. As a result, neither loss amount is included in calculating David's Washington capital gains. David's 2023 Washington capital gains amount is his federal net long-term capital gain, \$1,300,000, subject to the exemptions and deductions discussed in subsections (4) and (5) of this rule.

Example 9: Section 1061 applicable partnership interests.

Facts: Marcy owns interests in partnerships that are "applicable partnership interests" under I.R.C. § 1061. Marcy is a Washington domiciliary. In 2023, she reports on her federal tax return \$1,000,000 in capital gain passed through from her partnerships, all from the sale of intangible long-term capital assets. A portion of this capital gain, \$200,000, is recharacterized as short-term capital gain under

I.R.C. § 1061. She reports the remainder, \$800,000, as long-term capital gain. Marcy has no other capital gain or losses in 2023.

Result: The \$200,000 in capital gain that is recharacterized as short-term capital gain under I.R.C. § 1061 is not part of Marcy's net long-term capital gain reportable for federal income tax purposes. Therefore, Marcy's 2023 Washington capital gains amount is \$800,000, subject to the exemptions and deductions discussed in subsections (4) and (5) of this rule.

Example 10: Loss carried forward from a prior year.

Facts: In 2023, John incurs a \$1,003,000 long-term capital loss from a sale of stock while John was domiciled in Washington. John does not have any capital gains against which he can apply the loss. Under I.R.C. § 1211, \$3,000 of the loss is applied against ordinary income that John earned in 2023. Therefore, \$1,000,000 of the loss is carried forward to 2024 under I.R.C. § 1212. In 2024, John incurs a \$4,000,000 long-term capital gain from sales of stock while John continues to be domiciled in Washington. On John's federal return, John applies the \$1,000,000 loss from 2023 and reports a federal net long-term capital gain of \$3,000,000 for 2024.

Result: To calculate John's 2024 Washington capital gains, the starting point is John's federal net long-term capital gain of \$3,000,000. None of the adjustments in RCW 82.87.020(1) apply in determining John's adjusted capital gain. Therefore, John's 2024 Washington capital gains amount is \$3,000,000, subject to the exemptions and deductions discussed in subsections (4) and (5) of this rule.

Example 11: Out-of-state loss carried forward from a prior year.

Facts: Same facts as Example 10, except John incurs a net \$1,003,000 long-term capital loss from a sale of stock while John was domiciled in Oregon, and John becomes domiciled in Washington in 2024.

Result: To calculate John's 2024 Washington capital gains, the starting point is John's federal net long-term capital gain of \$3,000,000. RCW 82.87.020 (1)(c) instructs that the \$1,000,000 loss carryforward must be added back to the \$3,000,000 federal net long-term capital gain amount because all \$1,000,000 of the loss was from a sale or exchange that was not allocated to Washington. Therefore, John's 2024 Washington capital gains amount is \$4,000,000, subject to the exemptions and deductions discussed in subsections (4) and (5) of this rule.

Example 12: Short-term capital losses.

Facts: In 2023, Jason, a Washington domiciliary, realizes a \$403,000 short-term capital loss from sales of securities, and a \$325,000 net long-term capital gain from a sale of investment property. That year, he also earns \$125,000 in other income. For federal tax purposes, \$3,000 of the short-term capital loss is applied against Jason's other income and \$325,000 of the short-term capital loss is applied against Jason's long-term capital gain. The remaining \$75,000 net short-term capital loss is carried forward to 2024.

Result: Jason's 2023 Washington capital gains amount is his federal net long-term capital gain, \$325,000, subject to the exemptions and deductions discussed in subsections (4) and (5) of this rule.

Example 13: Short-term loss carried forward.

Facts: Same facts as Example 12, and in 2024, Jason realizes long-term capital gain totaling \$1,000,000, and short-term capital gain totaling \$200,000, all from sales of securities. For federal tax purposes, the \$75,000 short-term capital loss carried forward from

2023 is applied against Jason's 2024 \$200,000 net short-term capital gain.

Result: Jason's 2024 Washington capital gains amount is \$1,000,000, subject to the exemptions and deductions discussed in subsections (4) and (5) of this rule.

(b) **Beneficial ownership; pass-through entities.** The capital gains excise tax applies to the sale or exchange of long-term capital assets owned by individuals. Ownership includes both legal and beneficial ownership. An individual is considered to be a beneficial owner of long-term capital assets held by any pass-through or disregarded entity in which the individual holds an ownership interest, to the extent of the individual's ownership interest in the entity as reported for federal income tax purposes. See RCW 82.87.040. Accordingly, you must include both gains from the sale or exchange of capital assets of which you are the legal owner and gains passed through to you from the sale or exchange of capital assets of which you are a beneficial owner. Examples of pass-through entities for federal tax purposes include partnerships, limited liability companies, S corporations, and grantor trusts. See RCW 82.87.040. The department does not consider estates, or trusts other than grantor trusts, to be pass-through entities. However, beneficiaries of estates and nongrantor trusts may nevertheless be subject to capital gains excise tax on distributions of capital gains received from estates and nongrantor trusts.

Example 14: Mutual fund.

Facts: Jane is domiciled in Washington and an investor in a mutual fund. A mutual fund is formed as a regulated investment company, a type of pass-through entity for federal income tax purposes. In 2024, the fund earns long-term capital gain from the sale of capital assets held by the fund. Some of the capital gain is distributed to the fund's shareholders, and some of the gain is retained in the fund and reported as undistributed capital gain.

Result: Jane is liable for capital gains excise tax on her Washington capital gains arising from the sale of the fund's long-term capital assets to the extent of her ownership interest in the fund as reported for federal income tax purposes, including her share of the fund's undistributed capital gain, subject to the exemptions and deductions discussed in subsections (4) and (5) of this rule.

Example 15: S corporation.

Facts: Jack is domiciled in Washington. He is a 50 percent shareholder of an S corporation. The S corporation is a long-time shareholder of a C corporation. The S corporation sells the C corporation shares, resulting in long-term capital gain, 50 percent of which is passed through to Jack for federal income tax purposes.

Result: Jack is a beneficial owner of the S corporation's assets. Jack must include his 50 percent share of the long-term capital gain arising from the S corporation's sale of stock in calculating his Washington capital gains.

Example 16: Tiered partnership - Limited liability company.

Facts: Juan is domiciled in Washington. Juan is a 50 percent owner of a partnership. The partnership is a 50 percent owner of an LLC. The LLC sells an intangible asset that it has owned for two years, which results in long-term capital gain. As the owner of the partnership, 25 percent of the long-term capital gain from the LLC's sale of the intangible asset is passed through to Juan for federal income tax purposes.

Result: Because Juan is an owner of a pass-through entity, the partnership, and the partnership is an owner of another pass-through entity, the LLC, Juan is a beneficial owner of the LLC's assets. Therefore, Juan must include in calculating his Washington capital gains, the long-term capital gain passed through to him arising from the LLC's sale of the intangible asset.

(4) **Exemptions.** You may treat certain types of sales or exchanges as exempt from the capital gains excise tax. See RCW 82.87.050. These exemptions are subject to the following guidelines.

(a) **Real estate.** Generally, long-term capital gains from sales or exchanges of real estate are not subject to capital gains excise tax. This exemption applies to all real estate transferred by deed, real estate contract, judgment, or other lawful instruments that transfer title to real property and are filed as a public record with the counties where real property is located.

Example 17: Sale of real estate by an individual.

Facts: Pamela is a Washington domiciliary and owns investment real property in Western Washington. In 2025, a real estate developer offers to buy the real property. Pamela accepts the developer's offer and completes the sale the same year. The sale results in a \$10,000,000 long-term capital gain, which Pamela reports for federal income tax purposes. Pamela's only other transaction in 2025 involving long-term capital assets is a sale of some stock that resulted in \$300,000 in long-term capital gain. Her total federal net long-term capital gain in 2025 is \$10,300,000.

Result: Pamela is exempt from Washington capital gains excise tax on the \$10,000,000 long-term capital gain arising from the sale of the real property. In calculating adjusted capital gain for 2025, Pamela should subtract the \$10,000,000 from her federal net long-term capital gain as an amount of long-term capital gain from a sale or exchange that is exempt under chapter 82.87 RCW. Pamela's 2025 Washington capital gains equals \$300,000, subject to the exemptions and deductions discussed in subsections (4) and (5) of this rule.

Example 18: Sale of real estate by pass-through entity.

Facts: Paul and Pierre each own 50 percent of Invesco LLC. Invesco owns 100 percent of two other LLCs, PropertyOne LLC and PropertyTwo LLC. PropertyOne's only asset is investment real property located in Eastern Washington. In 2024, PropertyOne sells the investment property, resulting in \$6,000,000 of long-term capital gain. For federal tax purposes, Paul and Pierre each recognize \$3,000,000 in long-term capital gain from their distributive shares of the capital gain passed-through from PropertyOne.

Result: PropertyOne's sale of the investment property is exempt from capital gains excise tax. In calculating their Washington capital gains, Paul and Pierre should each subtract the \$3,000,000 from their federal net long-term capital gain as an amount of long-term capital gain from a sale or exchange that is exempt under chapter 82.87 RCW.

(b) **Sales of entities owning real estate.** The sale of an interest in a privately held entity is exempt from the capital gains excise tax to the extent the long-term gain or loss from the sale is directly attributable to real estate owned directly by the entity.

(i) A "privately held entity" for this purpose means an entity that is not traded through public means. For example, a privately held entity does not include a corporation traded on a public exchange.

(ii) "Owned directly" means the privately held entity in which the individual has an interest legally owns (holds legal title to) the real estate.

(iii) The value of this exemption is equal to the fair market value of the real estate owned directly by the privately held entity less its basis at the time that the sale or exchange of the individual's interest occurs, multiplied by the percentage of the ownership interest in the entity that is sold or exchanged by the individual. The following are not considered in the calculation of the exemption amount:

(A) Any amount that I.R.C. § 751 treats as an amount realized from the sale or exchange of property other than a capital asset; and

(B) Real estate not owned directly by the entity in which an individual is selling or exchanging the individual's interest.

(iv) The fair market value of real estate may be established by a fair market value appraisal issued by a state-licensed real estate appraiser or an allocation of assets by the seller and the buyer made consistent with the principles required for an allocation under I.R.C. § 1060, as amended, and related treasury regulations. However, the department is not bound by the parties' agreement as to the allocation of assets, allocation of consideration, or fair market value, if such allocations or fair market value do not reflect the fair market value of the real estate. The assessed value of the real estate for property tax purposes may also be used to determine the fair market value of the real estate if the assessed value is current as of the date of the sale or exchange of the ownership interest in the entity owning the real estate and the department determines that this method is reasonable under the circumstances. In no case may the exemption value under (b) of this subsection exceed the individual's long-term capital gain from the sale or exchange of the interest in the entity for which the individual is claiming this exemption.

Example 19: Sale of private entity directly and indirectly owning real estate.

Facts: Ken, who is domiciled in Washington, owns 100 percent of Holding Company LLC. Holding Company LLC owns three assets: A 100 percent interest in First Avenue Tower LLC, a 100 percent interest in Second Avenue Tower LLC., and 100 percent of Third Avenue Tower, a commercial building. All of the entities are privately held entities. First Avenue Tower LLC owns one asset: First Avenue Tower, a commercial building with a fair market value of \$4,000,000, and a basis of \$1,000,000. Second Avenue Tower LLC also owns only one asset, a commercial building called Second Avenue Tower. Second Avenue Tower has a fair market value of \$8,000,000, and a basis of \$5,000,000. Third Avenue Tower has a fair market value of \$5,000,000, and a basis of \$2,000,000.

Real estate	FMV	Basis
First Avenue Tower	\$4,000,000	\$1,000,000
Second Avenue Tower	\$8,000,000	\$5,000,000
Third Avenue Tower	\$5,000,000	\$2,000,000

Ken sells his entire interest in Holding Company LLC for \$17,000,000. His gain from the sale is a \$9,000,000 long-term capital gain.

Result: A portion of the \$9,000,000 gain Ken recognizes from the sale of Holding Company LLC may qualify for exemption. Ken's long-term

capital gain from the sale of his Holding Company LLC interest is ineligible for the exemption with respect to First Avenue Tower and Second Avenue Tower because Holding Company LLC does not directly own those properties. However, Holding Company LLC owns Third Avenue Tower directly. Therefore, \$3,000,000 of Ken's gain from the sale of Holding Company LLC is exempt. This amount is the difference between the fair market value of Third Avenue Tower and the basis of that property.

Example 20: Sale of private entity directly and indirectly owning real estate.

Facts: Same general facts as Example 19, except Holding Company LLC liquidates First Avenue Tower LLC prior to Ken's sale of Holding Company LLC. As a result of the liquidation, at the time of Ken's sale of his Holding Company interest, Holding Company LLC directly owns the commercial building previously held by First Avenue Tower LLC, as well as Third Avenue Tower.

Result: A portion of the \$9,000,000 gain Ken recognizes from the sale of Holding Company LLC may qualify for exemption. Specifically, the value of the exemption equals \$6,000,000, which is the \$4,000,000 fair market value of First Avenue Tower minus its \$1,000,000 basis, plus the \$5,000,000 fair market value of Third Avenue Tower minus its \$2,000,000 basis, multiplied by Ken's 100 percent ownership interest in Holding Company LLC.

Example 21: Sale of private entity directly owning a partial interest in real estate.

Facts: Mitch is a Washington domiciliary who owns 100 percent of Mitch Holdings LLC. Mitch Holdings LLC owns one asset, a 40 percent interest in an investment property. Mitch recently decided to divest from the property and did so by selling his entire interest in Mitch Holdings LLC to another person. The assessed value of the investment property is \$2,300,000.

Result: Mitch Holdings LLC is a privately held entity. Mitch's sale of Mitch Holdings LLC is exempt from the capital gains excise tax to the extent the long-term gain or loss from the sale is directly attributable to real estate owned directly by Mitch Holdings LLC, in this case, the investment property. The value of the exemption for Mitch is equal to the fair market value of Mitch Holdings LLC's interest in the investment property, less its basis. Mitch should obtain an appraisal to determine the fair market value of Mitch Holdings LLC's interest in the property. See RCW 82.87.050. While the assessed value of real estate may be used in some circumstances to determine fair market value, use of assessed value, or a percentage of the assessed value, is not a reasonable method for determining the fair market value of a partial interest in real estate.

Example 22: Sale of private entity owning real estate; exemption limitation.

Facts: Jesse, a Washington domiciliary, owns 100 percent of Property Co., an LLC. Property Co. owns three assets: A 100 percent interest in Property One LLC, a 100 percent interest in Property Two LLC, and a piece of real estate, Property 3. Property One LLC's only asset is real estate, Property 1, which has a fair market value of \$5,000,000, and a basis of \$2,000,000. Property Two LLC's only asset is a piece of depressed real estate, Property 2, which has a fair market value of \$2,000,000, and a basis of \$10,000,000. Property 3 has a fair market value of \$12,000,000, and a basis of \$5,000,000.

	FMV	Basis
Property 1	\$5,000,000	\$2,000,000
Property 2	\$2,000,000	\$10,000,000
Property 3	\$12,000,000	\$5,000,000

Jesse sells her entire interest in Property Co. for \$19,000,000. Jesse's basis in Property Co. is \$17,000,000. The sale results in a \$2,000,000 long-term capital gain for Jesse.

Result: The value of this exemption is equal to the fair market value of the real estate owned directly by the privately held entity, less its basis. However, the exemption value may not exceed the individual's long-term capital gain or loss from the sale or exchange of the interest in the entity. Here, Property 3 is the only real estate owned directly by Property Co. Its fair market value minus its basis is \$7,000,000. However, Jesse's gain from the sale of Property Co. is only \$2,000,000. Therefore, the value of the exemption from Jesse's sale of Property Co. is limited to \$2,000,000.

(c) **Retirement accounts.** Sales or exchanges of assets held under retirement savings accounts or retirement savings vehicles that are exempt from federal income tax are also generally exempt from capital gains excise tax. Exempt retirement accounts include the following:

- (i) Retirement savings accounts under I.R.C. § 401(k);
- (ii) Tax-sheltered annuities or custodial accounts described in I.R.C. § 403(b);
- (iii) Deferred compensation plans under I.R.C. § 457(b);
- (iv) Individual retirement accounts or individual retirement annuities described in I.R.C. § 408;
- (v) Roth individual retirement accounts described in I.R.C. § 408A;
- (vi) Employee defined contribution programs, employee defined benefit plans; and
- (vii) Retirement savings vehicles or accounts similar to those described above, such as exempt foreign retirement accounts.

