

WSR 17-22-083
EXPEDITED RULES
HEALTH CARE AUTHORITY

[Filed October 27, 2017, 3:43 p.m.]

Title of Rule and Other Identifying Information: Chapter 182-26 WAC, Washington health insurance partnership (HIP) program.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is repealing this chapter, as the legislature repealed chapter 70.47A RCW, the statutory authority for the HIP program. (See ESB 5316 - section 23, chapter 25, Laws of 2017 3rd sp. sess.)

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Brian Jensen, P.O. Box 42704, Olympia, WA 98504-2704, 360-725-1585.

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

The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule.

Explanation of the Reason the Agency Believes the Expedited Rule-making Process is Appropriate: The legislature has repealed the statutory authority for the HIP program. As a result, the agency cannot amend these rules and can only repeal them.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Melinda Froud, Washington State Health Care Authority, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1408, fax 360-586-9727, email melinda.froud@hca.wa.gov, AND RECEIVED BY January 3, 2018.

October 27, 2017
 Wendy Barcus
 Rules Coordinator

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 182-26-010 Authority.
- WAC 182-26-020 Definitions—Generally.
- WAC 182-26-100 Definitions.
- WAC 182-26-200 Employer eligibility for the HIP.
- WAC 182-26-210 Minimum employer contribution.
- WAC 182-26-220 Minimum participation.
- WAC 182-26-230 Small employer one-time exception to monthly group premium payment deadline.
- WAC 182-26-300 Who can receive a premium subsidy?
- WAC 182-26-305 Applying for a HIP premium subsidy.
- WAC 182-26-310 Application—Supporting documents.
- WAC 182-26-315 HIP application review.
- WAC 182-26-320 Annual subsidy application and renewal.
- WAC 182-26-325 Making changes to a HIP account.
- WAC 182-26-330 Loss of subsidy eligibility.
- WAC 182-26-335 Recoupment.
- WAC 182-26-340 How does the HIP determine the premium subsidy amount?
- WAC 182-26-345 How does the HIP calculate income?
- WAC 182-26-350 What does the HIP count as income?
- WAC 182-26-400 Appeals—Grounds.
- WAC 182-26-405 Appeals—Who may appeal a HIP decision?
- WAC 182-26-410 How to appeal a HIP decision.
- WAC 182-26-500 Surcharge applicability.

WSR 17-22-096
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed October 30, 2017, 11:45 a.m.]

Title of Rule and Other Identifying Information: WAC 458-30-200 Definitions, 458-30-280 Notice to withdraw from classification, 458-30-285 Withdrawal from classification, 458-30-295 Removal of classification, 458-30-300 Additional tax—Withdrawal or removal from classification, and 458-30-700 Designated forest land—Removal—Change in status—Compensating tax.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-30-200, 458-30-280, 458-30-285, 458-30-295, 458-30-300, and 458-30-700 to:

- Incorporate legislative changes resulting from SHB 1747 (2017);
- Incorporate legislative changes resulting from SSB 5977 (2017); and
- Provide general editing and formatting updates.

Copies of draft rules are available for viewing and printing on our web site at dor.wa.gov.

Reasons Supporting Proposal: The department is updating WAC 458-30-200, 458-30-280, 458-30-285, 458-30-295, 458-30-300, and 458-30-700, to reflect 2017 legislation that removed the two year notice for owner-initiated withdrawals and to add natural disasters, such as wildfires, to the list of exceptions to additional tax and compensating tax when land is removed from the current use program and designated forest land.

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

Statute Being Implemented: RCW 84.33.140, 84.34.070, 84.34.108.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Marcus Glasper, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-making Process is Appropriate: The expedited rule-making process is applicable to these rule updates because the department is incorporating changes resulting from 2017 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leslie Mullin, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1589, fax 360-534-1606, email Leslie Mu@dor.wa.gov, AND RECEIVED BY January 2, 2018.

October 30, 2017
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-093, filed 1/21/15, effective 2/21/15)

WAC 458-30-200 Definitions. (1) **Introduction.** This rule provides definitions for the terms used in conjunction with land classified under the Open Space Taxation Act, codified as chapter 84.34 RCW. The terms listed in this rule are intended to act in concert with each other as appropriate.

(2) **Definitions.** For purposes of land classified under chapter 84.34 RCW, the following definitions apply:

(a) "Additional tax" means the additional property taxes that will be collected when classification is withdrawn or removed from land classified under chapter 84.34 RCW.

(b) "Affidavit" means the real estate excise tax affidavit required by chapter 82.45 RCW and chapter 458-61 WAC. The affidavit will be prescribed by the department and furnished to county treasurers. This form is used by landowners to report sales or transfers of classified land. The owner or transferor and the purchaser or transferee, or agents of each, must sign the affidavit under penalty of perjury.

(c) "Agreement" means an agreement executed between an owner and the granting authority regarding the classification or reclassification of land as either open space or timber land under chapter 84.34 RCW.

(d) "Agricultural product" means livestock and plants that are produced for commercial purposes and includes any agricultural, horticultural, or aquacultural produce or crop; the raising of livestock, poultry, bees, or fur-bearing animals; or the production of milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. When used in relation to livestock or fur-bearing animals used for food or fiber, "raising" means breeding or increasing the value, size, or weight of the animal. Agricultural product does not include marijuana, useable marijuana, or marijuana-infused products as those terms are defined in RCW 69.50.101.

(e) "Applicant" means the owner who submits an application for classification or reclassification of land under chapter 84.34 RCW.

(f) "Application" means an application for classification or reclassification of land under chapter 84.34 RCW.

(g) "Approval" means a determination by the granting authority that land qualifies for classification or reclassification under chapter 84.34 RCW.

(h) "Appurtenance" refers to something used with, and related to or dependent upon another thing; that is, something that belongs to something else, an adjunct. The thing appurtenant is strictly necessary and essential to the proper use and enjoyment of the land, as well as useful or necessary for carrying out the purposes for which the land was classified under chapter 84.34 RCW.

(i) In terms of farm and agricultural land, an appurtenance is something used for a particular sort of farm and is widely and routinely used in the operation of the commercial agricultural enterprise.

(ii) For example, an appurtenance may be an outhouse, barn, or tool shed or it may be equipment used for a particular purpose or task, such as tools, instruments, or machinery.

(i) "Aquaculture" means the growing and harvesting of marine or fresh water flora or fauna in a soil or water medium for commercial agricultural purposes.

(j) "Assessor" means the county assessor or any agency or person who is authorized to act on behalf of the assessor.

(k) "Assessment year" means the year in which the property is listed and valued by the assessor and precedes the year in which the taxes on the property are due and payable.

(l) "Change in use" means a direct action taken by an owner that actually changes the use of, or has started changing the use of, classified land to a use that is not in compliance with the conditions of the agreement executed between the owner and the granting authority or to a use that is otherwise not in compliance with the provisions of chapter 84.34 RCW. ((WAC 458-30-295.))

(m) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under chapter 84.34 RCW.

(n) "Commercial agricultural purposes" means the use of farm and agricultural land on a continuous and regular basis, prior to and subsequent to application for classification or reclassification, that demonstrates that the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit from cash income by producing an agricultural product.

An owner or lessee must engage in commercial agricultural activities on the land to demonstrate a commercial agricultural purpose.

(o) "Contiguous" means land that adjoins and touches other land owned by the same owner or held under the same ownership. Land that is an integral part of a farming operation is considered contiguous even though the land may be separated by a public road, railroad, right of way, or waterway.

For purposes of this subsection (2)(o):

(i) "Same ownership" means owned by the same person or persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or

(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in (o)(i)(B)(III) of this subsection.

(p) "County financial authority" and "financial authority" mean the treasurer or any agency or person charged with the responsibility of billing and collecting property taxes.

(q) "County legislative authority" means the county commission, council, or other legislative body.

(r) "County recording authority" means the auditor or any agency or person charged with the recording of documents.

(s) "Current" and "currently" means as of the date on which property is to be listed and valued by the assessor.

(t) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls following its classification or reclassification under chapter 84.34 RCW.

(u) "Department" means the department of revenue.

(v) "Farm and agricultural conservation land" means either:

(i) Land previously classified as farm and agricultural land that no longer meets the criteria and is reclassified as open space land; or

(ii) Traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, has not been irrevocably devoted to a use inconsistent with agricultural uses, and has a high potential for returning to commercial agriculture.

(w) "Farm and agricultural land" means:

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

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

(B) Enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(C) Primarily used for other commercial agricultural purposes as established by rule.

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

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

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

For the purposes of meeting the minimum gross income requirements as described in (w)(ii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(iii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres in size that are primarily used for commercial agricultural purposes and that have:

(A) Standing crops with an expectation of harvest within seven years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year; or

(B) Standing crops of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year.

For the purposes of meeting the minimum investment requirements as described in (w)(iii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income invested by the lessee in the production of the standing crop on the owner's classified farm and agricultural land.

(iv) Any parcel of land or contiguous parcels of land less than five acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

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

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

For the purposes of meeting the minimum gross income requirements as described in (w)(iv)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(v) Farm and agricultural land also includes:

(A) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified farm and agricultural land parcel of twenty acres or more or multiple parcels that are contiguous and total twenty acres or more, and the use of the housing or residence is integral to the use of the classified farm and agricultural land for commercial agricultural purposes;

(B) Land on which appurtenances necessary for the production, preparation, or sale of the agricultural products are situated when the appurtenances are used in conjunction with the land(s) producing agricultural products, such as a machinery maintenance shed or a shipping facility located on farm and agricultural land that produces the products to be shipped;

(C) Land incidentally used for an activity or enterprise that is compatible with commercial agricultural purposes as long as the incidental use does not exceed twenty percent of the classified land. An incidental use of classified farm and agricultural land may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand;

(D) A noncontiguous parcel of land from one to five acres in size that constitutes an integral part of the commercial agricultural operation being conducted on land qualifying as "farm and agricultural land." As used in this paragraph, noncontiguous means not adjoining or touching but held by the same ownership as defined in RCW 84.34.020;

(E) Land used primarily for equestrian related activities for which a charge is made including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meets the requirements in (w)(i), (ii), or (iv) of this subsection; or

(F) Land used primarily for horticultural purposes including growing plants in the ground or in a container, regardless of whether under a structure, such as a greenhouse, subject to the following:

(I) The land is not primarily used for the storage, care, or selling of plants purchased from other growers for retail sale;

(II) If the land is less than five acres and used primarily to grow plants in containers, such land does not qualify as "farm and agricultural land" if more than twenty-five percent of the land used primarily to grow plants in containers is open to the general public for on-site retail sales;

(III) If more than twenty percent of the land used for growing plants in containers is covered by pavement, none of the paved area is eligible for classification as "farm and agricultural land." However, this limitation does not prevent up to twenty percent of the paved area from qualifying as "incidental use" as described in (bb) of this subsection; and

(IV) If the land classified under (w)(v)(F) of this subsection, in addition to any contiguous land classified under (w) of this subsection, is less than twenty acres, it must meet the applicable income or investment requirements described in (w)(ii), (iii), or (iv) of this subsection.

(x) "Farm employee or farm and agricultural employee" means an individual who is employed on farm and agricultural land on a full-time basis or a seasonal or migratory worker who works on farm and agricultural land only during the planting, growing, and/or harvesting seasons. For purposes of (x) of this subsection, "full-time basis" refers to an individual who is employed at least twenty-five hours per week on farm and agricultural land. It does not include a person who is employed full time by a business activity that is not conducted on classified farm and agricultural land and who only works occasional weekends or during the harvest season on classified farm and agricultural land.

(y) "Farm woodlot" means an area of land within a parcel(s) of classified farm and agricultural land that is used in a manner compatible with commercial agricultural purposes including, but not limited to, the growing and cutting of trees for the use of the owner or the sheltering of livestock.

(z) "Granting authority" means the appropriate agency or official that acts on an application for classification or reclassification under chapter 84.34 RCW. The granting authority for:

(i) Open space land classification under RCW 84.34.020 (1) and 84.34.037 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative authority and three members of the city legislative authority in the county in which the land is located in a meeting where members may be physically absent but participating through telephonic connection or separate affirmative acts by both the county and city legislative authorities where both affirm the entirety of the application either without modification or with identical modifications;

(ii) Farm and agricultural land classification under RCW 84.34.020(2) and 84.34.035 is the assessor or the assessor's designee; and

(iii) Timber land classification under RCW 84.34.020(3) and 84.34.041 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative authority and three members of the city legislative authority in the county in which the land is located in a meeting where members may be physically absent but participating through telephonic connection or separate affirmative acts by both the county and city legislative authorities where both affirm the entirety of the application either without modification or with identical modifications.

(aa) "Gross income" means cash income derived from commercial agricultural purposes, as defined in (n) of this subsection. Gross income includes payments received from the United States Department of Agriculture for participating in a crop reduction or acreage set-aside program when such payments are based on the productive capacity of the land. It also includes the wholesale value of agricultural products produced from any parcel of classified land of at least five acres but less than twenty acres in which the agricultural products are donated to nonprofit food banks or feeding programs. The term does not include the following:

(i) The value of any products produced on the land and consumed by the owner or lessee;

(ii) Cash income derived from leases for the use of the land for noncommercial agricultural purposes;

(iii) Payments for soil conservation programs; or

(iv) The value represented from an exchange of goods or services for other goods or services (bartering).

(bb) "Incidental use" means a use of land classified as farm and agricultural land or timber land that is compatible with commercial agricultural purposes or the commercial growing and harvesting of timber. Incidental use for land classified as farm and agricultural land cannot exceed twenty percent of the total classified land, while incidental use for timber land cannot exceed ten percent of the total classified land. An incidental use may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand.

(cc) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural purposes. To be considered integral to the farming operation, the residence of the farm operator or owner and/or housing for farm employees must be the place(s) from which the farmer conducts his/her commercial agricultural business.

(dd) "Interest" means the amount of applicable interest upon additional tax.

(ee) "Net cash rental" means the earning or productive capacity of farm and agricultural land less the production costs customarily or typically paid by an owner or landlord. See WAC 458-30-260 for a more detailed explanation of net cash rental.

(ff) "Notice of continuance" means the notice signed when land classified under chapter 84.34 RCW is sold or transferred if the new owner of the land intends to continue the classified use of the land and elects to have the land

remain classified under chapter 84.34 RCW. This notice is part of the real estate excise tax affidavit or may be a separate document prepared by the department and attached to this affidavit.

(gg) "Open space land" means one of the following:

(i) Any parcel(s) of land so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly;

(ii) Any parcel(s) of land, by preserving it in its present use would either:

(A) Conserve and enhance natural or scenic resources;

(B) Protect streams or water supply;

(C) Promote conservation of soils, wetlands, beaches, or tidal marshes;

(D) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space;

(E) Enhance recreation opportunities;

(F) Preserve historic sites;

(G) Preserve visual quality along highway, road, or street corridors, or scenic vistas;

(H) Retain in its natural state, tracts of land of not less than one acre in size situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority; or

(iii) Any parcel(s) of farm and agricultural conservation land.

(hh) "Owner" means:

(i) Any person(s) having a fee interest in a parcel of land;

or

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

(ii) "Parcel of land" means a property identified as such on the assessment roll. For purposes of chapter 84.34 RCW and this WAC chapter, a parcel does not include any land area not owned by the applicant including, but not limited to, a public road, right of way, railroad, or waterway.

(jj) "Penalty" means the amount due when land is removed from classification under chapter 84.34 RCW. The amount of the penalty is equal to twenty percent of the additional tax and interest calculated in accordance with RCW 84.34.080 or 84.34.108.

(kk) "Planning authority" means the local government agency empowered by the appropriate legislative authority to develop policies and proposals relating to land use.

(ll) "Primary use" means the existing use of a parcel or parcels of land so prevalent that when the characteristic use of the land is evaluated a conflicting or nonrelated use appears to be very limited or excluded. The primary use of a parcel does not represent a specific percentage of the total classified land.

(mm) "Qualification of land" means the approval of an application for classification or reclassification of land by a granting authority in accordance with chapter 84.34 RCW.

(nn) "Rating system" means a public benefit rating system adopted for classified open space land according to RCW 84.34.055.

(oo) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to a different classification estab-

lished by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as open space land under RCW 84.34.020(1).

(pp) "Removal" or "removed" means land classified under chapter 84.34 RCW is removed from classification by the assessor (~~(either)~~) because the owner requests removal, the new owner fails to sign the notice of continuance, the assessor does not approve a notice of continuance, or the land is no longer being used for the purpose for which classification was granted.

(qq) "Sale of ownership" means the conveyance of the ownership of a parcel of land in exchange for valuable consideration.

(rr) "Standing crop" includes short rotation hardwoods, Christmas trees, vineyards, fruit trees, or other perennial crops that:

(i) Are planted using agricultural methods normally used in the commercial production of that particular crop; and

(ii) Typically do not produce harvestable quantities in the initial years after planting.

(ss) "Tax year" means the year when property tax is due and payable.

(tt) "Timber land" means any parcel of land, five or more acres in size, or multiple parcels of land that are contiguous and total five or more acres in size, that are primarily used for the commercial growth and harvesting of forest crops.

(i) Timber land refers only to the land and also includes:

(A) Land incidentally used for an activity or enterprise that is compatible with the commercial growing and harvesting of timber as long as the incidental use does not exceed ten percent of the classified land; and

(B) Land on which appurtenances necessary for the production, preparation, or sale of commercial timber products are situated when the appurtenances are used in conjunction with the land(s) producing timber products.

(ii) Timber land does not include:

(A) Land listed on the assessment roll as designated forest land according to chapter 84.33 RCW;

(B) Land on which nonforest crops are located; or

(C) Land used as a residential home site.

(uu) "Timber management plan" is synonymous with a "forest management plan" and details an owner's plan regarding the management of classified timber land including, but not limited to, the planting, growing and/or harvesting of timber. The elements of such a plan are set forth in WAC 458-30-232.

(vv) "Transfer" means the conveyance of the ownership of a parcel of land without an exchange of valuable consideration and may include situations where classified land is donated to an owner, corporation, partnership, or limited liability corporation.

(ww) "True and fair value" is the value of a parcel of land placed on the assessment rolls at its highest and best use without regard to its current use. The term also refers to market value, that is, the amount of money a buyer of property willing, but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might reasonably be applied.

(xx) "Withdrawal" or "withdrawn" means action taken by the owner of land classified under chapter 84.34 RCW by filing a notice of request to withdraw the land from classification under the current use program in compliance with RCW 84.34.070. Once land has been classified under chapter 84.34 RCW, it must remain classified for at least ten assessment years from the date of classification. ~~((At any time))~~ After ~~((eight years of))~~ the initial ten-year classification period ~~((have))~~ has elapsed, the owner may file a notice of request to withdraw all or a portion of the land from classification with the assessor of the county in which the land is located. Land is withdrawn from classification as a result of a voluntary act by the owner. However, if the assessor has given written notice of removal as provided in RCW 84.34.108 (1)(d)(i) for all or a portion of the land prior to the owner providing the assessor with a request for withdrawal, then the land will be removed from classification.

AMENDATORY SECTION (Amending WSR 15-03-017, filed 1/8/15, effective 2/8/15)

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

(2) **Other rules to reference.** Readers may want to refer to the following rules for additional information:

(a) WAC 458-30-285 Withdrawal from classification.

(b) WAC 458-30-300 Additional tax—Withdrawal or removal from classification.

(c) WAC 458-30-305 Due date of additional tax, interest, and penalty upon withdrawal or removal.

(3) **Definitions.** For purposes of this rule, the ~~((following))~~ definitions ~~((applies: "Withdrawal" or "withdrawn" occurs when the owner of land classified under the provisions on chapter 84.34 RCW has filed a notice of request to withdraw all or a portion of the land from classification. In order to qualify for withdrawal, the parcel(s) of land must have been classified for a minimum of ten years and the owner must have filed a notice of request to withdraw with the assessor at least two years prior to the year the land is to be withdrawn. Land is withdrawn from classified status by a voluntary act of the owner.~~

~~((3))~~ in WAC 458-30-200 apply.

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

(a) During the ~~((ninth))~~ eleventh or later assessment year of classification, the owner may file with the assessor a notice of request for withdrawal, unless the assessor has given written notice of removal as provided in RCW 84.34.108 (1)(d)(i) for all or a portion of the land to be removed from classifica-

tion prior to the owner requesting withdrawal. The request for withdrawal may involve all or part of the land.

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

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

AMENDATORY SECTION (Amending WSR 15-03-017, filed 1/8/15, effective 2/8/15)

WAC 458-30-285 Withdrawal from classification. (1)

Introduction. RCW 84.34.070(1) states that once land has been classified under chapter 84.34 RCW, it must remain classified for a minimum of ten years from the date of classification to qualify for owner withdrawal. The land will remain classified until and unless the owner submits to the assessor a notice of request for withdrawal of all or a portion of the land from classification. If land is classified for less than ten years, the owner may request removal under RCW 84.34.108. After a request to withdraw ~~((classification))~~ is received, the assessor is required to make a series of determinations. This rule explains the procedures the assessor must follow upon receipt of a request for withdrawal.

(2) **Other rules to reference.** Readers may want to refer to the following rules for additional information:

(a) WAC 458-30-280 Notice to withdraw from classification.

(b) WAC 458-30-300 Additional tax—Withdrawal or removal from classification.

(c) WAC 458-30-305 Due date of additional tax, interest, and penalty upon withdrawal or removal.

(3) **Definitions.** For purposes of this rule, the definitions in WAC 458-30-200 apply.

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

~~If an owner of land classified as timber land under RCW 84.34.020(3) provides a notice of request to withdraw to the assessor and the county in which the land is located subsequently merges its timber land classification into its designated forest land program, as described in RCW 84.34.400,~~

~~the land will be removed as designated forest land two assessment years after the request to withdraw was received. The notice of request to withdraw must be received by the assessor within two years prior to the merger date.)) If the assessor gives written notice of removal as provided in RCW 84.34.108 (1)(d)(i) for all or a portion of the land prior to the owner providing the assessor with a request for withdrawal, then additional tax, interest, and penalty will be imposed.~~

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

(b) The additional tax and interest imposed by RCW 84.34.108(4) are due when land is withdrawn from classification if the land has been classified under chapter 84.34 RCW for a minimum of ten assessment years. ~~((If a request to withdraw classification is received by the assessor's office and an intervening act causes the classified land to be removed before the two assessment years have elapsed, the penalty described in RCW 84.34.108 (4)(e) is also due.))~~

However, if the removal is a result of one of the circumstances listed in RCW 84.34.108(6), no additional tax, interest, or penalty will be imposed. ~~((WAC 458-30-300.))~~

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

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

~~((3))~~ (5) **Procedure for partial withdrawal.** RCW 84.34.070 allows an owner to request withdrawal of all or a portion of the land from classification as long as the owner submits a notice of request for withdrawal ~~((two assessment years in advance of the effective date of the withdrawal))~~ after the initial ten-year classification period has elapsed. If only a portion of the classified land is to be withdrawn from classification, the remaining land must satisfy the same requirements that all of the land was required to meet when it was originally granted classification unless different criteria are required by statute. For example, if the owner of thirty acres of classified farm and agricultural land wishes to withdraw fifteen acres, the remaining fifteen acres must meet the minimum gross income or investment requirements listed in RCW 84.34.020 (2)(b) or (d) to remain classified even though the thirty acres were not required to meet any minimum gross income or investment requirements under RCW 84.34.020 (2)(a).