(d) **Assets subject to condemnation.** Sales or exchange of assets pursuant to, or under imminent threat of condemnation proceedings by the United States, the state or any of its political subdivisions, or a municipal corporation, are exempt from capital gains excise tax.

(e) **Certain livestock.** Sales or exchanges of cattle, horses, or breeding livestock are exempt if, for the taxable year of the sale or exchange, more than 50 percent of the taxpayer's gross income for the taxable year, including from the sale or exchange of capital assets, is from farming or ranching.

(f) **Depreciable property.** Sales or exchanges of property that is depreciable under I.R.C. § 167(a)(1) or that qualifies for expensing under I.R.C. § 179 is exempt from capital gains excise tax. Intangibles amortizable under I.R.C. § 197 do not qualify for this exemption.

Example 23: Nondepreciable intangible property.

Facts: Bob, a Washington domiciliary, sells in 2023 all his assets in a Burger Bob franchise store that he acquired in 2018. The sale results in long-term capital gain. A portion of the long-term capital gain was attributable to Bob's sale of goodwill in the store. Bob claims an exemption from capital gains excise tax on the portion of the long-term capital gain that is attributable to goodwill.

Result: Bob's long-term capital gain from the sale of the goodwill is not exempt from capital gains excise tax because goodwill is

an intangible amortizable under I.R.C. § 197 rather than property depreciable under I.R.C. § 167(a)(1) or property that qualifies for expensing under § 179.

(g) **Timber and timberland.** Sales of timber as defined in RCW 82.87.050, and timberland, as well as capital gains received as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber and timberland, are exempt from capital gains excise tax. Cutting or disposal of timber qualifying for capital gains treatment under I.R.C. § 631(a) or (b) is also considered a sale or exchange that is exempt from capital gains excise tax.

(h) **Commercial fishing privileges.** Sales or exchanges of commercial fishing privileges, as defined in RCW 82.87.050, are exempt from capital gains excise tax.

(i) **Goodwill in an auto dealership.** Sales or exchanges of goodwill received from the sale of an auto dealership licensed under chapter 46.70 RCW whose activities are subject to chapter 46.96 RCW are exempt from capital gains excise tax. However, long-term capital gain from sales or exchanges of goodwill in other types of businesses are not exempt from capital gains excise tax.

(5) **Deductions.** To obtain your Washington capital gains, you may deduct certain amounts from the measure of your adjusted capital gain, subject to the following guidelines. RCW 82.87.060.

(a) **Standard deduction.**

(i) Individuals other than spouses or state-registered domestic partners are entitled to deduct \$250,000 from their Washington capital gains.

(ii) Spouses and state-registered domestic partners are limited to a total standard deduction of \$250,000, regardless of whether they file joint or separate returns. In the case of spouses or domestic partners filing separate returns, the deduction may be split in whatever manner the spouses or partners choose, so long as the total claimed deduction does not exceed \$250,000.

(b) **Charitable donation deduction.** A taxpayer may take a deduction from their Washington capital gains for certain charitable donations to one or more qualified organizations during a tax year. See subsection (2) of this rule for "qualified organization" definition.

(i) **Deduction amount; limitation.** The charitable donation deduction equals the difference between the taxpayer's total qualifying donations minus \$250,000. The maximum charitable donation deduction in a year is \$100,000 per tax return, regardless of the taxpayer's filing status. Thus, in the case of one joint tax return, the maximum charitable donation deduction is \$100,000 although the return is filed by two individuals.

(ii) **Donor-advised funds; indirect donations through intermediaries.** Generally, a donor-advised fund is a separately identified account that is maintained and operated by a nonprofit organization, and each account is composed of donations that are made by individual donors. Although the nonprofit organization has legal control over it, individual donors maintain advisory privileges with respect to the distribution of funds and management of the account's assets. If you donate to a donor-advised fund or a similar intermediary charitable vehicle, that intermediary, or in case of a donor advised fund, the organization that owns or controls the fund, must qualify as a qualified organization under RCW 82.87.080. The organization to which you

make the donation, and not the organization where the donation ends up, determines whether you donated to a qualified organization.

Example 24: Qualifying charitable donations by a couple.

Facts: Chris and Hannah are a married couple. They file a joint return for federal tax purposes, and therefore also file a joint capital gains excise tax return. See RCW 82.87.120. However, they maintain some separate funds consisting of separate property (rather than community property). In 2024, each spouse made charitable donations to qualified organizations using their separate funds. Chris made donations totaling \$290,000, and Hannah made donations totaling \$400,000.

Result: The maximum charitable donation deduction in a year is \$100,000 per tax return. Thus, the total charitable donation deduction the couple can take on their joint capital gains excise tax return is \$100,000, even though the sum of the spouses' donations exceeded \$250,000 by more than \$100,000.

Example 25: Nonqualifying charitable donation.

Facts: Jimmy donates \$350,000 to the Global Wildlife Fund (GWF) every year. GWF is an international nonprofit organization that aims to conserve endangered species. Its global headquarters is in Sweden. GWF has a U.S. headquarters in Washington, D.C., and has no presence in Washington state. Jimmy claims a \$100,000 charitable donation deduction on his capital gains excise tax return.

Result: The facts indicate that GWF is not principally directed or managed within Washington state. Therefore, Jimmy is not eligible for the charitable donation deduction for his donation to GWF, because GWF is not a qualified organization under RCW 82.87.080.

(c) **Qualified family-owned small business deduction.** You may deduct the amount of adjusted capital gain derived in the taxable year from your sale or transfer of a qualified family-owned small business, subject to all the following requirements. RCW 82.87.070.

(i) The sale or transfer must be a sale of substantially all the business's assets or a transfer of substantially all of your interest in the business. A transfer of substantially all the business's assets, means a sale of at least 90 percent of the business's real property and tangible and intangible personal property, measured by fair market value. A sale of substantially all of your interest in the business, means a transfer of at least 90 percent of your interest in the business.

(ii) You must have held a qualifying interest in the qualified family-owned small business for at least five years immediately preceding the sale or transfer. A mere change in form of the business, i.e., where no change in beneficial ownership of the business has occurred, including no change in the proportion of beneficial ownership in the business, does not interrupt this required holding period.

(iii) You, or your family, or both, must have materially participated in operating the business for at least five of the 10 years immediately preceding the sale or transfer, unless the sale or transfer was to a member of your family. A mere change in form of the business, i.e., where no change in beneficial ownership of the business has occurred, including no change in the proportion of beneficial ownership in the business, does not interrupt this required participation period.

(iv) The business's worldwide gross revenue cannot have exceeded \$10,000,000 in the 12-month period immediately preceding the sale or transfer.

(6) **Allocation of long-term capital gains and losses.** Allocation is the method for determining which long-term capital gains and losses to include in computing a taxpayer's Washington capital gains.

(a) **Tangible personal property.** You must allocate to Washington long-term capital gain or loss from a sale of tangible personal property in two situations:

(i) The tangible personal property was located in Washington at the time of the sale or exchange, i.e., the tangible personal property was physically present in Washington at the time the sale or exchange occurred; or

(ii) The tangible personal property was not located in Washington at the time of the sale or exchange, but the transaction had each of the following characteristics:

(A) The property was located in Washington at any time during the year in which the sale or exchange occurred or in the immediately preceding year;

(B) The taxpayer was a Washington resident at the time the sale or exchange occurred; and

(C) The taxpayer was not subject to the payment of an income or excise tax legally imposed on the long-term capital gain by another taxing jurisdiction. If the sale generated a loss, this element is met if the loss is not included in the taxpayer's income or excise tax base in another taxing jurisdiction. RCW 82.87.100.

Example 26: Allocation of gain from tangible personal property.

Facts: Michael is domiciled in Washington. His home is in Seattle, and he resides there year-round. In October 2024, Michael decides to sell a coin collection he inherited two years ago. In December, Michael brings the coins to Nevada, which does not have an income tax and does not impose excise taxes on occasional sales. While in Nevada, Michael sells the coin collection and the sale results in a \$100,000 long-term capital gain.

Result: Michael's \$100,000 long-term capital gain from the sale is allocated to Washington for purposes of the capital gains excise tax. Although he sold the coins in Nevada, they were located in Washington during the year in which the sale occurred, Michael was a Washington resident at the time the sale occurred, and Michael was not subject to an income or excise tax on the sale of the coins in another taxing jurisdiction.

(b) **Intangible personal property.** You must allocate to Washington long-term capital gain or loss from a sale or exchange of intangible personal property if you were domiciled in Washington at the time the sale or exchange occurred. RCW 82.87.100.

(c) **Determinations of domicile.**

(i) Determination of intent, burden of proof. An intention to make a place of abode one's domicile is determined by facts and circumstances on a case-by-case basis. The department will review the factors and some may be given more weight than others depending on the facts and circumstances. The following is a nonexclusive list of factors the department will consider in evaluating an individual's domicile:

- Length of time spent in a location;
- Expressed intent;
- Place of business, profession, or employment;
- Location of bank accounts;
- Residence and address for federal income and state tax purposes;

- Sites of personal and real property owned by the individual;
- State of motor vehicle and other personal property registration;
- State of motor vehicle driver's license;
- Location of schools attended by children;
- State of voter registration;
- Location of professional or business licenses;
- Payment of in-state tuition;
- Location from where financial transactions originate;
- Claiming of residence in a state for purposes of obtaining a hunting or fishing license, eligibility to hold public office, eligibility for obtaining a property tax benefit (such as a homestead exemption), or for judicial actions;
- Mailing address.

Individuals may submit to the department a request for a ruling on where the department considers individuals to be domiciled for purposes of this tax.

(ii) Continuation and change of domicile. Your domicile, once established, is presumed to continue. Therefore, if you have been domiciled in Washington, you will have the burden of proving your domicile has changed to a location outside of Washington. To establish a new domicile, you must be physically present at the new place of intended domicile and have an intention to make that new place your permanent home. This means that, for instance, selling your former home or acquiring a new one is not conclusive in establishing domicile.

(iii) Domicile of spouses, state-registered domestic partners, children. The department will presume that the domicile of spouses or state-registered domestic partners are the same. The department will also presume that a child's domicile is the same as the domicile of the child's parents until the child is no longer dependent and establishes his or her own separate domicile. If the parents have separate domiciles, the department will presume that the domicile of the child is the domicile of the parent with whom the child spends more time in the tax year.

(iv) Exceptions. Federal law may apply to service members in determination of domicile. Generally, under Title 50 U.S.C. § 571 (residence for tax purposes under the Servicemembers' Civil Relief Act), a member of the armed forces does not acquire a new domicile solely because that individual was stationed elsewhere during a period of active duty.

(d) **Credit for taxes paid to other taxing jurisdictions.** Taxpayers may be entitled to a credit against capital gains excise tax equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction. See RCW 82.87.100. In no case may the credit under this subsection (c) exceed the individual's capital gains excise tax liability on the capital assets for the tax year in which the individual claims this credit. Entitlement to this credit requires the following:

(i) Another taxing jurisdiction legally imposed an income or excise tax on capital gain included in the taxpayer's Washington capital gains;

(ii) The taxpayer in fact paid the tax imposed by the other taxing jurisdiction before the taxpayer filed their Washington capital gains excise tax return on which the credit is claimed; and

(iii) The gain taxed by the other jurisdiction arose from the sale or exchange of a capital asset within the other taxing jurisdic-

tion. For this purpose, the department will presume that long-term capital gain from sales or exchanges of intangible personal property are within the other taxing jurisdiction if the other taxing jurisdiction legally imposed tax on the long-term capital gain derived from the sale or exchange of the intangible personal property.

Example 27: Allocation of gain from intangible property and credit for other taxes paid.

Facts: Julie is a Washington domiciliary and owns a second home in New York. During 2025, she resided in New York for eight months and in Washington the other four months. Julie is a casual investor. In 2025, Julie sold her investment in cryptocurrency to online buyers. The sale generated long-term capital gain for Julie. Under New York law, Julie is treated as a statutory resident even though she was domiciled in Washington. As a statutory resident, Julie is required to remit to New York income tax on the income she earned from the sale of the cryptocurrency. Julie pays the New York tax and files a Washington capital gains excise tax return, claiming a credit for the income tax paid to New York on the sale of the cryptocurrency.

Result: Because Julie was domiciled in Washington at the time the sale or exchange occurred, the gain from her sale is allocated to Washington. However, because New York legally imposed income tax on Julie's sale of cryptocurrency and Julie remitted income tax on the sale to New York, Julie is entitled to a credit against Washington capital gains excise tax equal to the New York tax Julie paid on the transaction.

(e) **Allocation and sourcing of gains or losses from pass-through entities.** The allocation method for gains and losses is the same whether you owned the property directly or indirectly through a pass-through or disregarded entity.

Example 28: Allocation of passed through gain from intangible property.

Facts: Jack is domiciled in Washington. He is a 50 percent shareholder of Invest Corp., an S corporation. Invest Corp. is a long-time shareholder of Fictional Co. In 2025, Invest Corp. sells its Fictional Co. shares, resulting in long-term capital gain, 50 percent of which is passed through to Jack for federal income tax purposes.

Result: The long-term capital gain from the sale of the Fictional Co. stock is allocated to Washington because the stock is intangible personal property and the taxpayer, Jack, was domiciled in Washington at the time the sale occurred.

WSR 24-14-089

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed June 28, 2024, 10:42 a.m., effective September 1, 2025]

Effective Date of Rule: September 1, 2025.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Restrictions imposed by the 2009 legislature on the implementation of new or amended school facility rules are retained in the 2023-2025 supplemental state operating budget, prohibiting implementation of the rules through June 2025.

Purpose: This filing delays the effective date of new sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, one year due to legislative direction in the supplemental state operating budget (ESSB 5187) prohibiting implementation until the legislature acts to formally fund implementation. The rules provide minimum environmental health and safety standards for schools.

New sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, were adopted by the state board of health (board) on August 12, 2009, filed as WSR 09-14-136. The board filed a rule-making order (CR-103), WSR 10-01-174, on December 22, 2009, setting the effective date of the rules as July 1, 2010. However, in advance of the board's actions, the 2009 legislature adopted a proviso in the state operating budget (ESHB 1244) suspending implementation of the rules until the legislature acts to formally fund implementation. The proviso has been included in all subsequent state operating budgets, including the 2023-2025 supplemental state operating budget (ESSB 5187). In response, the board has taken the following series of actions to delay implementation of the rules:

Voted on March 10, 2010, to file an amended rule-making order, filed as WSR 10-12-018 on May 21, 2010, to delay the effective date to July 1, 2011;

Voted on April 13, 2011, to file an amended rule-making order, filed as WSR 11-10-080 on May 3, 2011, to delay the effective date to July 1, 2013;

Voted on March 13, 2013, to file an amended rule-making order, filed as WSR 13-09-040 on April 11, 2013, to delay the effective date to July 1, 2015;

Voted on March 11, 2015, to file an amended rule-making order, filed as WSR 15-09-070 on April 15, 2015, to delay the effective date to July 1, 2017;

Voted on June 14, 2017, to file an amended rule-making order, filed as WSR 17-14-055 on June 28, 2017, to delay the effective date to August 1, 2019;

Voted on June 12, 2019, to file an amended rule-making order, filed as WSR 19-14-107 on July 2, 2019, to delay the effective date to August 1, 2021;

Voted on June 9, 2021, to file an amended rule-making order, filed as WSR 21-14-056 on July 1, 2021, to delay the effective date to August 1, 2022; and

Voted on June 8, 2022, to file an amended rule-making order, filed as WSR 22-14-021 on June 24, 2021, to delay the effective date to August 1, 2023.

Voted on June 14, 2023 to file an amended Rule-Making order, filed as WSR 23-16-005 on July 19, 2023, to delay the effective date to August 1, 2024.

Action by the board in June 2024 extends the effective date of the new rules to September 1, 2025. The board will continue to monitor the state budget and budget proviso suspending implementation of the new rules in the coming legislative sessions in 2025.