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

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

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

that it considers necessary to assist it in making this determination.

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

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

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

~~(b) **Notice to owner.**)~~ (e) Within thirty days of withdrawing the land from classification, the assessor must notify the owner in writing that the land has been withdrawn.

~~((e) **Valuation of land withdrawn from classification.**)~~

(f) When land has been withdrawn from classification, it must be placed on the assessment roll at its true and fair value as of January 1st of the year of withdrawal. The assessment roll lists both the assessed value of the land before and after the withdrawal from classification. Taxes for the current tax year will be prorated to the portion of the year to which each assessed value applies; that is, the current use value and the true and fair value.

~~((For example, an application for classification as open space land was submitted in April 2003 and approved effective assessment year 2004. In 2012, the owner submits a notice of request to withdraw all the land from classification. The assessor withdraws the land from classification as of January 1, 2014, which is the third assessment year after the request to withdraw was received. This land is placed on the assessment roll at its true and fair value as of January 1, 2014.))~~

AMENDATORY SECTION (Amending WSR 15-03-017, filed 1/8/15, effective 2/8/15)

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

(2) **Other rules to reference.** Readers may want to refer to the following rules for additional information:

(a) WAC 458-30-300 Additional tax—Withdrawal or removal from classification.

(b) WAC 458-30-305 Due date of additional tax, interest, and penalty upon withdrawal or removal.

(c) WAC 458-30-325 Transfers between classifications—Application for reclassification.

(3) **Definitions.** For purposes of this rule, the definitions in WAC 458-30-200 apply.

(4) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

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

~~(3))~~ (6) **Circumstances that cause removal of land from classification.** When any of the following actions occur, the assessor must remove all or a portion of the land from classification:

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

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

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

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

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

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

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

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

~~((4))~~ (7) **Removal examples.**

(a) **Example 1.** During an on-site inspection, the assessor discovers that classified farm and agricultural land has been paved over and is used as a parking lot for school buses.

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

~~((5))~~ **(8) Procedure when an assessor discovers a change in use.** If the assessor determines that the land is not being used for a qualifying use, the assessor must send the owner, by certified mail, return receipt requested, a written notice regarding this determination; e.g., the Notice of Intent to Remove Current Use Classification form.

(a) The owner must respond, in writing, to the assessor's inquiry about the use of the classified land within thirty calendar days of the postmark date of the notice.

(b) If the land in question is classified open space land or timber land, the assessor may ask the granting authority to provide reasonable assistance in determining whether the classified land continues to meet the criteria for classification. The granting authority must provide this assistance within thirty days of receiving the assessor's request for assistance. RCW 84.34.108(1).

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

~~((6))~~ **(9) Procedure for partial removal.** If only a portion of the classified land no longer qualifies for classification under chapter 84.34 RCW, the assessor will remove the nonqualifying portion of the classified land. The remaining land must satisfy the same requirements as when the land was originally granted classification unless different criteria are required by statute because of the reduced size of the land that remains classified.

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

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

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

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

~~((7))~~ **(10) Transactions that do not cause land to be removed from classification.** Land cannot be removed from classification solely because of:

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

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

~~((8))~~ **(11) Notice to owner.** Within thirty days of the removal of land from classification, the assessor must notify the owner in writing of the reason(s) for removal; e.g., the Notice of Removal of Current Use Classification and Additional Tax Calculation form. The removal notice must explain the steps an owner needs to follow if he or she wants to appeal the removal decision, including when a notice of appeal must be filed, where an appeal petition may be obtained, and how to contact the county board of equalization.

~~((9))~~ **(12) Right of appeal.** The seller, transferor, or owner of classified land may appeal the removal from classification to the board of equalization of the county in which the land is located. The appeal must be filed within thirty days (or up to sixty days if such a time limit has been adopted by the county legislative authority) of the postmark date the notice of removal was mailed by the assessor, electronically transmitted by the assessor, the assessor electronically notified the owner or person responsible for payment of taxes that the notice was available to be accessed by the owner or other person, or on or before July 1st of the year of removal, whichever is later. RCW 84.40.038.

~~((10))~~ **(13) Assessor's duty after removal.** Unless the removal is reversed on appeal, the assessor revalues the affected land with reference to its true and fair value as of January 1st of the year of removal from classification and places the ~~((land))~~ value on the assessment roll. The assessment roll lists both the assessed value of the land before and after the removal from classification. Taxes for the current tax year are prorated according to the portion of the year to which each assessed value applies.

~~((11))~~ **(14) Possible segregation after removal.** If only a portion of the land is being removed from classification, the assessor may segregate the affected portion for valuation and tax purposes.

~~((12))~~ **(15) Additional tax, interest, and penalty are due when land is removed.** The additional tax, interest, and penalty imposed by RCW 84.34.080 and 84.34.108 are due and payable to the treasurer thirty days after the owner is notified of the amount due, unless the removal is the result of one of the exempt circumstances or transactions listed in RCW 84.34.108(6). ~~((WAC 458-30-300.))~~

AMENDATORY SECTION (Amending WSR 15-03-017, filed 1/8/15, effective 2/8/15)

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

(2) **Other rules to reference.** Readers may want to refer to the following rules for additional information:

(a) WAC 458-30-295 Removal of classification.

(b) WAC 458-30-305 Due date of additional tax, interest, and penalty upon withdrawal or removal.

(c) WAC 458-30-325 Transfers between classifications—Application for reclassification.

(3) Definitions. For purposes of this rule, the definitions in WAC 458-30-200 apply.

(4) Duties of assessor and treasurer. After determining the land no longer qualifies for classification under chapter 84.34 RCW, the assessor must provide the owner a written notice regarding this determination and of his or her intent to remove the land from classification; e.g., the Notice of Intent to Remove Current Use Classification form.

(a) The owner must respond, in writing, to the assessor within thirty days of the postmark date of the notice regarding his or her intention of removing the classified land. Unless sufficient information or evidence is presented as to why the land should not be removed from classified status, the land will be removed from classification.

(b) Within thirty days of removing land from classification, the assessor notifies the owner, in writing, about the reason(s) for the removal; e.g., the Notice of Removal of Current Use Classification and Additional Tax Calculation form. The assessor will compute the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection ~~((5))~~ (7) of this rule. The removal notice must explain the steps the owner needs to follow if he or she wants to appeal the removal decision, including when a notice of appeal must be filed, where an appeal petition may be obtained, and how to contact the county board of equalization.

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

(d) The assessor computes the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection ~~((5))~~ (7) of this rule.

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

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

(g) The total amount is due and payable to the treasurer thirty days after the owner is notified of the amount due.

~~((3))~~ (5) **Amount of additional tax, interest, and penalty.** The amount of additional tax, interest, and penalty will be determined as follows:

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

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

(c) A penalty amounting to twenty percent of the sum of the additional tax and interest. A penalty is not imposed when the land has been classified for at least ten assessment years at the time it is withdrawn from classification and the owner submitted a request to withdraw classification to the assessor ~~((at least two assessment years prior to the date the land is withdrawn))~~.

(d) If additional tax, interest, and penalty are not imposed because the removal meets an exception in subsection ~~((5))~~ (7) of this rule, the assessor still calculates the prorated taxes from the date of removal through December 31st of the year the removal ~~((year))~~ occurred.

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

~~((4))~~ (6) **Failure to sign notice of continuance.** Land will be removed from current use classification if a new owner fails to sign the notice of continuance when the classified land is sold or transferred or if the new owner signs the notice of continuance and the assessor determines the land does not continue to qualify in its classification. Additional tax, interest, and penalty will be imposed in accordance with RCW 84.34.108(4) and become due and payable by the seller or transferor at the time of sale or transfer.

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

~~((5))~~ (7) **Exceptions.** No additional tax, interest, or penalty will be imposed if the withdrawal or removal from classification resulted solely from any of the following:

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

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

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

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

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

(f) Acquisition of property interests by public agencies or private organizations qualified under RCW 84.34.210 or 64.04.130 for the conservation purposes specified therein. Subsection ~~((6))~~ (8) of this rule provides a listing of these agencies, organizations, and purposes. However, when the land is no longer used for one of the purposes described in RCW 84.34.210 or 64.04.130, additional tax, interest, and penalty will be imposed on the owner of the property at that time;

(g) Removal of land granted classification as farm and agricultural land under RCW 84.34.020 (2)(f) because the principal residence of the farm operator or owner and/or housing for farm and agricultural employees was situated on it. This exception applies only to the land upon which the residence or housing is located even if this portion of the land does not have a separate parcel number for assessment and tax purposes;

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

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

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

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

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

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

the time of sale and the removal would not be subject to additional tax, interest, and penalty;

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

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

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

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

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

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

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

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

~~((6))~~ (8) **Land acquired by agencies or organizations qualified under RCW 84.34.210 or 64.04.130.** If the purpose for acquiring classified land is to protect, preserve, maintain, improve, restore, limit the future use of, or conserve the land for public use or enjoyment and the classified land is acquired by any of the following entities, no additional tax, interest, or penalty will be imposed:

(a) State agency;

(b) Federal agency;

(c) County;

(d) City;

(e) Town;

(f) Metropolitan park district (see RCW 35.61.010);

(g) Metropolitan municipal corporation (see RCW 35.58.020);

(h) Nonprofit historic preservation corporation as defined in RCW 64.04.130;

(i) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250; or

(j) Federally recognized Indian tribe.

~~((7))~~ (9) **Removal of classification from land that was previously designated forest land under chapter 84.33 RCW.** Land that was previously designated as forest land under chapter 84.33 RCW may be reclassified under chapter 84.34 RCW at the owner's request within thirty days after removal of the land from designation. If such land is subsequently removed from classification under chapter

84.34 RCW before it has been classified under chapter 84.34 RCW for at least ten assessment years, a combination of compensating tax imposed under chapter 84.33 RCW and additional tax, interest, and penalty imposed under chapter 84.34 RCW is due. RCW 84.33.145 explains the ~~((way))~~ method in which these taxes are ~~((to be))~~ calculated.

~~((8))~~ **(10) Termination of timber land classification.**

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

AMENDATORY SECTION (Amending WSR 15-03-017, filed 1/8/15, effective 2/8/15)

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

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

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

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

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

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

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

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

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

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

(3) How to retain designated forest land status when the land is sold or transferred. When designated forest land

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

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

(b) After the new owner signs the notice of continuance as part of the REET affidavit and, if required, the separate notice, the REET affidavit and notice must be submitted to the assessor for approval. The assessor may also require the owner to submit a timber management plan before approving the notice of continuance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The assessor must determine:

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

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

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

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

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

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

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

(c) The remaining land outside of the affected removal area continues to be designated as forest land if the owner retains a parcel of land that consists of five or more acres or multiple parcels that are contiguous and total five or more acres, primarily devoted to and used for growing and harvesting timber. If the remaining land fails to meet this requirement, it will be subject to removal.

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

(e) An assessor may not remove forest land merely because an owner subdivides the land into separate parcels, if the contiguous parcels of the subdivided land still consist of at least five acres and continues to be primarily devoted to and used for growing and harvesting timber. An assessor may ask an owner of designated forest land if the use of the land has changed when the owner subdivides a tract of designated forest land into separate parcels.

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

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

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

(ii) A governmental restriction includes:

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

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

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

(5) **Removal proceedings.** If the forest land no longer qualifies for designation, the assessor must provide timely

written notice(s) to the owner. RCW 84.33.140 (5)(e) (written notice and opportunity to be heard), and RCW 84.33.140 (9) (notice of removal). Upon receiving the notice that the land has been removed (notice of removal), the owner may appeal the removal and/or apply for reclassification of the land under chapter 84.34 RCW. If the owner chooses to appeal the removal, the appeal must be filed within thirty days (or up to sixty days if such a time limit has been adopted by the county legislative authority) of the postmark date the notice was mailed by the assessor, electronically transmitted by the assessor, the assessor electronically notified the owner or person responsible for payment of taxes that the notice was available to be accessed by the owner or other person, or on or before July 1st of the year of removal, whichever is later. RCW 84.40.038. If the owner chooses to apply for reclassification, they must do so within thirty days of the postmark date of the notice.

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

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

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

- (A) The owner declines the opportunity to be heard;
- (B) The owner fails to timely respond to the first notice;

or

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

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

(iii) The notice of removal provides the reason(s) for removing the land from designation and the date of the removal. The notice includes the compensating tax calculated in subsection (6) of this rule and the necessary recording fees to be paid. It also includes the due date for payment, along

with the owner's rights to appeal the removal or appeal the true and fair value at the time of removal, and the owner's right to apply for the land to be reclassified under chapter 84.34 RCW. The county must use the notice of removal form provided by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The compensating tax for the portion of the year of removal from January 1st to the date of removal is calculated by determining the difference between the amount of taxes assessed at the forest land value as of January 1st of the year of removal and the taxes that would have been paid if the land had been valued at its true and fair value as of January 1st of the year of removal.

(b) Formulas for calculating taxes after removal:

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

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

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

		÷			=	
	No. of days designated as forest land in the year of removal		365			Proration factor (To items (A) and (B))
(A)	\$ _____	x	_____	x	_____	= \$ _____
	True and Fair Value of Land (Jan 1st of year removed)		Last Levy Rate Extended Against Land		Proration factor	
(B)	\$ _____	x	_____	x	_____	= \$ _____
	Forest Land Value (Jan 1st of year removed)		Last Levy Rate Extended Against Land		Proration factor	
(C)	Amount of compensating tax for current year ((A) minus (B))					= \$ _____

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

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

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

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

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

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

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

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

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

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

(A) State agency;

(B) Federal agency;

(C) County;

(D) City;

(E) Town;

(F) Metropolitan park district (see RCW 35.61.010);

(G) Metropolitan municipal corporation (see RCW 35.58.020);

(H) Nonprofit historic preservation corporation as defined in RCW 64.04.130;

(I) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250; or

(J) Federally recognized Indian tribe.

However, when the land is no longer being used for one of the purposes listed in RCW 84.34.210 or 64.04.130, compensating tax will be imposed on the owner of the land at that time;

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

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

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

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

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

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

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

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

(x) The occurrence of a natural disaster such as a flood, windstorm, earthquake, wildfire, or other such calamity that changes the use of the property, rather than by virtue of an act by the landowner changing the use of the property;

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

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

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

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

(A) Protect or enhance public resources; or

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

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

(a) To calculate the increase the assessor must determine the number of days remaining in the year from the date of removal. The increase in property tax is due on the same due dates as all other property taxes are due for the year (April 30th and October 31st of the current year). RCW 84.56.020.

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

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

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

(d) An owner may appeal the true and fair value of the land which is used to calculate the compensating tax and the increase in the remaining current year's taxes in accordance with RCW 84.40.038.

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

(a) The amount of compensating tax is equal to the difference, if any, between the amount of property tax last levied on the land as designated forest land and an amount equal to the true and fair value as of January 1st of the year the land is removed from classification under RCW 84.34.108, multi-

plied by the last property tax levy rate extended against the land, multiplied by

(b) A number equal to:

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

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

WSR 17-22-126

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 1, 2017, 8:11 a.m.]

Title of Rule and Other Identifying Information: WAC 16-326-020 General requirements for growing, transporting

or processing Brassica seed within any Brassica seed production district.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 16-326-020 to reflect a change of name, address and phone extension for the Washington State University (WSU) Grant - Adams County Extension Office, which is now called WSU Grant - Adams Area Extension Office.

Reasons Supporting Proposal: The WSU Grant - Adams County Extension Office recently provided the department with a change of name, address and phone extension, rendering the existing rule outdated. The department strives to provide current contact information for organizations it has a business relationship with in order to facilitate public contact with these organizations.

Statutory Authority for Adoption: RCW 15.51.050, chapter 34.05 RCW.

Statute Being Implemented: RCW 15.51.050.

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

Name of Proponent: WSU Grant - Adams Area Extension Office, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Larsen, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1960; Implementation and Enforcement: Victor Shaul, 21 North 1st Avenue, Suite 203, Yakima, WA 98902, 509-249-6950.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-making Process is Appropriate: The proposed rules only make address or name changes per RCW 34.05.353 (1)(c).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Henri Gonzales, Department of Agriculture, 1111 Washington Street S.E., Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email WSDARulesComments@agr.wa.gov, AND RECEIVED BY January 2, 2018.

November 1, 2017
Jason Ferrante
Assistant Director

AMENDATORY SECTION (Amending WSR 12-08-009, filed 3/23/12, effective 4/23/12)

WAC 16-326-020 General requirements for growing, transporting or processing Brassica seed within any Brassica seed production district. (1) Growing, transportation or processing of Brassica seed is regulated under provisions of this section only within the borders of a Brassica seed production district, as described in WAC 16-326-010.

(2) No Brassica seed crop grown for any purpose is regulated as part of a Brassica seed production district, if it is harvested or mowed before flowering or otherwise handled so that pollen production is prevented. Note that other regulatory requirements, such as the provisions of the crucifer seed quarantine rule found in WAC 16-301-490 through 16-301-580, are applicable.

(3) Brassica seed crops, including seed grown for planting and seed grown for crushing or extraction for fuel or oil, may only be grown in locations that have been identified in a timely manner through the pinning process.

(a) Pinning for Brassica seed production in Brassica seed production district 1 will be held at least once a year at the WSU Northwestern Washington Research and Extension Center, 16650 State Route 536, Mt. Vernon, Washington 98237. Contact the WSU Mount Vernon Skagit County Extension office at 360-428-4270 for information about pinning events for district 1.

(b) Pinning for Brassica seed production district 2 will be held at least once a year at the WSU (~~Grant/Adams County~~) Grant-Adams Area Extension office, (~~35 C St. N.W., Ephrata~~) 1525 E. Wheeler Road, Moses Lake, Washington ((98823)) 98837. Contact the WSU (~~Grant County~~) Grant-Adams Area Extension office at 509-754-2011, ext. (~~413~~) 4313 for information about pinning events for district 2.

(c) Dates, times, locations and other information about pinning events will vary.

(d) Pinning for Brassica seed crops produced for planting must be performed by an authorized representative of the contractor for the crop. If the seed produced for planting is not being produced for a contractor, or if the contractor waives the pinning privilege, then the grower is responsible for pinning the location of the crop.

(e) Pinning for Brassica seed crops produced for fuel or oil must be performed by an authorized representative of the grower.

(4) Transportation and handling of Brassica seed within any Brassica seed production district must be performed in a way to prevent inadvertent spread of seed or production of volunteer plants. All shipments of viable seed must be in covered containers from which the seed cannot leak.

(5) Volunteer Brassica plants must be controlled as soon as feasible, but always prior to pollen production or blossoming.

WSR 17-22-131
EXPEDITED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed November 1, 2017, 9:33 a.m.]

Title of Rule and Other Identifying Information: Updating the term wholesale fish dealer to wholesale fish buyer in WAC 220-360-140.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating the term wholesale fish dealer to wholesale fish buyer in WAC 220-360-140. The term was changed in HB [ESHB] 1597 during the 2017 legislative session effective January 1, 2017.

Reasons Supporting Proposal: Due to a clerical error, this rule amendment did not get published in the most recent version of the Washington State Register. This amendment was adopted by the fish and wildlife commission on October 27, 2017.

Statutory Authority for Adoption: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, 77.65.520.

Statute Being Implemented: RCW 77.08.010, 77.12.170, 77.12.177, 77.15.096, 69.04.933, 69.04.934, 77.15.110, 77.15.170, 77.15.500, 77.15.565, 77.15.620, 77.15.630, 77.15.640, 77.65.010, 77.65.020, 77.65.090, 77.65.110, 77.65.120, 77.65.150, 77.65.160, 77.65.170, 77.65.190, 77.65.200, 77.65.210, 77.65.220, 77.65.240, 77.65.280, 77.65.310, 77.65.320, 77.65.330, 77.65.340, 77.65.350, 77.65.370, 77.65.390, 77.65.440, 77.65.480, 77.65.490, 77.65.500, 77.65.510, 77.15.160, 77.65.580, 77.65.590, 77.70.150, 77.70.190, 77.70.220, 77.70.280, 77.70.290, 77.70.300, 77.70.430, 77.70.490, 82.27.020, 82.27.070, 69.07.100, 36.71.090.

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

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Trisha Anderson, 1111 Washington Street, Olympia, WA 98501, 360-902-2211; Implementation: Peter Vernie, 1111 Washington Street, Olympia, WA 98501, 360-902-2302; and Enforcement: Chief Steve Bear, 1111 Washington Street, Olympia, WA 98501, 360-902-2936.

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

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

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-making Process is Appropriate: Based on the rationale of RCW 34.053(e) [34.05.353 (1)(e)], the department believes that an expedited rule-making process is appropriate because the process involved substantial participation in the 2017 legislative session by interested parties before the rule was developed.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL

ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Scott Bird, WDFW, 600 Capitol Way North, phone 360-902-2403, fax 360-902-2155, email Rules.Coordinator@dfw.wa.gov, AND RECEIVED BY January 2, 2018.

November 1, 2017
 Scott Bird
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-360-140 Identification of wild stocks of clams, mussels, or oysters—Reporting requirements for the commercial harvest of wild clams, mussels, or oysters from nonstate aquatic lands—Conversion to private sector cultured aquatic products. (1) Based upon RCW 15.85.020(3), the following shellfish are distinguished from private sector cultured aquatic products and are identified as wild stocks that are regulated under this chapter:

(a) All clams, mussels, or oysters that were not propagated, farmed, or cultivated under the active supervision and management of a private sector aquatic farmer; and

(b) All clams, mussels, or oysters that were set naturally prior to the time an aquatic farm was established and placed under the active supervision and management of a private sector aquatic farmer.

(2) Examples of harvested wild stocks of shellfish include, but are not limited to, the following:

(a) Any harvest of clams, mussels, or oysters from a site that is not registered as an aquatic farm unless there is some ability to demonstrate that the shellfish was propagated, farmed, or cultivated under the active supervision of an aquatic farmer;

(b) Any harvest of clams, mussels, or oysters that were naturally set prior to the time an aquatic farm was established at the site and placed under the active supervision and management of an aquatic farmer; and

(c) Shellfish that is harvested from a newly registered aquatic farm during a period when the shellfish is presumed to come from a wild stock as specified in subsection (5) of this section.