Action by the board in June 2023 extends the effective date of the new rules to August 1, 2024. The board will continue to monitor the state budget and budget proviso suspending implementation of the new rules in the coming legislative sessions for possible implementation in 2024.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 09-14-136 on July 11 [1], 2009.

Changes Other than Editing from Proposed to Adopted Version: See WSR 10-01-174.

A final cost-benefit analysis is available by contacting Andrew Kamali, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-584-6737, TTY 711, email andrew.kamali@sboh.wa.gov, website www.sboh.wa.gov.

Date Adopted: June 24, 2024.

Michelle A. Davis
Executive Director

WSR 24-14-101

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 1, 2024, 11:28 a.m., effective August 1, 2024]

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

Purpose: Timber harvesting operations involve multiple activities including, but not limited to, extracting, manufacturing, selling, and hauling standing and harvested timber. RCW 82.04.260 provides a preferential B&O tax rate for businesses engaged in certain timber activities (extracting, manufacturing, and selling). RCW 82.16.020 provides a reduced public utility tax rate for businesses that are engaged in log transportation. RCW 82.04.333 provides a B&O tax exemption to "small harvesters" as defined under RCW 84.33.035. In addition, RCW 82.04.440 provides a B&O tax credit to businesses who conduct manufacturing, extracting, and selling activities within this state. This rule provides guidance on the tax application of various statutes, the filing and reporting obligations of persons engaging in timber harvest operations, and other tax implications related to real estate excise tax and timber tax that may apply. The purpose of this rule-making effort is to clarify the department of revenue's (department) existing policies by adding language to the rule, including several new examples, and modernizing the rule for improved readability.

Citation of Rules Affected by this Order: Amending WAC 458-20-13501 Timber harvest operations.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), 82.45.150.

Adopted under notice filed as WSR 24-09-052 on April 15, 2024.

Changes Other than Editing from Proposed to Adopted Version: Following the CR-102 hearing, the department made additional minor non-substantive changes to the language within the "Facts" and "Result" sections for Example 11. The changes were made to further clarify a typical timber harvest operation. The department also made minor changes within the "Facts" section of Example 12 because the example refers to facts from Example 11, which were changed.

Additionally, the department made a minor change to add the word "Washington" in front of the words retail sales tax or use tax within the language in subsection (8)(a)(ii). The change clarified that Washington use tax is due if Washington retail sales or use tax has not been paid on the seedlings brought into and used in Washington.

Finally, the department made minor changes to the language in subsections (8)(b)(i) and (iv). The changes in subsection (8)(b)(i) clarified that tribal members also qualify for the retail sales and use tax exemption on purchases of conifer seed that is immediately placed into freezer storage operated by the seller when such conifer seed is to be used for growing timber in the tribal member's Indian country. The changes in subsection (8)(b)(iv) clarified that tribal members also qualify for the use tax exemption on purchases made by tribal members and where the seedlings will be used to grow timber in the tribal members' Indian country.

A final cost-benefit analysis is available by contacting Tiffany Do, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1558, fax 360-534-1606, TTY 1-800-451-7985, email TiffanyD@dor.wa.gov, website dor.wa.gov.

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

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

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

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

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

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

Date Adopted: July 1, 2024.

Brenton Madison
Rules Coordinator

OTS-4440.8

AMENDATORY SECTION (Amending WSR 20-02-058, filed 12/24/19, effective 1/24/20)

WAC 458-20-13501 Timber harvest operations. (1) Introduction.

Timber harvest operations generally consist of a variety of ~~((different))~~ activities. ~~((These activities may be subject to))~~ Depending on the nature of the activity, different tax types and tax rates (or classifications under) may apply, such as the business and occupation (B&O) tax, (and) public utility tax (, depending on the nature of the activity) (PUT), retail sales tax, use tax, real estate excise tax (REET), and timber harvest excise tax (timber excise tax). See chapters 82.04, 82.08, 82.12, 82.16, 82.45, and 84.33 RCW.

(a) **Scope of rule.** This rule explains the application of the ~~((business and occupation (B&O), public utility))~~ B&O tax, PUT, retail sales, and use taxes to persons performing activities associated with timber harvest operations, including timber harvesters, manufacturers of timber or wood products, extractors for hire, processors for hire, sellers of real property, and consumers of tangible personal property typically used in timber harvest operations. In addition, this rule explains how the ((public utility tax)) PUT deduction provided by RCW 82.16.050 for the transportation of commodities to an export facility applies to the transportation of logs ((. It also explains how the B&O tax exemption provided by RCW 82.04.333)) and provides details on how to apply the B&O tax exemption for small timber harvesters ((applies)).

(b) ~~((Additional information sources for activities associated with timber harvest operations. In addition to the taxes addressed in this rule, the forest excise and real estate excise taxes often apply to certain activities or sales associated with timber harvest operations.))~~ **Other rules that may be relevant.**

(i) Persons engaged in timber harvest operations should refer to the following rules for additional information:

~~((i))~~ (A) WAC 458-20-135 Extracting natural products;

~~((ii))~~ (B) WAC 458-20-136 Manufacturing, processing for hire, fabricating;

~~((iii))~~ (C) WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment ~~((†))~~.

~~((iv))~~ (ii) Persons engaged in timber harvesting activities may be subject to the timber excise tax or REET. This rule does not cover either of those taxes in detail. For more information on timber excise tax and REET, readers should refer to:

(A) Chapter 458-40 WAC Taxation of forest land and timber; and

~~((v))~~ (B) Chapter 458-61A WAC Real estate excise tax.

(iii) Persons cultivating short-rotation hardwoods are considered farmers. "Short-rotation hardwoods" are hardwood trees, such as hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than 15 years. RCW 84.33.035. For tax-reporting information for farmers and persons selling property to, or performing horticultural service for, farmers, readers should refer to:

(A) WAC 458-20-209 Farming for hire and horticultural services performed for farmers; and

(B) WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers.

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

~~((d) **Information regarding short-rotation hardwoods.** Persons cultivating short-rotation hardwoods are considered farmers. Refer to WAC 458-20-209 and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers. "Short-rotation hardwoods" are hardwood trees, such as, but not limited to, hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years. RCW 84.33.035.))~~

(2) **Timber harvesters.** Timber harvesters may engage in a variety of business activities ((that require them to report)), each subject to different tax reporting and collection obligations, including B&O tax under the extracting, manufacturing, wholesaling, or retailing ((B&O tax)) classifications; retail sales tax; and use tax. Timber harvesters ((may qualify)) are eligible for preferential B&O tax rates on certain qualifying business activities until July 1, 2045. RCW 82.04.260(12).

~~((The definition of "extractor" found in RCW 82.04.100 relates to the harvesting of trees (other than plantation Christmas trees) and is generally identical to the definition of "harvester" found in RCW 84.33.035. An exception is the specific provisions in the definition of "harvester" relating to trees harvested by federal, state, and local government entities. Both definitions include every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts (severs), or takes timber for sale or for commercial or industrial use. Both definitions exclude))~~ (a) **Definition of "harvester."** With respect to timber, the term "harvester" means, every person who, from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. RCW 84.33.035.

(i) When a government entity, i.e., the United States or any instrumentality thereof; the state, including its departments and insti-

tutions and political subdivisions; or any municipal corporation, fells, cuts, or takes timber for sale or for commercial or industrial use, the first person other than that government entity who acquires title to or possessory interest in the timber is considered the harvester.

(ii) The term "harvester" does not include persons performing, under contract, the necessary labor or mechanical services for ((the extractor/harvester.

~~(a) **Timber purchasers to file information report.** A purchaser must report to the department of revenue (department) purchases)) a harvester.~~

(iii) For purposes of B&O tax, a timber "harvester" is considered an "extractor," as that term is defined in RCW 82.04.100. In general, an extractor is subject to extracting B&O tax upon the value of the extracted products. RCW 82.04.230 and WAC 458-20-135. A timber harvester may also be a "manufacturer" as defined in RCW 82.04.110 if the harvester subsequently performs a manufacturing activity as defined in RCW 82.04.120 (1) (c) involving the extracted trees. The type of excise tax under which a timber harvester must report and pay is dependent on the business activities the timber harvester conducts. See (b) through (g) of this subsection for additional information.

(b) **Timber purchasers - Special reporting requirements.** A purchaser of privately owned timber ((in an amount exceeding two hundred thousand)) in excess of 200,000 board feet ((, if purchased)) in a voluntary sale made in the ordinary course of business must report the particulars of the purchase to the department of revenue (department) on or before the last day of the month following the purchase of the timber. RCW 84.33.088.

(i) The report must contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name, address and contact information; seller's name, address, and contact information; sale date; termination date in sale agreement; total sale price; legal description of sale area; sale name; forest practice application/harvest permit number if available; total acreage involved in the sale; estimated net volume of timber purchased by tree species and log grade; and description and value of property improvements.

~~((This))~~ (ii) The report must be filed on or before the last day of the month following ((the purchase of)) the timber purchase date. A ((two hundred fifty dollar)) penalty of \$250 may be imposed against a purchaser for each failure to ((satisfy the requirements for filing)) file this report. These filing requirements are scheduled to expire ((July 1, 2018)) September 30, 2025. RCW 84.33.088.

~~((b))~~ (c) **Extracting.** The felling, cutting (severing from land), or taking of trees is an extracting activity as defined in RCW 82.04.100. The extracting B&O tax classification applies to the value of the products extracted, which ((is the value of the severed trees prior to any manufacturing activity)) generally is the gross proceeds of sales, whether such sales are at wholesale or at retail. See RCW 82.04.230 and WAC 458-20-112.

(i) Until July 1, 2045, timber extractors are eligible for a preferential B&O tax rate for timber extracting activities. RCW 82.04.260 (12) (a). Taxpayers reporting under the preferential extracting timber B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(ii) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

~~((e))~~ (d) Manufacturing. The cutting into length (bucking), delimiting, and measuring (for bucking) of felled, cut (severed), or taken trees is a manufacturing activity as defined in RCW 82.04.120. The manufacturing B&O tax is measured by the value of the products manufactured, which is generally the gross proceeds of sale. For more information regarding the value of products see RCW 82.04.450 and WAC 458-20-112.

(i) For timber harvest operations, the manufacturing portion of the operation begins after the standing timber has been extracted (felled, cut (severed from land), or taken) if the severed trees are subsequently measured, delimited, and bucked at the manufacturing (harvest) site. The manufacturing site includes the entire contiguous area that is being actively logged (known as a "cutting area" or "harvest unit"). For timber harvest operations, manufacturing activities include bucking (cutting into length), delimiting, and measuring of felled, cut (severed from the land), or taken trees.

(ii) If the product is delivered to a point outside the state, transportation costs incurred by the seller from the last point at which manufacturing takes place within Washington may be deducted from the gross proceeds of sale when determining the value of the product, depending on the extent of the additional manufacturing activity conducted subsequent to the manufacturing conducted at the harvest site. See WAC 458-20-112.

~~((Example 1. In each of the following situations presume that the timber harvester delivers the product to the customer at a point outside the state:~~

~~((i))~~ (A) If there is no further manufacturing subsequent to manufacturing conducted at the harvest site, the measure of tax is the gross proceeds of the sale of the logs less transportation costs incurred by the seller from the harvest site to delivery to the customer out-of-state;

~~((ii))~~ (B) If logs are hauled to a separate manufacturing facility for processing into lumber, poles, or piles, the measure of tax is the gross proceeds of sale of the lumber, poles, or piles less transportation costs incurred by the seller from the manufacturing facility to the place of delivery to the customer out-of-state; and

~~((iii))~~ (C) If logs are hauled to a facility that only removes the bark, the measure of tax is the gross proceeds of sale of the logs less transportation costs incurred by the seller from the harvest site to the place of delivery to the customer out-of-state. This is because the mere removal of bark is not a manufacturing activity.

However, if at that facility the debarking is a part of a broader manufacturing process (e.g., cutting the logs into lumber), the entire process, including the debarking, is a manufacturing activity. In ~~((such a))~~ this case, the measure of tax is the gross proceeds of sale of the products manufactured from the logs less transportation costs incurred by the seller from the manufacturing facility to the place of delivery to the customer out-of-state.

~~((iv))~~ (iii) Until July 1, 2045, persons who manufacture ((A)) timber into timber products or wood products; ((B)) timber products into other timber products or wood products; or ((C)) mass timber products defined in RCW 19.27.570(1), are eligible ((for)) to report their gross proceeds of sales under a preferential manufacturing of timber or wood products B&O tax ((rate multiplied by the gross

~~proceeds of sale)) classification. RCW 82.04.260 (12) (b). Taxpayers ((reporting under the preferential Manufacturing of Timber or Wood Products)) claiming this preferential B&O tax ((classification)) rate in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.~~

~~((v))~~ Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

~~((d))~~ (e) Selling. ~~((The income from the sale of the logs is))~~ Sales of felled timber and timber products are subject to B&O tax under either the wholesaling or retailing ((B&O tax)) classification, as the case may be, unless exempt by law. The measure of tax is the gross proceeds of sales without any deduction for transportation costs.

(i) When determining the gross proceeds of sales, the timber harvester may not deduct amounts paid to others.

Example ((2)) 1. Measure of B&O tax for timber harvester. ~~((A timber harvester enters into a contract with another person to perform the necessary labor and mechanical services for the harvesting of timber. The harvester is to receive sixty percent of the log sale proceeds, and the person contracting to perform the services is to receive forty percent. The log buyer purchases the logs for five hundred thousand dollars. The buyer pays three hundred thousand dollars to the harvester and two hundred thousand dollars to the person performing the harvesting services. The harvester's gross proceeds of sale is five hundred thousand dollars.))~~ **Facts:** UVW Company (UVW), a timber harvester and a timber manufacturer, enters into a contract with QRS Company (QRS), in which QRS agrees to perform the necessary labor and mechanical services for extracting the timber, and for manufacturing (measuring, delimiting, and bucking of) the felled timber. UVW receives 60 percent of the gross proceeds from sales of the logs, and QRS receives 40 percent. A third-party buyer located in Washington purchases the logs from UVW for \$500,000. The buyer pays \$300,000 to UVW for the log sales and \$200,000 to QRS for performing the harvesting services.

Result: UVW is required to report the entire \$500,000 in sales proceeds for B&O tax purposes, regardless of the fact that QRS received \$200,000 of the sales proceeds directly from the buyer. In accordance with RCW 82.04.070, there is no deduction for the cost of doing business; therefore, UVW may not deduct the amount UVW paid to QRS for performing harvesting services. As a harvester and manufacturer, UVW must report \$500,000 under extracting B&O tax, manufacturing B&O tax, and retailing or wholesaling B&O tax, depending on whether the third-party buyer is buying the logs for resale. UVW is eligible for a multiple activities tax credit (MATC) because UVW is selling the logs it extracted and manufactured in Washington to a Washington customer. See (g) of this subsection for more information on the MATC.

(ii) Retail sales tax must be collected and remitted on all sales to consumers, unless ~~((exempt by law))~~ a statutory exemption applies. For wholesale sales, sellers must obtain and retain copies of their customers' reseller permits to document the wholesale nature of the transaction or otherwise comply with RCW 82.04.470. For information on reseller permits see WAC 458-20-102 and 458-20-10201.

(iii) Until July 1, 2045, persons who ~~((sell at wholesale))~~ make wholesale sales of eligible products may report their gross proceeds of sales under the preferential wholesaling of timber or wood products B&O tax classification. RCW 82.04.260 (12) (c). Taxpayers who claim this preference in the current calendar year must complete an Annual

Tax Performance Report by May 31st of the following calendar year. The following are eligible products:

- (A) Timber extracted by the seller;
- (B) Timber products manufactured by the seller from timber or other timber products;
- (C) Wood products manufactured by the seller from timber or timber products; ((or)) and
- (D) Mass timber products, as defined in RCW 19.27.570(1), manufactured by the seller (, are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12) (c). Taxpayers reporting under the preferential Wholesaling of Timber or Wood Products B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year).
- (iv) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

~~((e) **Multiple activities tax credit (MATC)**. An extractor or manufacturer who sells the product extracted or manufactured must report under each of the appropriate "production" (extracting or manufacturing) and "selling" (wholesaling or retailing) classifications on the excise tax return. The extractor or manufacturer may then claim a multiple activities tax credit (MATC) as described in RCW 82.04.440 for the extracting tax (RCW 82.04.230) or manufacturing tax (RCW 82.04.240), provided the credit does not exceed the wholesaling or retailing tax liability. For a more detailed explanation of the MATC reporting requirements see WAC 458-20-19301.))~~ (f) **Engaging in multiple activities**. Persons who extract, manufacture, or both extract and manufacture the timber products they sell are engaged in multiple activities. Timber harvesters who are engaged in multiple activities are required to report their gross proceeds of sales under each applicable production B&O tax classification (extracting or manufacturing) and, under the appropriate selling B&O tax classification (wholesaling or retailing).