(3) ~~((The sale of))~~ It is unlawful to sell wild stocks of clams, mussels, and oysters ~~((must be))~~ unless properly reported ~~((through the use of))~~ on a shellfish receiving ticket~~(s)~~. The failure to report the sale of shellfish with a fish receiving ticket when it is required is unlawful activity and constitutes a violation of WAC 220-352-020 and RCW 77.15.630. Any person selling wild stocks of clams, mussels, and oysters must sell the harvest to a ~~((licensed))~~ Washington wholesale fish ~~((dealer))~~ buyer, who is then required to complete the fish ticket. Alternatively, if the person harvesting the clams, mussels, or oysters sells this shellfish at retail or arranges for the harvested shellfish to be transported out-of-

state, they must be a (~~licensed~~) wholesale (~~dealer~~) fish buyer and must complete a fish receiving ticket for each day's sales or for each shipment.

(4) Wild stock sales may not be reported on aquatic farm quarterly production reports. Only private sector cultured aquatic products may be reported on quarterly production reports.

(5) The following shellfish are presumed to be wild shellfish that are subject to these regulations:

(a) All mussels, oysters, and clams other than geoducks that are commercially harvested from the nonstate lands within the first twelve months after a complete application for the aquatic farm registration is filed; and

(b) All geoducks commercially harvested from the nonstate lands within the first thirty-six months after a complete application for the aquatic farm registration is filed.

The presumption that shellfish harvested from a newly registered aquatic farm during these time periods are from wild stocks may be overcome by a showing that the harvested shellfish were actually propagated, farmed, or cultivated under the active supervision of an aquatic farmer. After twelve or thirty-six months, respectively, all shellfish produced from a registered aquatic farm will be presumed to be private sector cultured aquatic products, and must be reported on quarterly aquatic farm reports. If a person does not commercially harvest mussels, oysters, or clams other than geoducks for the first twelve months after the aquatic farm registration, or does not commercially harvest geoducks for the first thirty-six months after registration, there is no requirement to obtain an emerging commercial fishery license or trial fishery permit.

WSR 17-22-134

EXPEDITED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed November 1, 2017, 10:52 a.m.]

Title of Rule and Other Identifying Information: Amending and adding rules relating to aquatic invasive species (AIS) in chapter 220-640 WAC.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating terms to existing rules and adding rules to chapter 220-640 WAC based on changes from ESSB 6040 passed during the 2014 legislative session.

The department will amend and add the following rules: Amended WAC 220-640-010 Aquatic invasive species—Provisions, 220-640-020 Deleterious exotic wildlife, 220-640-030 Prohibited level 1 aquatic animal species, 220-640-040 Prohibited level 2 aquatic animal species, and 220-640-050 Prohibited level 3 aquatic animal species; and new WAC 220-640-060 Prohibited level 3 aquatic animal species, 220-640-070 Regulated Type A aquatic animal species, 220-640-080 Regulated Type B aquatic animal species, 220-640-090 Regulated Type C aquatic animal species, 220-640-100 Scientific research/display permits and monitoring and control programs—Requirements for possession of prohibited

aquatic animal species, 220-640-110 Importation of live aquatic organisms—Required certification of "zebra/quagga mussel free," 220-640-120 Capture of prohibited aquatic animals in Washington waters—Requirements, and 220-640-130 Allowable possession of prohibited aquatic animals if acquired prior to classification—Requirement of documentation.

Reasons Supporting Proposal: During the 2014 legislative session, the legislature made substantial changes to the laws concerning invasive species and enacted chapter 77.135 RCW (Invasive species). The department needs to amend and add to its current rules concerning AIS contained in chapter 220-640 WAC to reflect these statutory changes.

Statutory Authority for Adoption: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, 77.65.520.

Statute Being Implemented: RCW 77.135.010, 77.135.-020, 77.135.030, 77.135.040, 77.135.050, 77.135.060, 77.135.070, 77.135.080, 77.135.090, 77.135.100, 77.135.-110, 77.135.120, 77.135.130, 77.135.140, 77.135.150, 77.135.160, 77.135.170, 77.135.180, 77.135.200, 77.135.-210, 77.135.220, 77.135.230, 77.135.240.

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

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Captain Eric Anderson, 1111 Washington Street, Olympia, WA 98501, 360-640-0493; and Enforcement: Chief Steve Bear, 1111 Washington Street, Olympia, WA 98501, 360-902-2936.

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

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-making Process is Appropriate: Based on the rationale of RCW 34.053 [34.05.353] (1)(d), the department believes that an expedited rule-making process is appropriate because the content of the proposed rules is explicitly and specifically dictated by statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Scott Bird, WDFW, 600 Capitol Way North, phone 360-902-2403, fax 360-902-2155, email Rules.Coordinator@dfw.wa.gov, AND RECEIVED BY January 2, 2018.

November 1, 2017
Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-640-010 ((Nonnative)) Aquatic invasive species—Provisions. The following provisions apply to all nonnative aquatic species except nonnative species in ballast water, which are provided for in chapter ~~((220-370))~~ 220-650 WAC. The definitions of invasive species, prohibited aquatic animal species~~((s))~~ and regulated aquatic animal species~~((s))~~ (unregulated aquatic animal species, unlisted aquatic animal species and aquatic plant species) as used in this section are the same as in RCW ~~((77.08.010))~~ 77.135.010.

~~((1))~~ Request for designation of unlisted aquatic animal species prior to release. Unlisted nonnative aquatic animal species must be reviewed and designated for classification by the commission as either regulated aquatic animal species or unregulated aquatic animal species prior to approval for release into state waters. A request for classification of an unlisted nonnative aquatic animal species shall be treated as a petition to amend WAC 220-640-040, and made on the OFM-01 form. Upon receipt of a petition, the department shall initially classify the species as a prohibited species until the review is complete. In addition to the OFM-01 form, a person requesting classification must provide the following information in order to present a complete request for designation for classification:

(a) Common and scientific name, reason for release, source of the animals proposed for release, and number of animals proposed for release.

(b) Native range of the species, assessment of potential positive and negative impacts of the release, citation of available scientific literature on release of the species in other nonnative locales, known potential for displacement of native species, hybridization with or predation upon native species, and disease or parasite transmission.

(c) Estimate of technical and economic feasibility of eradicating or controlling spread of the species once it is introduced into state waters.

(2) Provisions applying to prohibited aquatic animal species:

(a) Zebra mussels: It is unlawful to import live aquatic organisms, including plants, for release into state waters from any state or Canadian province east of the Continental Divide without each importation being accompanied by a zebra mussel-free certificate issued by the department and signed by the supplier of the aquatic organisms. The original receiver in the state of Washington of the shipment of aquatic organisms is required to retain the zebra mussel-free certificate for two years. Secondary receivers, while in possession of live aquatic organisms, are required to retain invoices or other records showing who was the original receiver.

(b) Scientific research or display: The director may authorize, by prior written permit, a person to possess prohibited aquatic animal species for scientific research or display, provided:

(i) Specimens are confined to a secure facility, defined as an enclosure that will prevent the escape or release of prohibited aquatic animal species into a natural watercourse, and specimens are inaccessible to wildlife or other animals that could transport prohibited aquatic animal species:

(ii) Specimens are not transferred to any other facility without written approval by the director or designee.

(iii) All zebra mussels are incinerated or chemically preserved at the conclusion of the project, and the enclosure, holding waters and all equipment are disinfected. All other prohibited aquatic animal species must be killed at the conclusion of the project and either chemically preserved or disposed of in a landfill.

(iv) The permittee provides an annual report to the department, no later than January 31 of the following year, on a form provided by the department, describing the number, size and location of prohibited aquatic animal species enclosures and general nature of the research.

(c) Monitoring and control programs: The director may authorize persons working within the scope and supervision of a department sponsored monitoring and control program to capture, possess and destroy prohibited aquatic animal species, provided:

(i) The persons have completed a mandatory training program and are certified by the department;

(ii) The persons have a permit authorized by the director or designee in possession;

(iii) All prohibited aquatic animal species are disposed of in accordance with the monitoring and control program; and

(iv) Participants submit a report to the department within thirty days of any monitoring or control activity in accordance with the specifications outlined in the monitoring and control program.

(d) Capture of prohibited species in state waters. Prohibited aquatic animal species that are captured in state waters and not immediately returned to the water from which they were captured must be killed before removing the prohibited aquatic animal species from within the riparian perimeter of the body of water.

(e) It is lawful to possess dead vertebrate prohibited aquatic animal species taken from state waters, and it is lawful to possess chemically preserved nonvertebrate prohibited aquatic animal species from any source. No permit is required for possession under this subsection.

(f) Prohibited aquatic animals held in commercial and personal possession prior to classification. A person who possessed a prohibited aquatic animal species prior to the time the species was classified as prohibited may continue to hold the animal or animals for the life of the animals, provided:

(i) The person must maintain proof of possession prior to the classification.

(ii) The animals may not be transferred to another owner within the state.

(iii) The person must comply with all provisions of this section.

(iv) The animals must be prevented from reproducing, or if prevention is impracticable, the progeny must be destroyed.

(3) Infested waters.

(a) The following bodies of waters are infested with invasive aquatic plants or prohibited aquatic animal species. In these waters:

(i) It is unlawful to use aquatic animals from these waters for bait in the infested waters or any other waters.

(ii) All aquatic vegetation must be removed from lines, nets, motors, and all other equipment when the equipment is removed from the infested waters.

(iii) It is unlawful to transport water from these bodies of water, and bait containers, live wells, and bilges must be emptied before leaving the riparian perimeter of the body of water, except:

(A) Water may be transported in emergencies, such as a fire emergency.

(B) Water may be withdrawn and used under a water appropriation or public waters work permit issued by the department of ecology.

(b) List of infested waters:

Adams County: Herman and Hutchison lakes.

Chelan County: Chelan, Cortez, Domke, Fish, Roses and Wapato lakes.

Clallam County: Sutherland Lake.

Clark County: Battleground, and Lacamas lakes, Kline-line Pond, Caterpillar Slough, Columbia River adjacent to Ridgefield National Wildlife Refuge.

Columbia, Franklin and Walla Walla counties: Herbert G. West Lake, Snake River.

Cowlitz County: Kress and Silver lakes, Soho and Willow Grove sloughs.

Ferry County: Twin Lake.

Franklin County: Kahlotus and Sacajawea lakes, Seoteny Reservoir, Snake River.

Grant County: Babcock Ridge, Banks, Billy Clapp, Burke, Caliche, Canal, Corral, Corral Southwest, Moses, Priest Rapids, Quiney, Stan Coffin, Warden, and Windmill lakes, unnamed potholes at Dodson Frenchman and Frenchman Hills Nos. 1 through 4, Evergreen and Potholes reservoirs, Rocky Ford Creek and Winchester Wasteway.

Grays Harbor County: Duck and Failor lakes, Grays Harbor.

Island County: Crockett and Lone lakes.

Jefferson County: Crocker and Leland lakes.

King County: Alice, Angle, Bass, Desire, Fenwick, Geneva, Green, Killarney, Lucerne, Meridian, Nielson (Holm), Otter (Spring), Phantom, Pine, Pipe, Sammamish, Sawyer, Shadow, Shady, Spring, Steel, Twelve, Union, Washington, and Wilderness lakes.

Kitsap County: Buck, Horseshoe, Long, Mission, Square, Tahuya, and Wye lakes.

Kittitas County: Lavendar and Mattoon lakes.

Klickitat County: Celilo, Horsethief, and Spearfish lakes, Columbia River.

Lewis County: Carlisle, Mayfield, Plummer, and Riffe lakes, Swofford Pond, Chehalis and Cowlitz rivers and the Interstate Avenue Slough.

Mason County: Isabella, Island, Limerick, Mason, Spener, and Trails End (Priekett) lakes.

Okanogan County: Conconully, Green, Osooyoos, Palmer, Pearygin, and Whitestone lakes, Okanogan River.