(g) **Multiple activities tax credit (MATC)**. The MATC will apply in cases where a person sells products to Washington customers that they have also extracted and/or manufactured in Washington. For a detailed explanation of the MATC reporting requirements see WAC 458-20-19301.

Example 2. Computing the MATC.

Facts: ZYX Tree Company (ZYX) is in the business of manufacturing and selling wood siding products used in building construction. All of ZYX's products are manufactured by ZYX using timber that ZYX harvested. For the month of July 2023, ZYX had \$100,000 in gross income from its sales of specialty wood siding products. All of the sales were made at wholesale and occurred in Washington.

Result: ZYX must report \$100,000 in gross revenue under each of the following B&O tax classifications: Extracting timber, manufacturing of timber or wood products, and wholesaling of timber or wood products. Additionally, ZYX is eligible to claim the MATC. Because the preferential B&O tax rates are the same for all three of the classifications reported by ZYX, the MATC will fully offset both the extracting timber and manufacturing timber or wood products B&O tax liabilities. ZYX's tax liability after applying the MATC is \$290.40 (\$100,000 multiplied by the wholesaling of timber or wood products B&O tax rate of 0.2904 percent under RCW 82.04.260 (12) (c)). Note: An additional B&O tax surcharge imposed on those persons who are subject to any of

the taxes imposed under RCW 82.04.260(12) may apply. See RCW 82.04.261 for more information.

(3) **Extractors for hire.** Persons performing extracting activities (labor or mechanical services) (~~(, such as independent contractors,~~) for timber harvesters (~~(are subject to tax under the extracting for hire)~~) as independent contractors for hire must report gross income from these activities under the extracting for hire B&O tax classification (~~(measured by the gross income from those services)~~). RCW 82.04.280. Persons performing extracting for hire services for consumers must collect and remit retail sales tax on those services unless otherwise exempt by law. RCW 82.04.050(2).

Until July 1, 2045, persons who extract timber for hire are eligible for a preferential B&O tax rate for timber extracting for hire activities. RCW 82.04.260 (12) (a). Taxpayers reporting under the preferential extracting for hire timber B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(~~Example 3. Tree Severing Corporation (TSC) is hired by Timber Harvester to fell trees owned by Timber Harvester. TSC is performing an extracting activity, and is considered an extractor for hire with respect to those services. TSC is subject to tax under the Extracting for Hire Timber B&O tax classification measured by its gross income from the services.~~)

Extracting activities commonly performed by extractors for hire include, but are not limited to the following:

- (a) Cutting or severing trees;
- (b) Logging road construction or maintenance;
- (c) Activities related to and performed on timber-producing property that are necessary and incidental to timber operations, such as:
 - (i) Slash cleanup and burning;
 - (ii) Scarification;
 - (iii) Stream and pond cleaning or rebuilding;
 - (iv) Restoration of logging roadways to a natural state;
 - (v) Restoration of wildlife habitat; and
 - (vi) Fire trail work.

Example 3. Extracting timber for hire.

Facts: Timber Harvester, a harvester and manufacturer, pays Tree Severing Corporation (TSC) \$100,000 to fell trees owned by Timber Harvester.

Result: TSC is performing an extracting activity for hire. The \$100,000 TSC receives is subject to B&O tax under the preferential extracting for hire timber classification. TSC must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). This transaction is not subject to retail sales tax because Timber Harvester is not the consumer of the extracted timber.

(4) **Processors for hire.** Persons (~~(performing)~~) that perform labor and mechanical services as independent contractors for timber harvesters (~~(during the manufacturing portion of a timber harvest operation)~~) upon property belonging to others, so that as a result a new, different, or useful article of tangible personal property is produced for sale or commercial or industrial use during the manufacturing portion of a timber harvest operation are subject to B&O tax under the processing for hire (~~(B&O tax)~~) classification, measured by the gross income from those services. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon his or her own materials. RCW 82.04.280 (~~(For information regarding processors for hire see)~~) and WAC

458-20-136. Persons performing processing for hire services for consumers must collect and remit retail sales tax on the charges for those services unless otherwise exempt by law. RCW 82.04.050(2).

(a) For timber harvest operations, the manufacturing portion of the operation begins after the standing timber has been felled, cut (severed from the land), or taken if the felled trees are subsequently delimbed, measured, and bucked at the manufacturing (harvest) site. The subsequent activities of cutting, delimiting, and measuring of the felled, cut (severed from the land), or taken timber by third parties are considered processing for hire activities when performed at the site of the harvest.

(b) Until July 1, 2045, persons who process for hire ((a)) (i) timber into timber products or wood products; ((b)) (ii) timber products into other timber products or wood products; or ((c)) (iii) mass timber products defined in RCW 19.27.570(1), are eligible ((for a preferential B&O tax rate multiplied by the gross proceeds of sale)) to report their gross proceeds under the preferential processing for hire timber products B&O tax classification. RCW 82.04.260 (12)(b). Taxpayers ((reporting under the preferential Processing for Hire Timber Products B&O tax classification)) claiming this B&O tax preference in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

Example 4. Processing timber for hire. ((Tree Services Inc. (TSI) is hired to delimb and buck severed trees at the harvest site by the owner of the severed trees, the TTT Company. TSI is a processor for hire and is subject to tax under the Processing for Hire Timber Products B&O tax classification. TTT then hires Chopper Services to transport the logs by helicopter from where the logs were delimited and bucked to a location from which the logs will be transported to a mill. Under these circumstances, Chopper Services is a processor for hire as the manufacturing of the logs has started. However, if the manufacturing process on those logs had not yet begun Chopper Services would be an extractor for hire. In either case, the measure of tax is the gross income from the services.

Persons performing processing for hire or extracting for hire services for consumers must collect and remit retail sales tax on those services unless otherwise exempt by law.))

Facts: TTT Company (TTT), a harvester and a manufacturer, owns a parcel of land comprised of standing timber. TTT fells the timber on its own behalf. Subsequently, TTT pays Tree Services, Inc. (TSI) \$300,000 to delimb, measure, and buck the severed trees at TTT's harvest site.

Result: TSI is a processor for hire. The \$300,000 TSI received is subject to B&O tax under the preferential processing for hire timber products classification. TSI must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). This transaction is not subject to retail sales tax because TTT is not the consumer of the harvested timber, assuming TTT will resell the logs it extracted and manufactured.

Example 5. Tax treatment of services related to the manufacturing portion of a timber harvest operation.

Facts: With the same facts from Example 4, TTT pays Chopper Services Inc. (CS) \$200,000 to transport severed timber by helicopter from the location within the harvest site where the timber was felled to a staging location where the severed timber can be delimited, measured, and bucked (manufactured into logs) by TSI, prior to being loaded into trucks by TTT and transported to a mill for further processing.

Result: CS's provision of helicopter transportation services for transporting severed timber to a staging area within the manufacturing (harvest) site where the severed timber will be processed (measured, delimbed, and bucked) into logs are part of the manufacturing operation (which began after the timber was felled), and are themselves manufacturing activities. See RCW 82.08.02565 (2) (c) (ii). The \$200,000 CS received from TTT is subject to B&O tax under the processing for hire timber products classification. CS must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12).

(5) **Log hauling activities.** Persons performing services for timber harvesters are often required to haul logs by motor vehicle from the harvest site to separate locations, over public roads. The income attributable to this hauling activity is subject to ~~((the public utility tax (PUT)))~~ PUT.

(a) Effective August 1, 2015, RCW 82.16.020 provides a reduced PUT rate for most log transportation businesses. A "log transportation business" means ~~((the))~~ a business ((of)) engaged in transporting logs by truck, except when the transportation meets the definition of urban transportation business or occurs exclusively on private roads. RCW 82.16.010. WAC 458-20-180 explains the distinction between motor and urban transportation ((is explained in WAC 458-20-180)). If the hauling is exclusively performed over private roads, the gross income from the transportation activity is subject to B&O tax under the service and other activities ~~((B&O tax))~~ classification, not ~~((the))~~ a PUT classification.

~~((Example 5. Hauler A hauls logs over private roads from the harvest site to the transfer site where the logs are unloaded. Hauler B hauls these logs over both private and public roads from the transfer site to a mill. The income received by Hauler A is subject to tax under the service and other activities B&O tax classification. The income received by Hauler B is subject to the public utility tax.~~

~~((a) Subcontracting hauls to a third party. If the person hired to haul logs by motor carrier subcontracts part or all of the hauling to a third party, the amount paid to the third party is subject to the public utility tax if any part of the transportation performed by the third party occurred on a public road, and is subject to the B&O tax if the transportation occurred exclusively on private roads. The person originally hired to haul the logs by motor carrier may be entitled to claim the deduction for jointly furnished services in computing its PUT liability, depending on the circumstances. See WAC 458-20-179 for more information on the PUT deduction for services furnished jointly. No similar deduction is available under the B&O tax.~~

~~((b) Hauls))~~ **Example 6. Tax consequences of hauling logs (private roads, public roads, or both).**

Facts: Bob's Logging Company (Bob's Logging) pays HHH Log Hauling Company (HHH) \$4,000 to haul logs over private roads from Bob's harvest site to a transfer site located 10 miles away, where Bob's Logging will unload, sort, and reload the logs for further distribution. Separately, Bob's Logging pays JJJ Log Hauling Ltd (JJJ) \$6,000 to haul logs from the transfer site to a mill located 30 miles away. JJJ will transport the logs over both private and public roads. The harvest site, transfer site, and mill site are all located in unincorporated parts of Mason County.

Result: HHH is subject to B&O tax under the service and other activities classification because the haul of the logs performed by HHH is exclusively on private roads. HHH must report \$4,000 in gross income under the service and other activities B&O tax classification.

JJJ is subject to PUT under the motor transportation classification because the haul occurs on both private and public roads. JJJ must report \$6,000 in gross income under the motor transportation PUT classification.

(b) **Jointly provided hauling services.** In cases where log hauling services are jointly provided by two or more motor carriers, the motor carrier that contracts with the purchaser of the hauling services may be eligible to claim a PUT deduction for amounts paid to third-party motor carriers that jointly furnish some portion (or all) of the haul. See WAC 458-20-179 and RCW 82.16.050 for more information on the PUT deduction for services furnished jointly.

Example 7. Hauling services jointly provided.

Facts: Assume the facts from Example 6, except that JJJ contracts with Bob's Logging to perform all necessary hauling services from the harvest site to the transfer site, then from the transfer site to the mill. The portion of the haul from the harvest site to the transfer site will be performed over private and public roads. JJJ receives \$10,000 from Bob's Logging in exchange for the contracted services. After entering into the contract with Bob's Logging, JJJ enters into a contract with HHH, in which HHH will perform the first portion of the haul from the harvest site to the transfer site. HHH receives \$4,000 from JJJ in exchange for its portion of the jointly provided services.

Result: JJJ must report \$10,000 in gross income under the log hauling over public highways PUT classification. Additionally, JJJ may take a \$4,000 deduction for "Amounts Paid to Another for Services Jointly Provided" from the amount reported.

HHH must report \$4,000 in gross income under the log hauling over public highways PUT classification. HHH is not eligible for a deduction.

Example 8. Hauling services jointly provided.

Facts: Assume the facts from Example 6, except that JJJ contracts with Bob's Logging to perform all necessary hauling services from the harvest site to the transfer site, then from the transfer site to the mill. The portion of the haul from the harvest site to the transfer site will be performed entirely over private roads. JJJ receives \$10,000 from Bob's Logging in exchange for the contracted services. After entering into the contract with Bob's Logging, JJJ enters into a contract with HHH, in which HHH will perform the first portion of the haul from the harvest site to the transfer site. HHH receives \$4,000 from JJJ in exchange for its portion of the jointly provided services.

Result: JJJ must report \$10,000 in gross income under the log hauling over public highways PUT classification. JJJ may not claim a deduction for "Amount Paid to Another for Services Jointly Provided," as HHH's hauling services are not performed over a public road and are therefore not subject to PUT.

HHH must report \$4,000 in gross income under the service and other activities B&O tax classification. HHH is not subject to PUT, as the log hauling services were provided entirely over private roads.

(c) **Hauling logs using own equipment.** ((If the person hauls the product using his or her)) In cases where a person hauls timber or wood products using their own equipment((,)) and has established hauling rates that ((are paid)) they pay to ((third-parties)) third parties for comparable hauls, ((these)) such rates may be used to establish the measure of tax for the person's hauling activity. Otherwise, the measure of the tax should be all costs attributable to the hauling activity including, but not limited to, the following costs relative to the hauling equipment: Depreciation; repair parts and repair labor;

and wages and benefits for employees or compensation to contractors driving or maintaining the equipment. If appropriate records are not maintained to document these costs, the department will accept one-third of the gross income derived from a contract for all labor or mechanical services beginning with the cutting or severance of trees through the hauling services as the measure of the tax under the motor transportation or log hauling over public highways PUT classification.

~~((e))~~ (d) Deduction for hauls to export facilities. Refer to subsection (13) of this rule for information regarding the deduction available for certain log hauls to export facilities.

(6) **Common timber sale arrangements.** Persons who sell ~~((and/or))~~ or take timber may be subject to various taxes including ~~((the))~~ B&O tax, sales tax, use tax, timber excise tax, and ~~((real estate excise tax))~~ REET. There are a number of ways in which harvesting activities are conducted and timber is sold. The timing of the transfer of ownership of, or the contractual right to sever, standing timber determines which taxes are due and who is liable for remitting tax.

(a) In general, when a timber sale arrangement meets the definition of "selling standing timber" as defined in RCW 82.04.260 (12) (d), the gross income is subject to B&O tax under chapter 82.04 RCW. Until July 1, 2045, persons engaging in "selling standing timber" are eligible to report gross receipts from sales of standing timber under the preferential B&O tax rate of 0.2904 percent in RCW 82.04.260 (12) (d). Persons claiming the preferential B&O tax rate in the current year must file a complete Annual Tax Performance Report with the department under RCW 82.32.534 by May 31st of the following year.

(b) RCW 82.45.195 provides a REET exemption for a sale of standing timber if the gross income from such sale is taxable under RCW 82.04.260 (12) (d); also see WAC 458-61A-113. However, when a sale of standing timber does not meet the definition of "selling standing timber" in RCW 82.04.260 (12) (d) or when a sale of standing timber is a sale, conveyance, or transfer of the ownership of or title to real property as defined in RCW 82.45.010 and WAC 458-61A-113, REET is due. "Real property" or "real estate" means any interest, estate, or beneficial interest in land or anything affixed to land, including an ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber or crops. WAC 458-61A-102(18). For more information on sales that are subject to REET, see chapters 82.45 RCW and 458-61A WAC.

(c) The following examples briefly identify two common types of timber sale arrangements ~~((and then state a conclusion as to the taxes that apply. These examples are not an all-inclusive list of the different types of timber sale arrangements, or the variations that may occur))~~. The examples are intended to provide general guidance only. The tax treatment of a particular timber sale arrangement depends on the facts and circumstances in each case. These examples presume that the trees being harvested are not Christmas trees, and that no participant is a federal, state, or local government entity. The examples do not detail the timber excise tax consequences.

~~((a))~~ **Example ((6)) 9. Sale of standing timber (stumpage sales).** ~~((In this type of arrangement, Seller (landowner or other owner of the rights to standing timber) sells standing timber to Buyer. Buyer receives title to the timber from Seller before it is severed from the stump. Buyer may hire Contractor to perform the harvesting activity.~~

~~The tax consequences are:~~

~~(i) Seller is liable for real estate excise tax. A sale of real property has occurred under RCW 82.45.060. Refer to chapter 458-61 WAC for information on the real estate excise tax.~~

~~(ii) Buyer is liable for both timber excise tax and B&O tax. Buyer is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Buyer "from the...land of another under a right or license...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." See subsection (2) of this rule.~~

~~(iii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." See subsections (3), (4), and (5) of this rule.~~

~~(b) **Example 7. Sale of harvested timber (logs).** In this type of sales transaction, Seller (landowner or other owner of the rights to standing timber) hires Contractor to perform the harvesting activity. Contractor obtains all the necessary cutting permits, performs all of the harvesting activities from severing the trees to delivering the logs for scaling, and makes all the arrangements for the sale of the logs. Contractor, in effect, is performing the harvesting and marketing services for Seller. Seller retains title to the logs until after they are scaled, at which time title transfers to Buyer.~~

~~The tax consequences are:~~

~~(i) Seller is liable for both timber excise tax and B&O tax. Seller is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Seller is "the person who from the person's own land or from the land of another under a right or license granted by lease or contract...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." See subsection (2) of this rule.~~

~~(ii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." See subsections (3), (4), and (5) of this rule.~~

~~(iii) There is no real estate excise tax liability because there is no sale of real property under chapter 82.45 RCW.)~~

Facts: ABC Company (ABC) owns a large tract of standing timber. ABC sells the right to cut the standing timber to XYZ Partnership (XYZ) for \$100,000 on March 1, 2021. The sale agreement does not require XYZ to harvest (sever) the standing timber within 30 months from the date of the original contract. XYZ receives title to the timber from ABC prior to harvesting it. When the timber is ready for harvest on May 1, 2024, XYZ hires DEF Company (DEF) (third-party timber harvest contractor) to sever the timber on its behalf. XYZ pays DEF \$50,000. After the timber is extracted, XYZ sells the harvested timber to UVW Company (an unrelated third-party Washington manufacturer) at wholesale for \$250,000. UVW Company will measure, delimb, and buck the severed timber, then haul the logs from the harvest site to its own manufacturing facility, using its own trucks.

Result: ABC is not subject to B&O tax, PUT, or retail sales or use tax. ABC is liable for REET on the sale of standing timber to XYZ, because the transaction is a sale of real property. See RCW 82.45.010(1), 82.45.060, WAC 458-61A-102, and 458-61A-113. ABC is not liable for B&O tax, in this example, because the sale between ABC and XYZ does not meet the definition of "selling standing timber" in RCW 82.04.260 (12)(d). However, if the sale arrangement between ABC and XYZ were to require that XYZ sever or cut the timber within 30 months from the date of the original sale contract, ABC would then be subject to B&O tax on its proceeds from "selling standing timber" as defined

in RCW 82.04.260(12), and the transaction would be exempt from REET in accordance with RCW 82.45.195.

XYZ (as the owner of the standing timber) must report \$250,000 in gross income under the following B&O tax classifications: Extracting timber and wholesaling of timber or wood products. XYZ is eligible to claim the MATC equal to its extracting timber B&O tax liability. XYZ must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). XYZ is also subject to timber excise tax. See chapters 84.33 RCW and 458-40 WAC.

DEF must report \$50,000 in gross income under the extracting for hire timber B&O tax classification and is not eligible for a credit or deduction. DEF must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12).

Example 10. Sale of harvested timber (logs).

Facts: Assume the facts from Example 9, except that ABC hires DEF to harvest the timber on ABC's behalf, rather than selling the standing timber to XYZ. ABC agrees to pay DEF \$50,000 in exchange for DEF's harvesting and manufacturing (measuring, delimiting, and bucking of felled trees) services. After the timber has been severed, measured, delimited, and bucked into logs by DEF, ABC sells the logs to GHI Lodge, Inc. (GHI) for \$250,000. GHI is purchasing the logs to construct a new lodge (for GHI's own use) in unincorporated Skamania County (which is also the location of the harvest site).

Result: ABC (as the owner of the timber) must report \$250,000 in gross income under the following B&O tax classifications: Extracting timber, manufacturing of timber products, and retailing. ABC is eligible to claim the MATC equal to its extracting timber B&O tax and manufacturing of timber products B&O tax liabilities. ABC must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). ABC is required to collect retail sales tax at the current combined state and local rate for unincorporated Skamania County. ABC is also subject to timber excise tax. See chapters 84.33 RCW and 458-40 WAC.

DEF must report \$50,000 in gross income under the extracting for hire timber and processing for hire timber products B&O tax classifications. DEF must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). DEF is not eligible for the MATC.

(7) Equipment and supplies used in timber harvest operations.

((The)) Retail sales tax applies to all ((purchases of)) ~~retail sales of tangible personal property, including~~ equipment, component parts of equipment, and supplies by persons engaging in timber operations unless a specific exemption applies. Purchases of fertilizer and spray materials (e.g., pesticides) for use in the cultivating of timber are also subject to ((the)) retail sales tax, unless purchased for resale ((as tangible personal property)). If ((the)) a seller fails to collect the ((appropriate)) retail sales tax, the buyer is required to remit ((the retail sales tax -)) what is commonly referred to as "deferred retail sales tax" ((-or use tax)) directly to the department.

If a person ((using property in Washington incurs a use tax liability, and prior to that use paid)) ~~acquires tangible personal property in a transaction that is not subject to retail sales tax, the person is subject to use tax based on the place of first use of the tangible personal property in Washington. In cases where a person has already paid a retail sales or use tax on the same tangible personal property to another state or foreign country (or political subdivision of either), that person may claim a credit for those taxes against ((the)) their~~ Washington use tax liability.

(a) **Exemption available for certain manufacturing machinery and equipment.** RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for certain machinery and equipment (M&E) used by manufacturers. Persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

Example 11. Retail sales tax exemption for M&E (qualifying and nonqualifying M&E).

Facts: GHI LLC (GHI) is a timber harvester and a manufacturer, engaged in felling, delimiting, bucking, measuring, cutting, yarding, and loading logs at a logging operation site. GHI specializes in harvesting timber in remote locations with steep and challenging terrain. In performing its business activities, GHI uses a feller buncher to sever (cut) the standing timber. GHI also uses chainsaws to fell snags. After the trees are severed, GHI uses a yarder to create a cable yarding system to yard (transport or drag) the severed trees through the harvest unit to a staging area where they will be processed into logs and loaded onto trucks for transportation to an off-site mill. At the staging area, GHI uses a log processor to delimit, measure, and buck the trees, and a log loader to sort and stack the logs by species and length. The yarder, log processor, and the log loader are exclusively used by GHI as described in this example.

Result: For purposes of the retail sales and use tax exemptions in RCW 82.08.02565 and 82.12.02565, GHI may be eligible to claim an exemption for the yarder, log processor, and the log loader as (a) GHI is a manufacturer; (b) the manufacturing operation process has begun; (c) the three pieces of equipment are used directly in the manufacturing operation; (d) the three pieces of equipment are used a majority of the time in a qualifying manner; and (e) all other requirements under WAC 458-20-13601 are met (including the one year useful life requirement). In general, yarding (the process of transporting or dragging felled trees or logs to a landing area) as a standalone activity is not a manufacturing activity. Thus, whether yarding is a part of a manufacturing operation depends on whether such activity takes place at a manufacturing site. In this example, yarding occurs at the manufacturing (harvest) site.

GHI is not eligible to claim an exemption for the feller buncher or chainsaws as the majority use of both types of equipment are for extracting activities (cutting or severing trees from the land). Had the majority of use of the chainsaws and the feller buncher been for delimiting, measuring, and bucking the felled trees, both pieces of equipment may have been eligible for the M&E exemption if all the other requirements for the M&E exemption in WAC 458-20-13601 are satisfied.

Example 12. Retail sales tax exemption for M&E (majority use test).

Facts: Assume the facts from Example 11. In addition, GHI uses a bulldozer for a variety of purposes in its operations. The bulldozer is used exclusively to (a) support GHI's feller buncher in performing extracting activities (cutting or severing of timber); (b) support GHI's yarder in performing manufacturing activities upon the timber that has already been severed (yarding or transporting the severed trees to the staging area where the severed trees will be processed into logs and loaded onto trucks and transported to an off-site mill); and (c) clear debris and generally assist in the restoration of timber harvest sites. GHI does not separately state charges associated with its use of the bulldozer in its contracts with customers. GHI does

maintain detailed time records that document the number of hours the bulldozer is used in the performance of each of the three activities. In its first year of use, the bulldozer was used to support the feller buncher for 200 hours, support the yarder for 400 hours, and clear debris and generally assist in harvest site restoration for 400 hours.

Result: While the use of the bulldozer to support the yarder for manufacturing activities is generally a qualifying use for purposes of the M&E exemption in RCW 82.08.02565 and 82.12.02565, the bulldozer is not eligible for the exemption because the majority of its use is for a nonqualifying purpose (supporting the feller buncher for extracting activities and clearing debris for harvest site restoration). In this case, the proper measure for determining majority use is time. A majority of the bulldozer's use, measured in time, was for nonmanufacturing activities (60 percent, or 600 of 1,000 hours used).

(b) **Property manufactured for commercial use.** ((Persons manufacturing tangible personal property)) A person who manufactures timber or wood products for commercial or industrial use ((are)) is subject to ((both the manufacturing)) B&O tax under the manufacturing of timber or wood products classification and use tax ((en)). Both taxes are imposed based on the value of the tangible personal property manufactured((r)) unless a specific exemption applies. WAC 458-20-134 defines and provides information on commercial or industrial use, and WAC 458-20-112 describes how to determine the value of products. If ((the person also extracts the product, B&O tax is due under the extracting tax classification, and a MATC may be taken)) a person is also the harvester of the timber, the activity is subject to B&O tax under the extracting timber classification. The MATC will also apply, so long as both the extracting and manufacturing activities occur in Washington.

Example ((8)) 13. Lumber manufactured for commercial use.

Facts: ABC Company ((severs trees)) (ABC) harvests timber, manufactures the ((logs)) timber into lumber, and then uses the lumber to construct an office building. The harvest site and manufacturing site are both located in unincorporated Clark County. The office building site is in Camas.

Result: ABC's use of the lumber ((by ABC in constructing)) to construct its office building is a commercial or industrial use. ABC is subject to use tax on the value of the lumber incorporated into the office building. Because ABC's first taxable use of the lumber occurred in Camas (the building construction site location), the combined state and local use tax is due based on the location code and rate assigned to the Camas address. ABC is also subject to B&O tax under the extracting timber and manufacturing of timber or wood products ((B&O tax)) classifications and may claim ((a)) the MATC((. ABC is also responsible for remitting use tax on the value of the lumber incorporated into the office building)).

(8) **Seeds and seedlings.** Persons ((cultivating timber)) who cultivate trees by agricultural methods (or tree cultivators) often purchase or collect tree seeds that are raised into tree seedlings. The ((growing of the seed may be performed by the person cultivating timber, or through the use of a third-party grower. In the case of a)) activity of raising a seed into a seedling may be performed by the tree cultivator, or by third-party growers. In the case of third-party growers, typically the seed is provided ((to the grower)) by the tree cultivator and tree seedlings are received back after a specified growing period.

(a) **Responsibility to remit retail sales or use tax.** The purchase of seed((s)) or seedlings by a ((person cultivating timber)) tree cul-

tivator is subject to ~~((the))~~ retail sales tax. If ~~((the))~~ a seller fails to collect retail sales tax, the buyer must remit ~~((retail sales tax (commonly referred to as ")))~~ deferred retail sales tax ~~(("))~~ (or use tax) ~~((τ))~~ unless otherwise exempt by law. The use of seed collected by a ~~((person cultivating timber))~~ tree cultivator is also subject to use tax.

(i) In the case of seed provided by a tree cultivator to a third-party grower ~~((s))~~ in Washington, the ~~((seed owner, and not the third-party grower,))~~ tree cultivator incurs any use tax liability on the value of the seed. ~~((The value))~~

(ii) In the case of seedlings brought into and used in Washington ~~((is))~~ by a tree cultivator, the seedlings are subject to ~~((the))~~ use tax, unless Washington retail sales or use tax was previously paid on the seedlings ~~((or on the seed from which the seedlings were grown))~~.

(b) **Limited sales and use tax exemptions for conifer seeds.** ~~((RCW 82.08.850 and 82.12.850 provide retail sales and use tax exemptions for certain sales or uses of conifer seeds. A deferral mechanism is also available if the buyer cannot at the time of purchase determine whether the purchase is eligible for the sales tax exemption.))~~

(i) ~~((Retail sales tax))~~ **Exemption requirements.** Retail sales and use tax ~~((does))~~ do not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller ~~((if the seed is to be))~~ and is: (A) Used for growing timber outside Washington ~~((. This exemption also applies to the sale of conifer seed))~~ or (B) sold to an Indian tribe or tribal member and is to be used for growing timber in the tribe's or tribal member's Indian country ~~((τ again only if the seed is immediately placed into freezer storage operated by the seller))~~. For the purposes of this ~~((exemption))~~ rule, "Indian country" ~~((has the meaning given in))~~ is defined as set forth in 18 U.S.C. Sec. 1151. See RCW 82.24.010.

~~((This exemption applies only if))~~ The buyer must provide ~~((s))~~ the seller with an exemption certificate in a form and manner prescribed by the department at the time of purchase. The seller must retain a copy of the buyer's exemption certificate ~~((to substantiate the exempt nature of these sales))~~. RCW 82.32.070 requires taxpayers to keep and preserve suitable records as may be necessary to determine the amount of any tax collected by the department for a period of five years.

(ii) **Deferring payment of retail sales tax if unable to determine whether purchase qualifies for the retail sales tax exemption.** If a buyer of conifer seed is normally engaged in growing timber both within and outside Washington and is not able to determine at the time of purchase whether the seed acquired, or the seedlings germinated from the seed acquired, will be used for growing timber within or outside Washington, the buyer may defer payment of the retail sales tax until it is determined that the seed, or seedlings germinated from the seed, will be planted for growing timber in Washington. A buyer that does not pay retail sales tax on the purchase of conifer seed and subsequently determines that the sale did not qualify for the retail sales tax exemption must remit to the department the amount of retail sales tax that would have been paid at the time of purchase. It is important to note that the retail sales tax liability may be deferred only if the seller immediately places the conifer seed into freezer storage operated by the seller.

(iii) **Tax paid at source deduction.** A buyer who pays retail sales tax on the purchase of conifer seed and subsequently determines that the sale qualifies for the tax paid at source deduction may claim a

deduction on its combined excise tax return. The deduction is allowed only if the buyer keeps and preserves records ~~((that show from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid))~~ identifying the seller, purchase date, purchase amount, and retail sales tax paid. RCW 82.32.070 requires suitable records must be kept and preserved for a period of five years. See WAC 458-20-102 for more information on the tax paid at source deduction.

(iv) **Use tax exemption.** Use tax does not apply to the use of conifer seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed. This exemption applies only if the seedlings will be used for growing timber outside Washington, or if the owner of the conifer seed is an Indian tribe or tribal member and the seedlings will be used for growing timber in the tribe's or tribal member's Indian country. If the owner of the conifer seed is not able to determine at the time the seed is used in a growing process whether the use of the seed qualifies for this exemption, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington. ~~((For the purposes of this exemption, "Indian country" has the meaning given in RCW 82.24.010.))~~

(9) **Activities or income incidental to timber harvest operations.** ~~((The following activities or income, and the applicable tax classifications are often associated with timber operations. These tax reporting requirements apply even if these activities are incidental to the person's primary business activity.))~~ This subsection addresses the tax consequences of various business activities that are incidental to timber harvest operations.

(a) **Taking other natural products from timberland.** The value of natural products such as boughs, mushrooms, seeds, and cones taken for sale or commercial or industrial use is subject to ~~((the))~~ B&O tax under the extracting ~~((B&O tax))~~ classification. ~~((The sale))~~ Sales of these products ~~((is))~~ are subject to B&O tax under the wholesaling or retailing ~~((tax))~~ classification, as the case may be. Persons ~~((both extracting and selling natural products should refer to WAC 458-20-19301 for an explanation of the MATC reporting requirements. The retail sales tax applies to sales to consumers,))~~ who extract natural products in Washington and subsequently sell those products to customers that receive the products in Washington are eligible for the MATC. Sales of natural products to consumers that are sourced to Washington are subject to retail sales tax unless a specific exemption applies.