Pacific County: Black, Island, Loomis, and O'Neil lakes, Willapa Bay.

Pend Oreille County: Davis, Diamond, Fan, Horseshoe, Mashall, Nile, and Saheen lakes, Little Spokane and Pend Oreille rivers.

Pierce County: Bay, Clear, Harts, Hidden, Ohop, Rapjohn, Spanaway, Tapps, and Whitman lakes.

San Juan County: Sportsman Lake.

Skagit County: Beaver, Big, Campbell, Clear, Erie, Heart, Memurray, and Sixteen lakes.

Skamania County: Coldwater and Drano lakes, Columbia River.

Snohomish County: Goodwin, Meadow, Nina, Roesiger, Shoecraft, Silver, Stevens, and Swartz lakes.

Spokane County: Eloika, Liberty, Long, Newman, and Silver lakes.

Stevens County: Black, Deep, Gillette, Heritage, Loon, McDowell, Sherry, Thomas, and Waitts lakes, Long Lake Reservoir.

Thurston County: Capitol, Hicks, Long, Munn, Scott, and Ski lakes, Black and Chehalis rivers.

Wahkiakum County: Columbia River and Brooks Slough.

Walla Walla County: Snake River.

Whateom County: Terrell and Whateom lakes.

Whitman County: Bryan and Lower Granite lakes, Snake River.

Yakima County: Buena, Byron, Dog, and Freeway (Rotary) lakes, unnamed ponds at 12N-19E-20, Yakima River.

(4) Aquaculture provisions. It is unlawful to fail to comply with the following provisions regarding aquaculture and waters containing prohibited aquatic animal species or invasive aquatic plant species:

(a) When a natural body of water is designated by rule as infested, ongoing aquaculture operations in that body of water are restricted from transferring product, equipment or associated materials until such time as the operator of the aquaculture operation submits to the department a plan to prevent the spread of invasive aquatic plants and prohibited aquatic animal species, and has received approval from the department of such plan.

(b) Artificial water basins found to be infested with prohibited aquatic animal species are required to have the water sterilized before continuing aquaculture operations, and any private sector cultured products in such waters must be killed before sale or transfer.

(c) By permit from the department, water from bodies of water infested with invasive aquatic plants may be used in artificial water basins for aquaculture, provided that the water is treated to eliminate invasive aquatic plants prior to use.

(5) Violations of this section involving invasive aquatic animal species is punishable under RCW 77.15.809 or 77.15.811.

(6) Violations of this section involving invasive aquatic plants is punishable under RCW 77.15.290.))

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-640-020 ((Aquatic nuisance species.))
Reserved—Deleterious exotic wildlife. Reserved.**

(1) The following ((species)) animals are hereby designated as deleterious exotic wildlife ((and aquatic nuisance species)):

~~((a) Zebra mussels, including *Dreissena polymorpha* and other species commonly known as quagga;~~

~~(b) The European green crab, *Carcinus maenas*; and~~

~~(c) Chinese mitten crabs, including all members of the genus *Eriocheir*.~~

~~(2) It is unlawful to intentionally import into the state or possess aquatic nuisance species except as provided in this section.~~

~~(3) Zebra mussels: It is unlawful to import live aquatic organisms, including plants, for release into state waters from any state or Canadian province east of the Continental Divide without each importation being accompanied by a zebra mussel-free certificate issued by the department and signed by the supplier of the aquatic organisms. The original receiver in the state of Washington of the shipment of aquatic organisms is required to retain the zebra mussel-free certificate for two years. Secondary receivers, while in possession of live aquatic organisms, are required to retain invoices or other records showing who was the original receiver.~~

~~(4) Scientific research: The director may authorize, by prior written permit, a person to possess aquatic nuisance species for scientific research, provided:~~

~~(a) Specimens are confined to a secure facility, defined as an enclosure that will prevent the escape or release of aquatic nuisance species or any form of aquatic nuisance species larvae, is not a natural watercourse, and is inaccessible to wildlife or other animals that could transport aquatic nuisance species.~~

~~(b) Specimens are not transferred to any other facility without written approval by the director or designee.~~

~~(c) All zebra mussels are incinerated or chemically preserved at the conclusion of the project, and the enclosure, holding waters and all equipment are disinfected. All other aquatic nuisance species must be killed at the conclusion of the project and either chemically preserved or disposed of in a landfill.~~

~~(d) The permittee provides an annual report to the department, no later than January 31 of the following year, on a form provided by the department, describing the number, size and location of aquatic nuisance species enclosures and general nature of the research.~~

~~(5) Monitoring and control programs: The director may authorize persons working within the scope and supervision of a department-sponsored monitoring and control program to capture, possess and destroy aquatic nuisance species, provided:~~

~~(a) The persons have completed a mandatory training program and are certified by the department;~~

~~(b) The persons have a permit authorized by the director or designee in possession;~~

~~(c) All aquatic nuisance species are disposed of in accordance with the monitoring and control program; and~~

~~(d) Participants submit a report to the department within thirty days of any monitoring or control activity in accordance with the specifications outlined in the monitoring and control program.~~

~~(6) Abatement. Except as provided for in subsection (4) of this section, the department may take action to prevent or abate introduced aquatic nuisance species as a public nuisance, including but not limited to chemical treatment of the~~

water containing the aquatic nuisance species or object to which an aquatic nuisance species is attached, heat treatment of such object, or other abatement measures as are appropriate. The possessor of aquatic nuisance species may be responsible for costs incurred by the department in abating an aquatic nuisance species infestation.)) (a) Birds: In the family Anatidae, the mute swan (*Cygnus olor*).

(b) Mammals:

(i) In the family Viverridae, the mongoose (all members of the genus *Herpestes*).

(ii) In the family Suidae, the wild boar (*Sus scrofa* and all wild hybrids).

(iii) In the family Tayassuidae, the collared peccary (javelina) (*Tayassu tajacu*).

(iv) In the family Bovidae, all members and hybrids of the following genera: *Rupicapra* (Chamois); *Hemitragus* (Tahr); *Capra* (goats, ibexes except domestic goat *Capra hircus*); *Ammotragus* (Barbary sheep or Aoudad); *Ovis* (sheep), except domestic sheep *Ovis aries*; *Damaliscus* (Sassabies); *Alcelaphus buselaphus* (Hartebeest); and *Connochaetes* (Wildebeests).

(v) In the family Cervidae, the European red deer (*Cervus elaphus*), all nonnative subspecies of *Cervus elaphus*, and all hybrids with North American elk; Fallow deer (*Dama dama*), Axis deer (*Axis axis*), Rusa deer or Sambar deer (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*), Sika deer (*Cervus Nippon*), Reindeer (all members of the genus *Rangifer* except *Rangifer tarandus caribou*), and Roedeer (all members of the genus *Capreolus*).

(2) It is unlawful to import into the state, hold, possess, propagate, offer for sale, sell, transfer, or release live specimens of deleterious exotic wildlife, their gametes and/or embryo, except as provided under subsection (3), (4), (5), (6), or (7) of this section, and as provided in WAC 220-640-020.

(3) Scientific research or display: The director may authorize, by written approval, a person to import into the state, hold, possess, and propagate live specimens of deleterious exotic wildlife for scientific research or for display by zoos or aquariums who are accredited institutional members of the association of zoos and aquariums (AZA), provided:

(a) The specimens are confined to a secure facility;

(b) The specimens will not be transferred to any other location within the state, except to other AZA-accredited facilities with written director approval or as otherwise authorized in writing by the director;

(c) The specimens will be euthanized and all parts incinerated at the end of the project, except for federally listed endangered or threatened species, which may be retained or transferred where in compliance with federal law;

(d) The person will keep such records on the specimens and make such reports as the director may require; and

(e) The person complies with other requirements of this section.

(4) Retention or disposal of existing specimens lawfully in captivity:

(a) Specimens lawfully in captivity prior to January 18, 1991: A person holding exotic wildlife specimens in captivity that were classified by the fish and wildlife commission as deleterious exotic wildlife on or before January 18, 1991, may retain the specimens of such deleterious exotic wildlife

such person lawfully possessed prior to January 18, 1991, provided such person complies with subsection (4)(c) through (h) hereunder and the other requirements of this section;

(b) Specimens lawfully in captivity prior to June 20, 1992: A person holding the following deleterious exotic wildlife specimens in captivity that were classified by the fish and wildlife commission as deleterious exotic wildlife by operation of emergency rule filed June 19, 1992, (in the family Bovidae, Ssassabies (all members of the genus Damaliscus), Hartebeest (Alcelaphus buselaphus), Wildebeests (all members of the genus Connochaetes), Markhor (Capra falconeri), and Marcopolo sheep (Ovis ammon); and in the family Cervidae, Fallow deer (Dama dama), Axis deer (Axis axis), Sika deer (Cervus nippon), and Rusa deer or Sambar deer (Cervus unicolor, Cervus timorensis, Cervus mariannus and Cervus alfredi)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to June 20, 1992, and the lawful progeny thereof, provided such person complies with (c) through (h) of this subsection and the other requirements of this section and except as provided under subsection (7) of this section;

(c) The person reported to the director, in writing, the species, number, and location of the specimens, as required;

(d) The specimens are confined to a secure facility at the location reported;

(e) Live specimens are not propagated, except at AZA-accredited facilities with the written permission of the director or as otherwise authorized in writing by the director;

(f) Live specimens shall be neutered, physically separated by sex, and/or rendered infertile by means of contraception, except at AZA-accredited facilities with the written permission of the director;

(g) Live specimens are not released; and

(h) Live specimens are not sold or transferred, except:

(i) Live specimens in lawful possession may be permanently removed from the state of Washington or transported directly to slaughter where in accordance with other applicable law;

(ii) Federally listed endangered or threatened species may be transferred to AZA-accredited facilities where in compliance with federal law;

(iii) Live specimens may be moved to the new primary residence of the possessor with the written approval of the director, provided that all other requirements are satisfied and the total number of locations where animals are held is not increased; and

(iv) AZA facilities may sell and/or transfer live specimens within the state with the written permission of the director.

(5) Retention or disposal of existing specimens lawfully in captivity prior to February 13, 1993: A person holding exotic wildlife specimens in captivity that are newly classified by the fish and wildlife commission as deleterious exotic wildlife by operation of this rule (Reindeer (all members of the genus Rangifer, except Rangifer tarandus caribou), and Roedeer (all members of the genus Capreolus)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to February 13, 1993, provided:

(a) The person reports to the director in writing by March 31, 1993, and reports annually thereafter, or as otherwise required by the director, the species, number, and location of such specimens; and

(b) The person complies with subsection (4)(d) through (h) of this section and the other requirements of this section.

(6) The provisions of this section shall not prohibit the importation, possession, propagation, sale, transfer, or release of live specimens of federally listed threatened or endangered species, their gametes and/or embryo, where in compliance with federal law.

(7) Notwithstanding the provisions of subsection (2) of this section, Fallow deer (Dama dama) and reindeer (all members of the genus Rangifer, except Rangifer tarandus caribou) may be imported into the state, held, possessed, propagated, offered for sale, sold, and/or transferred, provided:

(a) The person complies with subsection (4)(c) through (g) of this section and the other requirements of this section, except for subsection (4)(e), (f), and (h) of this section; and

(b) The person complies with the department of agriculture per WAC 16-54-180 as now or hereafter amended, except:

Animals that have resided at any time east of a line drawn through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and the 100th Meridian where it passes through Texas, or that have had contact with or shared common ground with animals which have resided at any time east of such line, shall not be imported into the state of Washington unless specifically authorized in writing by the director of the department of agriculture and the department of fish and wildlife;

(c) No specimens affected with any infectious or communicable disease shall be imported into the state unless in compliance with all applicable laws and regulations and unless written permission is obtained from the directors of the department of agriculture and the department of fish and wildlife;

(d) The specimens are confined to a secure facility; and

(e) Reindeer may not be imported into, held, or possessed in Ferry, Stevens, or Pend Oreille counties or that portion of Spokane County north of Spokane River.