(b) **Timber cruising, scaling, and access fees.** Gross income from timber cruising, scaling services, and allowing others to use private roads is subject to B&O tax under the service and other activities ~~((B&O tax))~~ classification. ~~((This tax classification also applies to))~~ Gross income from access fees for activities such as hunting, taking firewood, bough cutting, mushroom picking, or grazing is also subject to B&O tax under the service and other activities classification. Charges ~~((to))~~ that allow a person to take an identified quantity of tangible personal property from privately owned real property are considered sales of that property, and the gross income received from these charges is subject to B&O tax under the retailing or wholesaling classification, as the case may be. These charges are also subject to retail sales tax when made to a consumer and the sale is sourced to Washington, unless a specific exemption applies. ~~((See subsection (9)(d) of this rule.))~~

(c) **Planting, thinning, and spraying.** ~~((The service and other activities B&O tax applies to the gross proceeds of sale received for))~~ Sales of the following services are subject to B&O tax under the service and other activities classification: Planting trees or other vegetation((τ)); precommercial thinning((τ)); and spraying or applying fertilizers, pesticides, or herbicides.

(d) **Sales of firewood and Christmas trees.** ~~Sales of firewood, Christmas trees, and other tangible personal property are ((either wholesale (subject to B&O tax under the wholesaling tax classification) or retail (subject to B&O tax under the retailing tax classification and also to retail sales tax) sales, depending on the nature of the transaction))~~ generally subject to either the wholesaling B&O tax, or the retailing B&O tax and retail sales tax, as the case may be. These sales are often made in the nature of charges ((allowing)) that allow the buyer to select and take an identified quantity of the property (e.g., six cords of firewood or two Christmas trees). Sales of commercially traded firewood or naturally grown trees (including Christmas trees) are also subject to timber excise tax; see WAC 458-40-610 and 458-40-660. For activities related to plantation (cultivated) Christmas trees, see subsection (10) of this rule and WAC 458-20-210.

(e) **Unloading logs from logging trucks.** The taxability of gross income ((from the unloading of)) received by persons operating equipment to unload logs from logging trucks onto rail cars at transfer points ((is subject to the retailing B&O and retail sales taxes when the activity is a rental of equipment with operator. RCW 82.04.050. For more information regarding the rental of equipment with an operator see WAC 458-20-211. If this activity is not a rental of equipment with operator, gross income from the activity is)) depends on the nature of the customer's activities.

(i) In cases where the customer will direct the operator of the equipment as to where and how to move the logs, the activity is considered a "rental of equipment with an operator," the charges for which are subject to retailing B&O tax and retail sales tax. See RCW 82.04.050(9) and WAC 458-20-211.

(ii) In cases where the equipment operator is responsible for loading and unloading logs at their own discretion and to contract specification, the activity is considered an "other support service," and the charges for which are subject to B&O tax under the service and other activities ((B&O tax)) classification.

~~((The income from unloading of logs from logging trucks is subject to tax under the stevedoring B&O tax classification if performed at an export facility as a part of or to await future movement in waterborne export. For tax-reporting information regarding services associated with interstate or foreign commerce))~~ (iii) In cases where the equipment operator is responsible for loading and unloading logs at their own discretion and to contract specification, and where the activities are performed at an export facility as part of a waterborne export activity, the activity is considered "stevedoring," the charges for which are subject to B&O tax under the stevedoring classification. See WAC 458-20-193D.

(f) **Transporting logs by water.** Gross income received for transporting logs by water (e.g., log booming and rafting) or from log patrols is subject to ((tax)) PUT under the ((")) other public service business((" classification of the public utility tax.

~~This tax classification applies to the gross income from this activity even if the person segregates a charge for boomsticks used~~

while transporting the logs)) classification. Commonly, log transporters use "boomsticks" (i.e., floating logs chained together in a rough hexagonal shape, which are designed to prevent log bundles or loose logs from escaping the log boom during towing) to assist in the transportation of logs over water.

(i) In cases where boomsticks are used in the transportation of logs, any separate or itemized charges for the use of boomsticks are included in the taxable measure subject to the other public service business PUT classification.

(ii) In ((many)) cases where logs will be towed to a location specified by the customer for storage(~~(. Any charges for)~~), separately stated or itemized charges for the use of boomsticks, while the logs are stored, are rentals of tangible personal property and are subject to ((the)) B&O tax under the retailing ((B&O tax)) classification and retail sales tax ((if to a consumer. For information regarding the rental of tangible personal property see WAC 458-20-211)).

(g) **Export sorting yard operations.** Export sorting yard operations generally consist of ((multiple)) a number of distinct business activities(~~(. These activities can include)~~) including, but ((are)) not ((necessarily)) limited to, ((services such as)) weighing, tagging, banding, appraising, and sorting of logs. Other incidental activities(~~(, such as the)) include debarking, ((removal of)) removing imperfections (such as crooks, knots, splits, and seams), and trimming of log ends to remove defects(~~(, are also performed as needed))~~. Gross income received by persons performing the types of export sorting yard activities ((as identified)) described in this subsection is subject to B&O tax under the service and other activities ((B&O tax)) classification.~~

(10) **Harvesting Christmas trees.** As described below, persons growing, producing, or harvesting Christmas trees are either farmers or extractors ((under the law, as explained below. Activities generally associated with the harvesting of Christmas trees, such as cutting, trimming, shearing, and baling (packaging) are not manufacturing activities because they are not the "cutting, delimiting, and measuring of felled, cut, or taken trees" under RCW 82.04.120)), depending on the facts and circumstances in each case.

(a) **Plantation Christmas tree operations (farming operations).** Persons growing or producing plantation Christmas trees on their own lands or on lands in which they have a present right of possession are farmers. See RCW 82.04.213 and WAC 458-20-210 for more information on farmers. Plantation Christmas trees are Christmas trees that are exempt from the timber excise tax under RCW 84.33.170(~~(. This))~~, which requires that the Christmas trees be grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising Christmas trees. See RCW 82.04.035 and 84.33.035.

(i) Gross income from wholesale sales of plantation Christmas trees by farmers is exempt from B&O tax. See RCW 82.04.330. Gross income from retail sales of plantation Christmas trees by farmers is subject to B&O tax under the retailing ((B&O tax)) classification and ((to)) retail sales tax. ((For information on sales of agricultural products by farmers see WAC 458-20-210.))

(ii) Farmers growing or producing plantation Christmas trees ((may)) are not subject to retail sales or use tax on their purchase of seed((s)), seedlings, fertilizer, and spray materials ((at whole-sale)). See RCW 82.04.050 and ((82.04.060)) WAC 458-20-210.

(iii) Persons performing cultivation or harvesting services for farmers are generally ~~((subject to the service and other activities B&O tax on the))~~ taxable on gross income from ((those)) these services under the service and other activities B&O tax classification. See WAC 458-20-209 for information on farming for hire and horticultural services performed for farmers.

(b) **Other Christmas tree operations (extracting operations).** Persons who, either directly or by contracting with others for the necessary labor or mechanical services, fell, cut, or take Christmas trees other than plantation Christmas trees are extractors and should refer to the provisions in this rule for timber harvesters. ~~((RCW 82.04.100. The tax reporting instructions regarding extracting and extracting for hire activities provided elsewhere in this rule apply.))~~

(11) **Timber harvest operations in conjunction with other land clearing or construction activities.** Persons sometimes engage in timber harvest operations in conjunction with ~~((the clearing of land for the construction of residential communities, golf courses, parks, or other development. In such cases, these persons are engaging in separate business activities, and income from each may be subject to different tax liabilities))~~ land clearing or construction activities, such as clearing or improving land for residential or commercial building development, golf courses, parks, or other improvements to real property. Each activity has its own tax consequences and may be subject to tax under a variety of taxes.

(a) Income ~~((attributable to the))~~ derived from a timber harvest operation((s)) is subject to ~~((tax under the tax classifications as described elsewhere in this rule))~~ the provisions in this rule for timber harvesters.

(b) Income ~~((attributable to the))~~ derived from clearing or improving of land for ((the)) construction of ((the)) residential ((community, golf course, park)), commercial, or other ((development)) improvements is subject to ~~((the))~~ wholesaling B&O tax, retailing((r)) B&O tax and retail sales tax, or public road construction B&O tax, as the case may be. Refer to WAC 458-20-170, 458-20-171, and 458-20-172 for tax-reporting information regarding these construction activities. Persons performing landscape and horticultural services such as cutting or trimming trees after the land is developed should refer to WAC 458-20-226.

Example 14. Combined contracts (land clearing and timber harvesting).

Facts: LCG Land Clearing and Grading Company (LCG) is hired by FFF Corporation (FFF), a commercial property development company, to clear and grade an unimproved parcel of land owned by FFF. Once cleared and graded, FFF intends to construct a commercial warehouse on the property, which it will lease to third-party tenants. The property contains a significant amount of standing timber, which LCG is responsible for extracting and selling the extracted timber on FFF's behalf under the terms of the contract. The contract between FFF and LCG includes a \$25,000 charge for the timber extraction services and a \$75,000 charge for the land clearing and grading services. LCG hires a subcontractor, HHH Logging Company (HHH) to extract the timber from the property. LCG pays HHH \$20,000 for its services. FFF ultimately sells the extracted timber to JJ Mill Company (JJ) for \$30,000 at wholesale.

Result: LCG is an extractor for hire with respect to the \$25,000 in proceeds from FFF for the harvest of the standing timber. The gross income is subject to B&O tax under the extracting for hire timber

classification. LCG is also subject to B&O tax under the retailing classification and must collect retail sales tax from FFF on the \$75,000 in proceeds for the clearing and grading of the real property.

HHH is an extractor for hire with respect to the \$20,000 in proceeds from LCG for the harvest of the standing timber. The gross income is subject to B&O tax under the extracting for hire timber classification.

FFF is an extractor with respect to the sale of the harvested timber to JJ. FFF must report \$30,000 in gross income under the extracting timber and wholesaling of timber or wood products B&O tax classifications. FFF may also be eligible for the MATC, if the sale to JJ occurred in Washington.

(12) **Logging road construction and maintenance.** Constructing or maintaining logging roads (whether active or inactive) is considered an extracting activity. Income derived from this activity is subject to B&O tax under the extracting or extracting for hire ((B&O tax, as the case may be)) classification. This income is not subject to ((the)) retail sales tax. A person constructing or maintaining a logging road is a consumer of all materials incorporated into the logging road. The purchase or use of these materials is subject to either ((the)) retail sales or use tax.

(a) **Logging road materials provided without charge.**

(i) Landowners ((/)) or timber harvesters may provide materials (e.g., crushed rock) ((without charge)) to persons constructing or maintaining logging roads without charge. In such cases, ((while both the person providing the materials without charge and the person applying the materials to the road are consumers under the law,)) tax is due only once on the value of the materials.

(ii) The person constructing or maintaining the roads is responsible for remitting use tax on the value of the materials, unless ((that)) the person documents that the landowner or timber harvester previously remitted the appropriate retail sales or use tax.

Alternatively, the person may take a written statement from the landowner ((/)) or timber harvester certifying that the landowner ((/)) or timber harvester has remitted (for past periods) ((and/or)) or will remit (for future periods) all applicable retail sales or use taxes due on materials provided without charge. This statement must identify the period of time, not to exceed four years, for which ((it)) the agreement is effective. The statement must identify the landowner ((/)) or timber harvester's tax ((reporting account)) registration number and must be signed by ((a person who is authorized to make such a representation)) an owner, member, or authorized agent of the timber harvester.

(b) **Extracted or manufactured logging road materials.** Persons constructing or maintaining logging roads are subject to ((the)) B&O tax and use ((taxes)) tax on the value of applied materials they extract or manufacture from private pits, quarries, or other locations. The measure of tax is the value of the extracted or manufactured products ((, as the case may be)). See WAC 458-20-112 for additional information regarding how to determine the "value of products."

(i) If ((the)) a person ((either)) directly, or by contracting with others, extracts and crushes, washes, screens, or blends materials to be incorporated into the logging road, B&O tax under the extracting classification is due on the raw value of the extracted products ((before any manufacturing)). B&O tax under the manufacturing classification ((,)) and use tax are also due ((upon)), measured by the value of the manufactured product. If the "cost basis" is the appro-

appropriate method for determining the value of products under WAC 458-20-112, this value includes the cost of transportation to a processing point((~~τ~~)) but does not include any transportation from ((~~the~~)) a processing point to ((~~the~~)) a road site. ((A)) The MATC may be taken when computing the B&O tax as explained in WAC 458-20-19301.

(ii) In the case of fill dirt, sand, gravel, or rock that is extracted from a location away from ((~~the~~)) a logging road site, but not further processed, ((B&O tax under the extracting classification,~~τ~~)) extracting B&O tax and use tax are due based upon the value of the extracted product. If the "cost of production basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value does not include transportation costs to ((~~the~~)) a road site.

(iii) The mere severance of fill dirt, sand, gravel, or rock from outcroppings at the side of a logging road for placement in the road is a part of the logging road construction or maintenance activity. The person incorporating these materials into the road does not incur a tax liability for ((~~either~~)) the extracting or ((~~the~~)) use of these materials.

(13) **Deduction for hauling logs to export yards.** RCW 82.16.050 provides a ((~~public utility tax~~)) PUT deduction for amounts derived from the transportation of commodities from points of origin within this state to an export elevator, wharf, dock, or shipside ("export facility") on tidewater or navigable tributaries of tidewaters. The commodities must be forwarded from the facility, without intervening transportation, by vessel and in their original form, to an interstate or foreign destination. No deduction is allowed when the point of origin and the point of delivery are located within the corporate limits of the same city or town.

(a) **Conditions for deduction.** This deduction is available only to the person making the last haul, not including hauls within the export facility((~~τ~~)) before the logs are ((~~put~~)) placed on the ship. This deduction is not available if the haul starts in the same city or town where the export facility is located.

The deduction is available only if both of the following criteria are met:

(i) The logs eventually go by vessel to another state or country; and

(ii) The form of the logs does not change between the time the logs are delivered to the export facility and the time the logs are ((~~put~~)) placed on the ship. The mere removal of bark from the logs (debarking) or the incidental removal of imperfections (see subsection (9)(g), of this rule) while the logs are at the export facility is not itself a manufacturing activity, nor does it result in a change in the "original form" of the logs as contemplated by RCW 82.16.050.

(b) **Documentation requirements for deduction.** The log hauler must prove entitlement to the deduction. Delivery tickets that show delivery to an export facility are not, alone, sufficient proof. A certificate from the export facility operator is acceptable additional proof if it is substantially in the following form. Rather than a certificate covering each haul, a "blanket certificate" may be used for a one-year period ((~~of time~~)) if no significant changes in operation will occur within this period of time.

Exemption certificate for logs delivered to an export facility

The undersigned export facility operator hereby certifies:

That _____ percentage or more of all logs hauled to the storage facilities at _____, the same located on tidewater or navigable tributaries thereto, will be shipped by vessel directly to an out-of-state or foreign destination and the following conditions will be met:

1. The logs will not go through a process to change the form of the logs before shipment to another state or country.
2. There will be no intervening transportation of these logs from the time of receipt at the export facility until loaded on the vessel for the interstate or foreign journey.

Trucking Firm _____
 Trucking Firm Address _____
 Trucking Firm UBI# _____
 Export Facility Operator _____
 Operator UBI# _____
 Person Giving Statement _____
 Title of Person Giving Statement _____

(c) **Examples.** (~~The following examples identify a number of facts and then state a conclusion regarding the deductibility of income derived from hauling logs to export facilities. Unless specifically provided otherwise~~) For Examples 16 through 18, presume that the logs are shipped directly to another country from the export facility.

~~((i) Example 9. Logs are hauled from the harvest site to an export facility. While the bark will be removed from fifty percent of the logs, no other processing takes place.))~~ **Example 16. Qualifying PUT deduction for transportation to an export facility.**

Facts: MMM Hauling Company (MMM) is hired to haul logs from a harvest site to an export facility over public roads. The logs will immediately be loaded upon a ship for export at the export facility. As part of its services, MMM will remove bark from 50 percent of the logs; no other processing activities will occur. MMM receives \$10,000 in exchange for its services.