(8) Escaped animals:

(a) Escaped deleterious exotic wildlife, including Fallow deer (Dama dama) and reindeer (all members of the genus Rangifer, except Rangifer tarandus caribou) will be considered a public nuisance. The department or any peace officer may seize, capture, or destroy deleterious exotic wildlife that have escaped the possessor's control. The former possessor shall be responsible for costs incurred by the department in recovering, maintaining, or disposing of such animals, as well as any damage to the state's wildlife or habitat.

(b) Escapes of deleterious exotic wildlife must be reported immediately to the department.

(c) The recapture or death of escaped deleterious exotic wildlife must be reported immediately to the department.

(9) Secure facility:

(a) All deleterious exotic wildlife will be held in a secure facility. For the purpose of this rule, a secure facility is an enclosure so constructed as to prevent danger to the environ-

ment or wildlife of the state, including escape of deleterious exotic wildlife specimens or ingress of resident wildlife ungulates (hoofed animals). The adequacy of the facility shall be determined by the director or agents of the director.

(b) For deleterious exotic wildlife listed in subsection (1)(b)(iv) and (v) of this section, the "secure facility" must comply with the fencing requirements in subsection (10) of this section, unless otherwise authorized by the director in writing.

(10) Fencing requirements:

(a) Perimeter fences must be, at a minimum, eight feet above ground level for their entire length. The bottom six feet must be mesh of sufficient size to prevent resident wildlife ungulates (hoofed animals) from entering and deleterious exotic wildlife from escaping. Supplemental wire required to attain a height of eight feet may be smooth, barbed, or woven wire (at least 12-1/2 gauge) with strands spaced not more than six inches apart.

(b) Perimeter fences constructed of high tensile wire must be supported by a post or stay at minimum intervals of eight feet.

(c) Perimeter fences must be at least 12-1/2 gauge woven wire, 14-1/2 gauge high-tensile woven wire, chain link, non-climbable woven fence, or other fence approved by the director.

If the wire used is not a full eight feet in height, it must be overlapped one row and securely fastened at every other vertical row or woven together with cable.

(d) Electric fencing materials may be used on perimeter fences only as a supplement to conventional fencing materials.

(e) All gates in the perimeter fences must be self-closing, equipped with two locking devices, and installed only in locations that have been approved by the director. Double gates may be required at points in the perimeter fences subject to frequent vehicle traffic that is not related to activities involving the holding of deleterious exotic wildlife.

(f) Posts used in the perimeter fences must be:

(i) Wood (pressure treated), five-inch minimum diameter or an equivalent as approved by the director;

(ii) Spaced no more than twenty-four feet apart with stays or supports at eight foot intervals between the posts;

(iii) Extended at least eight feet above ground level; and

(iv) Have corners braced with wood or with an equivalent material as approved by the director.

(g) Fences must be maintained at all times to prevent deleterious exotic wildlife from escaping or resident wildlife ungulates (hoofed animals) from entering the enclosure. If such animals do pass through, under, or over the fence because of any topographic feature or other conditions, the person possessing deleterious exotic wildlife must immediately supplement the fence to prevent continued passage.

(h) For any fence existing prior to February 13, 1993, a person may petition the director in writing for a variance from the above fencing requirements. Any such petition must be filed no later than May 31, 1993, and must identify all aspects in which the existing fence does not meet the fencing requirements contained herein. On approval of the director, such person may maintain such existing fence with normal

repair. However, any extension or relocation of existing fence must meet the fencing requirements contained herein.

(11) Marking requirements:

(a) All live specimens of deleterious exotic wildlife, except those listed in subsection (1)(a) and (b) of this section, shall be permanently and individually identified by methods approved by the director.

(b) Identification assigned to an individual animal may not be transferred to any other animal.

(c) All specimens of deleterious exotic wildlife identified in subsection (1)(b)(iv) and (v) of this section must be individually identified by the methods specified below:

(i) All live specimens of such deleterious exotic wildlife shall be marked with USDA official ear tags or with ear tags supplied or approved by the department. Tags shall be applied in sequential order; and

(ii) All live specimens of such deleterious exotic wildlife shall be marked with a tattoo with an identifying number that has been recorded with the director. The tattoo must be placed on the left ear of the animal.

(d) All lawful progeny of deleterious exotic wildlife must be tagged and tattooed by December 31st of the year of birth or upon leaving the holding facility, whichever is earlier.

(e) Where allowed, if an animal is sold or transferred within the state, the tag and tattoo must accompany the animal. The new owner or possessor shall not renumber the animal.

(f) Where allowed, live specimens of deleterious exotic wildlife shall be marked prior to importation.

(g) No unmarked deleterious exotic wildlife may be sold or otherwise transferred from the holding facility.

(12) Testing of specimens:

(a) Where allowed, prior to entry into the state of Washington, a person importing any member of the genus Cervus, which is identified in subsection (1)(b)(v) of this section, must submit records of genetic tests conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex Cervus elaphus not indigenous to the state of Washington). Such testing shall be at the possessor's expense. Animals that are deemed by department of wildlife biologists upon examination to exhibit either: Behavioral (vocalization), morphological (size, rump patch, color), or biochemical indications of such influence (hemoglobin, superoxide dismutase, transferrin and post-transferrin, or others to be developed) may not be imported.

(b) The director may require a person currently possessing any member of the genus Cervus that are identified in subsection (1)(b)(v) of this section to submit records of genetic tests conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex Cervus elaphus not indigenous to the state of Washington) for each individual cervid to the department. Such testing shall be at the possessor's expense. The director may require that any animal identified as a red deer or having nonindigenous genetic influence be destroyed, removed from the state, or neutered.

(c) The director may require that all specimens of deleterious exotic wildlife lawfully in captivity be tested for brucellosis (*brucella abortus*), tuberculosis (*mycobacterium bovis* and *mycobacterium tuberculosis*), meningeal worm (*Paralophostrongylus tenuis*), and muscle worm (*Elaphostrongylus cervis*) in accordance with the procedures specified in department of agriculture per WAC 16-54-180 as now or hereafter amended and/or for other disease or parasites determined to pose a risk to wildlife. The results of such tests shall be filed with the director as required.

(13) Reporting:

(a) A person holding deleterious exotic wildlife in captivity shall submit a completed report no later than March 30, 1993, and then no later than January 31st of each year, or as otherwise required by the director, on a form provided by the department.

(b) Persons possessing deleterious exotic wildlife must notify the director within ten days of any change of such persons' address and/or location of the holding facility.

(14) Inspection:

(a) All holding facilities for deleterious exotic wildlife located in the state are subject to inspection for compliance with the provisions of this section.

(b) Such inspections shall be conducted at reasonable times.

(15) Notification and disposition of diseased animals:

(a) Any person who has reason to believe that deleterious exotic wildlife being held pursuant to this rule have or have been exposed to a dangerous or communicable disease or parasite shall notify the department immediately.

(b) Upon having reason to believe that deleterious exotic wildlife held pursuant to this rule have been exposed to or contracted a dangerous or contagious disease or parasite, the director may order inspection of such animals by a licensed, accredited veterinarian or inspection agent. Inspection shall be at the expense of the possessor.

(c) The director shall determine when destruction of animals, quarantine, or disinfection is required at any facility holding deleterious exotic wildlife, pursuant to this rule. If the director determines that destruction, quarantine, or disinfection is required, a written order shall be issued to the possessor describing the procedure to be followed and the time period for carrying out such actions. Such activities shall be at the expense of the possessor.

(16) Quarantine area:

(a) Any facility holding deleterious exotic wildlife must have an approved quarantine facility within its exterior boundary or submit an action plan to the director that guarantees access to an approved quarantine facility within the state of Washington:

(i) An approved quarantine facility is one that meets criteria set by the Washington state department of agriculture;

(ii) The quarantine area must meet the tests of isolation, separate feed and water, escape security, and allowances for the humane holding and care of its occupants for extended periods of time.

(b) Should the imposition of a quarantine become necessary, the possessor must provide an on-site quarantine facility or make arrangements at such possessor's expense to trans-

port the animals to the approved quarantine facility named in the quarantine action plan.

(17) Seizure:

(a) The department of wildlife may seize any unlawfully possessed deleterious exotic wildlife.

(b) The cost of any seizure and/or holding of deleterious exotic wildlife may be charged to the possessor of such animals.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-640-030 ((~~Deleterious exotic wildlife.~~) **Prohibited level 1 aquatic animal species. ((1) The following animals are hereby designated as deleterious exotic wildlife:**

(a) Birds:

~~In the family Anatidae, the mute swan (*Cygnus olor*).~~

(b) Mammals:

~~(i) In the family Viverridae, the mongoose (all members of the genus *Herpestes*).~~

~~(ii) In the family Suidae, the wild boar (*Sus scrofa* and all wild hybrids).~~

~~(iii) In the family Tayassuidae, the collared peccary (javelina) (*Tayassu tajacu*).~~

~~(iv) In the family Bovidae, all members and hybrids of the following genera: *Rupicapra* (Chamois); *Hemitragus* (Tahr); *Capra* (goats, ibexes except domestic goat *Capra hircus*); *Ammotragus* (Barbary sheep or Aoudad); *Ovis* (sheep), except domestic sheep *Ovis aries*; *Damaliscus* (Sassabies); *Alelaphus buselaphus* (Hartebeest); and *Connochaetes* (Wildebeests).~~

~~(v) In the family Cervidae, the European red deer (*Cervus elaphus elaphus*), all nonnative subspecies of *Cervus elaphus*, and all hybrids with North American elk; Fallow deer (*Dama dama*), Axis deer (*Axis axis*), Rusa deer or Sambar deer (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*), Sika deer (*Cervus nippon*), Reindeer (all members of the Genus *Rangifer* except *Rangifer tarandus caribou*), and Roedeer (all members of the Genus *Capreolus*).~~

~~(2) It is unlawful to import into the state, hold, possess, propagate, offer for sale, sell, transfer, or release live specimens of deleterious exotic wildlife, their gametes and/or embryo, except as provided under subsection (3), (4), (5), (6), or (7) of this section, and as provided in WAC 220-640-020.~~

~~(3) Scientific research or display: The director may authorize, by written approval, a person to import into the state, hold, possess, and propagate live specimens of deleterious exotic wildlife for scientific research or for display by zoos or aquariums who are accredited institutional members of the Association of Zoos and Aquariums (AZA), provided:~~

~~(a) The specimens are confined to a secure facility;~~

~~(b) The specimens will not be transferred to any other location within the state, except to other AZA-accredited facilities with written director approval or as otherwise authorized in writing by the director;~~

~~(c) The specimens will be euthanized and all parts incinerated at the end of the project, except for federally listed endangered or threatened species, which may be retained or transferred where in compliance with federal law;~~

(d) The person will keep such records on the specimens and make such reports as the director may require; and

(e) The person complies with other requirements of this section.