Result: MMM must report \$10,000 in gross income under the log hauling over public highways PUT classification. MMM may also claim a \$10,000 deduction from the measure of its PUT, as the logs will be shipped directly to another country from the export facility, provided the appropriate exemption certificate is obtained.

NOTE: Because the mere removal of bark is not considered a change in the form of the logs, the export facility may provide a certificate in the above form indicating that all logs at this facility will ultimately be shipped to another country. ((The hauler may then claim a deduction for one hundred percent of this haul.

~~(ii) Example 10. Logs are hauled from the harvest site))~~ Additionally, this means that MMM is not engaged in a processing for hire activity.

Example 17. Activities that do not qualify for PUT deduction for transportation to an export facility.

Facts: Assume the facts from Example 16, except that MMM hauls the logs to an export sorting area, approximately one mile from the export facility. At this location further sorting takes place and ((eighty)) 80 percent of the logs are hauled approximately one mile ((on)) over public roads ((to shipside and shipped)) for export to another country. The other ((twenty)) 20 percent of the logs are sold and delivered to local sawmills. ((The haul to the sorting yard is

subject to tax because there is another haul from the sorting yard to shipside.)

Result: MMM must report \$10,000 in gross income under the log hauling over public highways PUT classification. MMM may not claim a deduction from the measure of its PUT, as the logs will not be shipped directly to another country from the export facility. It is immaterial that ((the hauler)) MMM may be paid ((based on)) an "export" rate for its services.

((The haul from the sorting yard to shipside is)) Charges for the haul of the logs from the export sorting area to the export facility may be deductible if ((it)) the transportation route does not start and end within the corporate limits of the same city or town, and the hauler obtains the appropriate exemption certificate. The haul to the local sawmills is not deductible.

((iii) **Example 11.** Logs are hauled from the harvest site to an export facility. The hauler is aware that all logs will need to be hauled a distance of approximately one-half mile across the export facility yard to reach the ship when it arrives at the dock. The dock is located next to the export facility. The hauler may take the deduction.) **Example 18. Qualifying PUT deduction for transportation to an export facility.**

Facts: Assume the facts from Example 16, except that once the logs are delivered by MMM to an export facility, the logs will still need to be transported approximately half of a mile to reach the ship for loading (all within the export facility).

Result: MMM must report \$10,000 in gross income under the log hauling over public highways PUT classification. MMM may also claim a \$10,000 deduction from the measure of its PUT, as the logs will be shipped directly to another country from the export facility, provided the appropriate exemption certificate is obtained. Movement of the logs within the export facility is not an intervening haul.

(14) **Small timber harvesters - Business and occupation tax exemption.** RCW 82.04.333 provides a limited exemption from B&O tax for small harvesters. A small harvester may take a deduction for an amount not to exceed ((one hundred thousand dollars)) \$100,000 per tax year from the gross receipts or value of products proceeding or accruing from timber harvested. A deduction may not reduce the amount of tax due to less than zero.

((A)) (a) **Definition of small harvester.** "Small harvester" means every person, who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding ((two million)) 2,000,000 board feet in a calendar year. When a government entity (i.e., the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein) ((se)) fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the ((United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein,)) government entity who acquires title to or a possessory interest in the timber. "Small harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods. RCW 84.33.035.

~~((a))~~ (b) Registration - Tax return. A person whose only business activity is as a small harvester of timber ~~((and whose gross income in a calendar year from the harvesting of timber is less than one hundred thousand dollars, is not))~~ is required to register with the department for B&O tax purposes ~~((This person must nonetheless register with the forest tax))~~, unless otherwise specified in WAC 458-20-101 (2) (a) or under chapter 82.32 RCW. A small harvester must also register with the forest tax program in the department's audit division ~~((of the department))~~ for payment of the timber excise tax. See chapters 84.33 RCW and 458-40 WAC for more information regarding the timber excise tax.

~~((An unregistered small harvester of timber is required to register with the department for B&O tax purposes in the month when the gross proceeds received during a calendar year from the timber harvested exceed the exempt amount. The harvester must then file and report on an excise tax return all proceeds received during the calendar year to the time when the filing of the excise tax return is required.~~

~~(b))~~ (c) Examples. In each of the following examples, the harvester must register with the department's forest tax ~~((division))~~ program for the payment of timber excise tax, and must report under the appropriate tax classifications as described above in this rule.

~~((i) Example 12.))~~ Example 19. Unregistered small harvester.

Facts: A small harvester, not currently registered with the department for B&O tax purposes, harvests timber in June 2023 and again in August 2023, receiving ~~((fifty thousand dollars in June and two hundred thousand dollars in August from the sale of the logs harvested.~~

~~B&O tax is due on the entire two hundred fifty thousand dollars received from the sale of logs.)~~ \$10,000 for the June 2023 sale and \$200,000 for the August 2023 sale of the harvested logs. Each sale is made to a lumber mill who presents the small harvester with a reseller permit.

Result: The small harvester must register with the department in August when the receipts from the timber harvesting business exceed the ~~((one hundred thousand dollars exemption amount))~~ gross revenue threshold in WAC 458-20-101, assuming the other registration conditions in that rule have not otherwise been met prior to August.

An excise tax return ~~((is to be filed in the appropriate period as provided in WAC 458-20-22801.~~

~~(ii) Example 13.~~ A person is primarily engaged in another business ~~that))~~ must be filed according to the tax reporting frequency assigned by the department (e.g., monthly, quarterly, or annually). The small harvester must report \$210,000 in gross revenue under extracting timber, manufacturing of timber or wood products, and wholesaling of timber or wood products B&O tax classifications. The small harvester taxpayer is eligible to report a \$100,000 "small harvester" B&O tax deduction from the measure of all three B&O tax classifications. In addition, the taxpayer is eligible to take the MATC for both the extracting timber and manufacturing of timber or wood products. As a result, the wholesaling of timber or wood products B&O tax is due.

Example 20. Registered small harvester.

Facts: RRR Construction Company (RRR) is primarily in the business of commercial building construction and is currently registered with the department ~~((for B&O tax purposes and has monthly receipts of two hundred fifty thousand dollars. The person is)).~~ In July 2023, RRR generates \$250,000 in gross wholesaling income from its construction activities. RRR is also a small harvester as defined in RCW 84.33.035

~~((and receives sixty thousand dollars)). RRR's timber harvesting operation includes extracting standing timber from its own land and processing the extracted timber into logs before wholesaling the logs to third-party mills. In July 2023, RRR receives \$60,000 from the sale of (the timber harvested.~~

~~B&O tax remains due on two hundred fifty thousand dollars from the other business activities. The sixty thousand dollars received from the sale of logs is exempt and is not reported on the person's excise tax return. The exemption applies to the activity of harvesting timber and receipts from the sale of logs are not combined with the receipts from other business activities to make the sale of logs taxable)) logs from its timber harvesting operation to a local mill for resale. Year to date, RRR has not had any other sales of harvested timber or wood products.~~

~~**Results:** RRR is required to report \$250,000 in gross revenue under the wholesaling B&O tax classification for its construction activities.~~

~~RRR (as a smaller harvester and a manufacturer) is required to report \$60,000 in proceeds from the sale of logs under three B&O tax classifications: Extracting timber, manufacturing of timber or wood products, and wholesaling of timber or wood products. RRR is eligible for a \$60,000 "small harvester" B&O tax deduction from all three B&O tax classifications. RRR is eligible for additional "small harvester" B&O tax deductions up to \$40,000 (\$100,000-\$60,000) for the remainder of the reporting calendar year.~~

~~((iii) **Example 14.**) **Example 21. Unregistered small harvester (deduction carryover).**~~

~~**Facts:** Don Janson, a small harvester not otherwise registered with the department for B&O tax purposes contracts with ((a logging company to provide the labor and mechanical services of the harvesting. The small harvester is to receive sixty)) NNN Logging Company (NNN) to extract standing timber from real property owned by Mr. Janson and process the extracted timber into logs. Mr. Janson retains ownership of the timber until it is sold. Under the agreement, Mr. Janson receives 60 percent and the logging company ((forty)) receives 40 percent of the log sale proceeds. ((The log purchaser pays two hundred fifty thousand dollars for the logs during the calendar year, paying one hundred fifty thousand dollars to the small harvester and one hundred thousand dollars to the logging company.~~

~~For the small harvester, B&O tax is due on the entire two hundred fifty thousand dollars paid for the logs. The small harvester is taxed upon the gross sales price of the logs without deduction for the amount paid to the logging company. RCW 82.04.070. The small harvester must register with the department for B&O tax purposes in the month when, for the calendar year, the proceeds from all timber harvested exceed one hundred thousand dollars. The logging company is taxed on the one hundred thousand dollars it received under the appropriate business tax classification(s). The logging company is not a small harvester as defined in RCW 84.33.035.) In September 2021, the harvested timber is sold at wholesale for \$250,000, \$150,000 (60 percent of \$250,000) of which is received by Mr. Janson.~~

~~**Result:** Mr. Janson (as a smaller harvester and a manufacturer) is required to register with the department for B&O tax purposes and must report the entire \$250,000 in sales proceeds under the following B&O tax classifications: Extracting timber, manufacturing of timber or wood products, and wholesaling of timber or wood products. Mr. Janson is not allowed to deduct the \$100,000 (40 percent of \$250,000) Mr.~~

Janson paid to NNN. However, Mr. Janson is eligible to take a \$100,000 "small harvester" B&O tax deduction from the measure of the B&O tax classifications reported, reducing the B&O taxable income to \$150,000. Assuming the sale occurred in Washington, Mr. Janson is also eligible to claim the MATC for both the extracting timber and manufacturing of timber or wood products. Mr. Janson is subject to B&O tax under the wholesaling of timber or wood products classification.

NNN (as a logging contractor for Mr. Janson) must report the \$100,000 gross income received from its extracting standing timber and processing for hire activities under the following B&O tax classifications: Extracting for hire timber and processing for hire timber products. NNN may also be subject to other taxes, depending on the activities NNN conducted.

WSR 24-14-102

PERMANENT RULES

HORSE RACING COMMISSION

[Filed July 1, 2024, 11:34 a.m., effective August 1, 2024]

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

Purpose: Amends the distribution of source market fees to reflect a change in duties performed by commission employees because a voluntary agreement with the Horseracing Industry [Integrity and] Welfare Unit was signed and the Washington horse racing commission (WHRC) employees will be performing certain duties that were not performed last year.

Citation of Rules Affected by this Order: Amending WAC 260-49-070 Distribution of source market fees.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 24-11-112 on May 20, 2024.

Changes Other than Editing from Proposed to Adopted Version: The total percent of source market fee collected was lowered to 8.5 percent from 12.5 percent and the percent going into the WHRC operating account was lowered to six percent from 10 percent.

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

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

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

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

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

Date Adopted: July 1, 2024.

Amanda Benton
Executive Secretary

OTS-5419.2

AMENDATORY SECTION (Amending WSR 23-12-024, filed 5/26/23, effective 7/1/23)

WAC 260-49-070 Distribution of source market fee. (1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) One hundred percent of the total source market fee directly to the class 1 racing association.

(b) The class 1 racing association shall submit monthly (~~(2.5)~~) 8.5 percent of the total source market fee to the commission of which

2.5 percent to be deposited into the Washington bred owners' bonus fund and (~~zero~~) 6 percent to be deposited into the commission's operating account.

(c) The class 1 racing association shall distribute (~~two and one-half~~) 2.5 percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

(d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

WSR 24-14-111
PERMANENT RULES
OFFICE OF
ADMINISTRATIVE HEARINGS

[Filed July 2, 2024, 7:11 a.m., effective August 2, 2024]

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

Purpose: The purpose is to update current rule language with gender-inclusive pronouns. This change clarifies the language of the rules without changing its effect.

Citation of Rules Affected by this Order: Amending WAC 10-08-050, 10-08-085, 10-08-090, 10-08-110, 10-08-120, 10-08-130, 10-08-140, 10-08-150, 10-08-160, 10-08-190, and 10-08-230.

Statutory Authority for Adoption: RCW 34.12.030.

Adopted under notice filed as WSR 24-10-077 on April 30, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, Repealed 0.

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

Date Adopted: July 2, 2024.

RaShelle Davis
Chief Administrative Law Judge

OTS-5387.1

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-050 Adjudicative proceedings—Assignment of administrative law judge—Motion of prejudice. (1) Whenever a state agency as defined in RCW 34.12.020(4) conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the agency shall use one of the following methods for requesting assignment of an administrative law judge:

(a) Not less than (~~twenty~~) 20 days prior to the date of the hearing, notify the chief administrative law judge or (~~his or her~~) their designee of the date, time, and place of the hearing and request assignment of an administrative law judge to preside over the hearing, or

(b) File with the office of administrative hearings a copy of the hearing file, which filing shall be deemed to be a request for assignment of an administrative law judge to issue the notice of hearing and preside over the hearing, or

(c) Schedule its hearings to be held at times and places reserved and provided to the agency for that purpose by the office of administrative hearings.

(2) Motions of prejudice with supporting affidavits under RCW 34.12.050 must be filed at least three days prior to the hearing or to any earlier stage of the adjudicative proceeding at which the administrative law judge may be required to issue a discretionary ruling. If the notice of hearing does not state the name of the presiding administrative law judge, the chief administrative law judge or (~~his or her~~) their designee shall make such assignment at least five days prior to the hearing and shall disclose the assignment to any party or representative making inquiry. Subsequent motions of prejudice filed by the same party in the same proceeding shall be ruled upon by the chief administrative law judge or (~~his or her~~) their designee.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-085 Consolidation of proceedings. If there are multiple adjudicative proceedings involving common issues or parties, upon motion of any party or upon (~~his or her~~) their own motion, the presiding officer may, in (~~his or her~~) their discretion, consolidate the proceedings.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-090 Adjudicative proceedings—Continuances. (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on (~~his or her~~) their own motion or may be granted on timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance shall state whether or not all other parties agree to the continuance. If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

AMENDATORY SECTION (Amending WSR 20-07-005, filed 3/4/20, effective 4/4/20)

WAC 10-08-110 Adjudicative proceedings—Filing and service of documents. (1) Filing.

(a) Documents to be filed with the agency shall be deemed filed when received during regular business hours at any office of the agency. Documents to be filed with the presiding officer shall be deemed filed when received during regular business hours at the office of the presiding officer. Documents received outside of regular business hours shall be deemed filed the following business day.

(b) Filing documents by fax:

(i) As used in this chapter, "fax" means electronic telefacsimile transmission.

(ii) Documents may be filed by fax with the agency. Filing by fax is perfected when a complete and legible copy of the documents is re-produced on the agency's fax machine during regular business hours. A transmission of documents after regular business hours shall be considered filed on the following business day.

(iii) Any documents filed by fax should be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the documents relate, and indicating the date of and the total number of pages included in the transmission.

(iv) The party attempting to file the documents by fax bears the risk that the documents will not be timely received or legibly printed, regardless of the cause. If the fax is not received in legible form, filing will not be perfected.

(c) The filing of documents with the presiding officer by electronic mail ("email") is not authorized without the express approval of the presiding officer and under such circumstances as the presiding officer allows.

(2) Service.

(a) All notices, pleadings, and other documents filed with the agency shall be served upon all representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(b) Methods of service permitted. Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax; or by commercial parcel delivery company. Service by email or electronic filing is permitted if expressly assented to by the receiving party.

(c) Service by mail is completed upon deposit in the United States mail properly stamped and addressed. Service by fax is completed upon production by the fax machine of confirmation of a successful transmission. Service by commercial parcel delivery is completed upon delivery to the parcel delivery company, properly addressed with charges prepaid. Service by email is completed when the email is successfully sent. Service by electronic filing is completed upon successful uploading of the document to that party's designated system.

(3) Proof of service. Where proof of service is required by statute or rule, filing the documents with the agency, together with one of the following, shall constitute proof of service:

(a) An acknowledgment of service.

(b) A certificate that the person signing the certificate served the documents upon all parties of record in the proceeding by delivering a copy thereof in person to all parties of record.

(c) A certificate that the person signing the certificate served the documents upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or (~~his or her~~) their attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax to each party to the proceeding or (~~his or her~~) their attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company; or

(iv) If agreed to by the parties, emailing or uploading to an electronic case management system a copy of the document. The certifi-

cate of service must include verification of successful sending or uploading of the document by the recipient, which may include a read receipt or confirmation of successful upload.

(4) Electronic filing with the office of administrative hearings (OAH).

(a) Documents may be filed electronically with OAH through the use of the agency's portal.

(b) Filing documents through the OAH portal:

(i) As used in this chapter, "electronically" means successfully uploading documents through the OAH portal.

(ii) Filing electronically is perfected when a complete and legible copy of the documents is successfully uploaded to OAH's portal during regular business hours. A document uploaded after regular business hours is considered filed on the following business day. Regular business hours for the purposes of electronic filing with OAH are Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, excluding weekends and state holidays.

(iii) For any documents filed electronically through the OAH portal, the party attempting to file bears the risk that the documents will not be timely received or will not be legible, regardless of the cause unless the cause is due to an OAH portal malfunction. If the uploaded document is not received in legible form, filing will not be perfected.

(c) All service requirements as outlined in subsections (2) and (3) of this section apply to documents electronically filed through the OAH portal.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-120 Adjudicative proceedings—Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under (~~his or her~~) their control.

(a) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under (~~his or her~~) their control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving (~~him or her~~) them a copy thereof, or by leaving such copy at the place of (~~his or her~~) their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance

therewith, may (a) quash or modify the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-130 Adjudicative proceedings—Prehearing conference.

(1) The presiding officer upon (~~(his or her)~~) their own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
- (d) Limitations on the number and consolidation of the examination of witnesses;
- (e) Procedural matters;
- (f) Distribution of written testimony and exhibits to the parties prior to the hearing;
- (g) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within (~~(ten)~~) 10 days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding the presiding officer may, in (~~(his or her)~~) their discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.

(5) Nothing in this rule shall be construed to limit the right of an agency to attempt informal settlement of an adjudicative proceeding at any time.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-140 Adjudicative proceedings—Evidence. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(2) Where practicable, the presiding officer may order:

- (a) That all documentary evidence which is to be offered during the hearing or portions of the hearing be submitted to the presiding

officer and to the other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted in advance as required in (a) of this subsection be not received in evidence in the absence of a clear showing that the offering party had good cause for (~~his or her~~) their failure to produce the evidence sooner, unless it is submitted for impeachment purposes;

(c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(3) When portions only of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(4) No former employee of the agency shall appear, except with the permission of the agency, as an expert witness on behalf of other parties in a proceeding in which (~~he or she~~) they previously took an active part in the investigation as a representative of the agency.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for striking all testimony previously given by such witness on related matter.

(6) Any party bound by a stipulation or admission of record may, at any time prior to closure of the hearing, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

AMENDATORY SECTION (Amending WSR 16-19-083, filed 9/20/16, effective 10/21/16)

WAC 10-08-150 Adjudicative proceedings—Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the appointing authority shall appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(2) An adjudicative proceeding under chapter 34.05 RCW includes a legal proceeding which occurs on the record, and also includes oral and written communications of a party to an agency proceeding, and the filing, issuance and entry of notices, motions, orders, decisions, petitions, and other documents. When a party or witness appears in a legal proceeding on the record, the appointing authority is the presid-

ing officer, and otherwise the appointing authority is the agency head or designee.

(3) (a) The agency head or designee may make a predetermination that an interpreter is qualified to provide parties with a:

(i) Visual translation or sight translation of forms, notices, proposed exhibits, briefs and orders, either before or following the hearing; or

(ii) Visual or spoken-language interpretation of oral communication with the agency that is not on the record.

(b) The agency head or designee may maintain a list of interpreters who have been determined to be qualified to interpret before the agency.

(4) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose function is to interpret at adjudicative proceedings on the record and as otherwise needed by impaired and non-English-speaking persons.

(5) The appointing authority shall appoint a qualified spoken language interpreter who is on the list of certified interpreters maintained by the administrative office of the courts (AOC), except as provided in this subsection. The appointing authority may find there is good cause to appoint a qualified spoken language interpreter who is not on the list of certified interpreters maintained by the AOC. "Good cause" includes, but is not limited to, consideration of the totality of circumstances and a determination by the appointing authority that:

(a) The current list of certified interpreters maintained by the AOC does not include an interpreter certified in the language spoken by the non-English-speaking person;

(b) The parties agree to the issue or motion;

(c) The motion or hearing is expedited or emergent;

(d) The matter involves general or procedural information;

(e) The matter involves sight translation of case-related documents including forms, notices, proposed exhibits, briefs, and orders, either before or following the hearing;

(f) The rescheduling of a hearing to appoint a certified interpreter would cause prejudicial delay;

(g) The certified interpreter qualified by the appointing authority becomes unavailable unexpectedly before completion of the adjudicative proceeding; or

(h) An interpreter who is certified to interpret in the courts of another state or the federal courts is available.

(6) The appointing authority shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to (~~his or her~~) their qualifications and impartiality.

(7) If in the opinion of the impaired or non-English-speaking person, the appointing authority or a qualified observer, the interpreter does not provide accurate and effective communication with the

impaired or non-English-speaking person, the appointing authority shall appoint another interpreter.

(8) Mode of interpretation.

(a) The AOC recognizes three spoken language interpreting modes: Consecutive, simultaneous, and sight translation. Sight translation means the act of reading a written text out loud.

(b) Interpreters for non-English-speaking persons shall use the simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(c) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(d) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall interpret all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit interpretation and the presiding officer shall ensure that the interpreter interprets the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(9) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(10) The presiding officer shall explain to the impaired or non-English-speaking party that a written decision or order will be issued in English, and that a visual translation or sight translation of the decision is available at no cost to the party.

The presiding officer shall attach to or include in the decision or order a telephone number to request a visual translation or sight translation.

(11) If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(12) The agency involved in the hearing shall pay interpreter fees and expenses.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-160 Adjudicative proceedings—Testimony under oath or affirmation. (1) Every person called as a witness in a hearing shall swear or affirm that the testimony (~~(he or she is)~~) they are about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the presiding officer may require the witness

to agree to be bound by the laws of the state of Washington for purposes of the oath or affirmation.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

AMENDATORY SECTION (Amending WSR 89-13-036, filed 6/15/89)

WAC 10-08-190 Adjudicative proceedings—Cameras—Recording devices. Photographic and recording equipment shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as ((he or she)) they deem((s)) necessary to prevent disruption of the hearing.

AMENDATORY SECTION (Amending WSR 89-13-036, filed 6/15/89)

WAC 10-08-230 Informal settlements. RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(1) (a) All agencies and persons are strongly encouraged to explore early, informal resolution to disputes whenever possible. Any person whose interest in a matter before an agency may be resolved by settlement shall communicate ((his or her)) their request or complaint to the agency, setting forth all pertinent facts and particulars and the desired remedy. If the agency requires additional information to resolve the matter informally, it shall promptly provide to the person who is seeking relief an opportunity to supply such information. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations; Provided, however, that any time limit applicable to filing an application for an adjudicative proceeding shall not be extended because settlement attempts are pending.

(b) In the event an early, informal resolution is reached, the agency is responsible for providing a written description of the resolution to the person(s) involved.

(2) (a) If settlement of an adjudicative proceeding may be accomplished by informal negotiation with the agency or other parties involved, negotiations shall be commenced at the earliest possible stage of the proceeding. Settlement shall be concluded by:

(i) Stipulation of parties or

(ii) Withdrawal by the applicant of ((his or her)) their application for an adjudicative proceeding or

(iii) Withdrawal by the agency of the agency action which is the subject matter of the adjudicative proceeding.

(b) A stipulation shall be in writing and signed by each party to the stipulation or ((his or her)) their representative or shall be recited on the record at the hearing. When an adjudicative proceeding

has been settled by stipulation, the agency head, the agency head's designee, or the presiding officer shall enter an order in conformity with the terms of the stipulation.

(c) When an adjudicative proceeding has been wholly or partially settled by withdrawal, the presiding officer shall enter an order dismissing the adjudicative proceeding, or an order dismissing the affected party's interest in the proceeding if other parties have not withdrawn.

WSR 24-14-115
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 2, 2024, 9:21 a.m., effective August 2, 2024]

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

Purpose: WAC 388-71-0876, 388-71-0992, 388-112A-0081, and 388-112A-0613 were put in place for the sole purpose of extending training deadlines during the COVID-19 emergency. The extended deadlines for both training and continuing education have passed, and certification deadlines are now set through rule by the department of health. RCW 74.39A.074 (6)(a) and 74.39A.341 (6)(a) require that the rules allowing extension of training deadlines be repealed when no longer necessary. The purpose is to remove the COVID-19 training and continuing education extension rules that are no longer necessary.

Citation of Rules Affected by this Order: Repealing WAC 388-71-0876, 388-71-0992, 388-112A-0081, and 388-112A-0613.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.074, 74.39A.341.

Adopted under notice filed as WSR 24-08-069 on April 2, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 4.

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

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

Date Adopted: July 2, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5027.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-0876	When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training?
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- WAC 388-71-0992 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?
- WAC 388-112A-0081 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training?
- WAC 388-112A-0613 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?

WSR 24-14-120

PERMANENT RULES

BELLEVUE COLLEGE

[Filed July 2, 2024, 12:25 p.m., effective August 2, 2024]

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

Purpose: Repeal of chapter 132H-131 WAC, Scholarships and financial aid.

Citation of Rules Affected by this Order: Repealing WAC 132H-131-010 and 132H-131-020.

Statutory Authority for Adoption: RCW 28B.50.140(13); chapter 34.05 RCW.

Adopted under notice filed as WSR 24-09-042 on April 12, 2024.

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

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

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

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

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

Date Adopted: July 2, 2024.

Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-5235.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132H-131-010 Scholarships.

WAC 132H-131-020 Financial aid.

WSR 24-14-129
PERMANENT RULES
OFFICE OF

ADMINISTRATIVE HEARINGS

[Filed July 2, 2024, 2:24 p.m., effective August 2, 2024]

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

Purpose: The purpose is to update current rule language with gender-inclusive pronouns. This change clarifies the language of the rules without changing its effect.

Citation of Rules Affected by this Order: Amending WAC 10-04-050.

Statutory Authority for Adoption: RCW 34.12.030.

Adopted under notice filed as WSR 24-10-078 on April 30, 2024.

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

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

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

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

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

Date Adopted: July 2, 2024.

RaShelle Davis
Chief Administrative Law Judge

OTS-5386.1

AMENDATORY SECTION (Amending WSR 18-01-144, filed 12/20/17, effective 1/20/18)

WAC 10-04-050 Inspection of public records. (1) The office will provide space to inspect public records.

(2) The office will notify the requestor in writing that the records are available to inspect. Within (~~thirty~~) 30 days after the office sends notification, the requestor must make arrangements with the office to inspect the records.

(3) After inspection is complete, the requestor must identify which records (~~he or she wishes~~) they wish the office to copy. Depending on staff availability and the volume of records requested, the office may copy the records at that time or provide the records to the requestor at a later date.

(4) When the inspection of the requested records is complete and all requested copies are provided, the public records officer will send notification to the requestor that the request is closed.

WSR 24-14-147

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 3, 2024, 10:48 a.m., effective August 3, 2024]

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

Purpose: This rule making amends the Washington beef commission (commission) WAC by incorporating changes from the passage of 2ESSB 5150 during the 2024 legislative session. The rule changes include the following: Assessment increase for Washington state beef checkoff of up to \$2.50 per head to be implemented over a three-year period (2024, 2025, and 2026). Due to the commission's authority to collect both the state and federal beef checkoff, the total amount collected will be no more than \$3.00 per head. One dollar of that total will be for the federal beef checkoff; and new section that provides language around refunding an assessment.

Propose to repeal WAC 60-12-005 as the details included in this section are out of date and are clarified in WAC 60-12-010.

Citation of Rules Affected by this Order: New WAC 60-12-025; repealing WAC 60-12-005; and amending WAC 60-12-010.

Statutory Authority for Adoption: RCW 16.67.090.

Adopted under notice filed as WSR 24-10-110 on May 1, 2024.

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

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

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

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

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

Date Adopted: July 3, 2024.

Derek I. Sandison
Director

OTS-5390.1

AMENDATORY SECTION (Amending WSR 10-21-057, filed 10/15/10, effective 11/15/10)

WAC 60-12-010 Levy of assessment. (1) Pursuant to the National Beef Promotion and Research Program, 7 U.S.C. S 2901, et seq., RCW 16.67.120 and 16.67.122, the Washington state beef commission levies an assessment of ~~((one dollar and fifty cents per head))~~ up to \$3.00 (\$2.00 of which goes to the state beef checkoff and \$1.00 to the federal beef checkoff) per head to be implemented as prescribed in subsection (2) of this section on all Washington cattle sold in this state or elsewhere, provided that no assessment shall be collected with reference to the following:

(a) Sales by a person who purchased cattle solely for resale when such resale occurs within (~~(ten)~~) 10 days from such person's purchase of the cattle and when any assessment due in connection with that original purchase has been paid. In order to qualify for this exception, such persons additionally must present the designated collecting person with their certification of nonproducer status form, along with a brand inspection certificate, a bill of sale or other documentation establishing the date of their purchase of the cattle. Such documentation must be presented to the designated collection person at the time of sale (~~(to the designated collection person)~~).

(b) Sales of cattle where the cattle that have been transported into Washington from another state for the purpose of sale and the sale takes place within (~~(thirty)~~) 30 days of the cattle entering the state unless the assessment has not been paid in the state of origin.

(2) (a) Beginning July 1, 2024, the assessment for the combined state and federal checkoff will be \$2.00 per head. \$0.50 of the \$2.00 assessment levied under this subsection may not be collected at the first point of sale of any calf identified with a green tag as identified in RCW 16.57.160.

(b) Beginning January 1, 2025, the assessment for the combined state and federal checkoffs will be \$2.50 per head. \$1.00 of the \$2.50 assessment levied under this subsection may not be collected at the first point of sale of any calf identified with a green tag as identified in RCW 16.57.160.

(c) Beginning January 1, 2026, the assessment for the combined state and federal checkoffs will be \$3.00 per head. \$1.50 of the \$3.00 assessment levied under this subsection may not be collected at the first point of sale of any calf identified with a green tag as identified in RCW 16.57.160.

(3) Assessments shall be paid by and shall be collected from the seller of the cattle. The term seller shall not include an agent or representative who is compensated in connection with the sale solely on a commission, handling fee or other service fee basis.

~~((3))~~ (4) (a) A designated collecting person is defined as either a state department of agriculture brand inspector where a brand inspection is conducted in conjunction with a sale or the buyer of the cattle where no brand inspection is conducted in connection with the sale.

(b) Where a brand inspection is conducted in conjunction with a sale, brand inspectors employed by the state department of agriculture may collect the assessment from the seller of the cattle. Where no brand inspection is conducted in connection with the sale, the buyer of the cattle shall collect the assessment from the cattle seller at the time of the sale. All assessments so collected shall be transmitted directly to the Washington state beef commission by the fifteenth of the month after the month of collection.

~~((4))~~ (5) That portion of each assessment remitted to the Washington state beef commission for purposes of providing funds for a National Beef Promotion and Research Program under 7 U.S.C. S 2901, et seq. shall be remitted to the cattlemen's beef promotion and research board by the Washington state beef commission.

NEW SECTION

WAC 60-12-025 Refunds. (1) Chapter 16.67 RCW provides that of the assessments levied in RCW 16.67.120, a producer or owner of cattle from whom an assessment is collected, except for assessments collected at the first point of sale of green tag calves not subject to the assessment increases provided in RCW 16.67.120(2), has the right to request a refund of not more than \$1.00 per head beginning July 1, 2024, not more than \$1.50 per head beginning January 1, 2025, and not more than \$2.00 per head beginning January 1, 2026. Refund requests must be mailed to the commission within 90 calendar days of the assessment and include the following information:

- (a) Name and address of the producer or owner;
- (b) Name and address of the entity collecting the assessment (brand inspector or livestock market);
- (c) Number of head on which a refund is requested;
- (d) Total amount of refund requested;
- (e) Date of assessment;
- (f) Producer's signature; and
- (g) Proof of payment of the assessment.

(2) The commission must process the requested refunds on a calendar quarterly basis. Any refund request that is received by the commission less than 15 days from the end of the calendar quarter must be paid at the end of the next quarter.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 60-12-005 Promulgation.