(4) Retention or disposal of existing specimens lawfully in captivity:

(a) Specimens lawfully in captivity prior to January 18, 1991: A person holding exotic wildlife specimens in captivity that were classified by the fish and wildlife commission as deleterious exotic wildlife on or before January 18, 1991, may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to January 18, 1991, provided such person complies with subsections (4)(e) through (4)(h) hereunder and the other requirements of this section;

(b) Specimens lawfully in captivity prior to June 20, 1992: A person holding the following deleterious exotic wildlife specimens in captivity that were classified by the fish and wildlife commission as deleterious exotic wildlife by operation of emergency rule filed June 19, 1992 (in the family Bovidae, *Sassabies* (all members of the Genus *Damalisus*), *Hartebeest* (*Aleelaphus buselaphus*), *Wildebeests* (all members of the Genus *Connochaetes*), *Markhor* (*Capra falconeri*), and *Mareopolo sheep* (*Ovis ammon*); and in the family Cervidae, *Fallow deer* (*Dama dama*), *Axis deer* (*Axis axis*), *Sika deer* (*Cervus nippon*), and *Rusa deer or Sambar deer* (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to June 20, 1992, and the lawful progeny thereof, provided such person complies with subsection (4)(e) through (h) of this section and the other requirements of this section and except as provided under subsection (7) of this section;

(c) The person reported to the director, in writing, the species, number, and location of the specimens, as required;

(d) The specimens are confined to a secure facility at the location reported;

(e) Live specimens are not propagated, except at AZA-accredited facilities with the written permission of the director or as otherwise authorized in writing by the director;

(f) Live specimens shall be neutered, physically separated by sex, and/or rendered infertile by means of contraception, except at AZA-accredited facilities with the written permission of the director;

(g) Live specimens are not released; and

(h) Live specimens are not sold or transferred, except:

(i) Live specimens in lawful possession may be permanently removed from the state of Washington or transported directly to slaughter where in accordance with other applicable law;

(ii) Federally listed endangered or threatened species may be transferred to AZA-accredited facilities where in compliance with federal law;

(iii) Live specimens may be moved to the new primary residence of the possessor with the written approval of the director, provided that all other requirements are satisfied and the total number of locations where animals are held is not increased; and

(iv) AZA facilities may sell and/or transfer live specimens within the state with the written permission of the director.

(5) Retention or disposal of existing specimens lawfully in captivity prior to February 13, 1993: A person holding exotic wildlife specimens in captivity that are newly classified by the fish and wildlife commission as deleterious exotic wildlife by operation of this rule (*Reindeer* (all members of the Genus *Rangifer*, except *Rangifer tarandus caribou*), and *Roedeer* (all members of the Genus *Capreolus*)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to February 13, 1993, provided:

(a) The person reports to the director in writing by March 31, 1993, and reports annually thereafter, or as otherwise required by the director, the species, number, and location of such specimens; and

(b) The person complies with subsection (4)(d) through (h) of this section and the other requirements of this section.

(6) The provisions of this section shall not prohibit the importation, possession, propagation, sale, transfer, or release of live specimens of federally listed threatened or endangered species, their gametes and/or embryo, where in compliance with federal law.

(7) Notwithstanding the provisions of subsection (2) of this section, *Fallow deer* (*Dama dama*) and *reindeer* (all members of the Genus *Rangifer*, except *Rangifer tarandus caribou*) may be imported into the state, held, possessed, propagated, offered for sale, sold, and/or transferred, provided:

(a) The person complies with subsection (4)(e) through (g) of this section and the other requirements of this section, except for subsection (4)(e), (f), and (h) of this section; and

(b) The person complies with the department of agriculture WAC 16 54 180 as now or hereafter amended, except:

Animals that have resided at any time east of a line drawn through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and the 100th Meridian where it passes through Texas, or that have had contact with or shared common ground with animals which have resided at any time east of such line, shall not be imported into the state of Washington unless specifically authorized in writing by the director of the department of agriculture and the department of fish and wildlife;

(c) No specimens affected with any infectious or communicable disease shall be imported into the state unless in compliance with all applicable laws and regulations and unless written permission is obtained from the directors of the department of agriculture and the department of fish and wildlife;

(d) The specimens are confined to a secure facility; and

(e) *Reindeer* may not be imported into, held, or possessed in Ferry, Stevens, or Pend Oreille counties or that portion of Spokane County north of Spokane River.

(8) Escaped animals:

(a) Escaped deleterious exotic wildlife, including *Fallow deer* (*Dama dama*) and *Reindeer* (all members of the Genus *Rangifer*, except *Rangifer tarandus caribou*) will be considered a public nuisance. The department or any peace officer may seize, capture, or destroy deleterious exotic wildlife that have escaped the possessor's control. The former possessor

shall be responsible for costs incurred by the department in recovering, maintaining, or disposing of such animals, as well as any damage to the state's wildlife or habitat.

(b) Escapes of deleterious exotic wildlife must be reported immediately to the department.

(c) The recapture or death of escaped deleterious exotic wildlife must be reported immediately to the department.

(9) Secure facility:

(a) All deleterious exotic wildlife will be held in a secure facility. For the purpose of this rule, a secure facility is an enclosure so constructed as to prevent danger to the environment or wildlife of the state, including escape of deleterious exotic wildlife specimens or ingress of resident wildlife ungulates (hoofed animals). The adequacy of the facility shall be determined by the director or agents of the director.

(b) For deleterious exotic wildlife listed in subsection (1)(b)(iv) and (v) of this section, the "secure facility" must comply with the fencing requirements in subsection (10) of this section, unless otherwise authorized by the director in writing.

(10) Fencing requirements:

(a) Perimeter fences must be, at a minimum, eight feet above ground level for their entire length. The bottom six feet must be mesh of sufficient size to prevent resident wildlife ungulates (hoofed animals) from entering and deleterious exotic wildlife from escaping. Supplemental wire required to attain a height of eight feet may be smooth, barbed, or woven wire (at least 12 1/2 gauge) with strands spaced not more than six inches apart.

(b) Perimeter fences constructed of high tensile wire must be supported by a post or stay at minimum intervals of eight feet.

(c) Perimeter fences must be at least 12 1/2 gauge woven wire, 14 1/2 gauge high tensile woven wire, chain link, non-climbable woven fence, or other fence approved by the director.

If the wire used is not a full eight feet in height, it must be overlapped one row and securely fastened at every other vertical row or woven together with cable.

(d) Electric fencing materials may be used on perimeter fences only as a supplement to conventional fencing materials.

(e) All gates in the perimeter fences must be self-closing, equipped with two locking devices, and installed only in locations that have been approved by the director. Double gates may be required at points in the perimeter fences subject to frequent vehicle traffic that is not related to activities involving the holding of deleterious exotic wildlife.

(f) Posts used in the perimeter fences must be:

(i) Wood (pressure treated), five-inch minimum diameter or an equivalent as approved by the director;

(ii) Spaced no more than twenty-four feet apart with stays or supports at eight foot intervals between the posts;

(iii) Extended at least eight feet above ground level; and

(iv) Have corners braced with wood or with an equivalent material as approved by the director.

(g) Fences must be maintained at all times to prevent deleterious exotic wildlife from escaping or resident wildlife ungulates (hoofed animals) from entering the enclosure. If such animals do pass through, under, or over the fence

because of any topographic feature or other conditions, the person possessing deleterious exotic wildlife must immediately supplement the fence to prevent continued passage.

(h) For any fence existing prior to February 13, 1993, a person may petition the director in writing for a variance from the above fencing requirements. Any such petition must be filed no later than May 31, 1993, and must identify all aspects in which the existing fence does not meet the fencing requirements contained herein. On approval of the director, such person may maintain such existing fence with normal repair. However, any extension or relocation of existing fence must meet the fencing requirements contained herein.

(11) Marking requirements:

(a) All live specimens of deleterious exotic wildlife, except those listed in subsection (1)(a) and (b) of this section, shall be permanently and individually identified by methods approved by the director.

(b) Identification assigned to an individual animal may not be transferred to any other animal.

(c) All specimens of deleterious exotic wildlife identified in subsection (1)(b)(iv) and (v) of this section must be individually identified by the methods specified below:

(i) All live specimens of such deleterious exotic wildlife shall be marked with USDA Official ear tags or with ear tags supplied or approved by the department. Tags shall be applied in sequential order; and

(ii) All live specimens of such deleterious exotic wildlife shall be marked with a tattoo with an identifying number that has been recorded with the director. The tattoo must be placed on the left ear of the animal.

(d) All lawful progeny of deleterious exotic wildlife must be tagged and tattooed by December 31 of the year of birth or upon leaving the holding facility, whichever is earlier.

(e) Where allowed, if an animal is sold or transferred within the state, the tag and tattoo must accompany the animal. The new owner or possessor shall not renumber the animal.

(f) Where allowed, live specimens of deleterious exotic wildlife shall be marked prior to importation.

(g) No unmarked deleterious exotic wildlife may be sold or otherwise transferred from the holding facility.

(12) Testing of specimens:

(a) Where allowed, prior to entry into the state of Washington, a person importing any member of the Genus *Cervus*, which is identified in subsection (1)(b)(v) of this section herein, must submit records of genetic tests conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Washington). Such testing shall be at the possessor's expense. Animals that are deemed by department of wildlife biologists upon examination to exhibit either: Behavioral (vocalization), morphological (size, rump patch, color), or biochemical indications of such influence (hemoglobin, superoxide dismutase, transferrin and post-transferrin, or others to be developed) may not be imported.

(b) The director may require a person currently possessing any member of the Genus *Cervus* that are identified in

subsection (1)(b)(v) of this section to submit records of genetic tests conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Washington) for each individual cervid to the department. Such testing shall be at the possessor's expense. The director may require that any animal identified as a red deer or having nonindigenous genetic influence be destroyed, removed from the state, or neutered.

(c) The director may require that all specimens of deleterious exotic wildlife lawfully in captivity be tested for brucellosis (*Brucella abortus*), tuberculosis (*Mycobacterium bovis* and *Mycobacterium tuberculosis*), meningeal worm (*Paralophostromylus tenuis*), and muscle worm (*Elaphostrongylus cervis*) in accordance with the procedures specified in department of agriculture WAC 16-54-180 as now or hereafter amended and/or for other disease or parasites determined to pose a risk to wildlife. The results of such tests shall be filed with the director as required.

(13) Reporting:

(a) A person holding deleterious exotic wildlife in captivity shall submit a completed report no later than March 30, 1993, and then no later than January 31 of each year, or as otherwise required by the director, on a form provided by the department.

(b) Persons possessing deleterious exotic wildlife must notify the director within ten days of any change of such persons' address and/or location of the holding facility.

(14) Inspection:

(a) All holding facilities for deleterious exotic wildlife located in the state are subject to inspection for compliance with the provisions of this section.

(b) Such inspections shall be conducted at reasonable times.

(15) Notification and disposition of diseased animals:

(a) Any person who has reason to believe that deleterious exotic wildlife being held pursuant to this rule have or have been exposed to a dangerous or communicable disease or parasite shall notify the department immediately.

(b) Upon having reason to believe that deleterious exotic wildlife held pursuant to this rule have been exposed to or contracted a dangerous or contagious disease or parasite, the director may order inspection of such animals by a licensed, accredited veterinarian or inspection agent. Inspection shall be at the expense of the possessor.

(c) The director shall determine when destruction of animals, quarantine, or disinfection is required at any facility holding deleterious exotic wildlife, pursuant to this rule. If the director determines that destruction, quarantine, or disinfection is required, a written order shall be issued to the possessor describing the procedure to be followed and the time period for carrying out such actions. Such activities shall be at the expense of the possessor.

(16) Quarantine area:

(a) Any facility holding deleterious exotic wildlife must have an approved quarantine facility within its exterior boundary or submit an action plan to the director that guarantees access to an approved quarantine facility within the state of Washington.

(i) An approved quarantine facility is one that meets criteria set by the Washington state department of agriculture.

(ii) The quarantine area must meet the tests of isolation, separate feed and water, escape security, and allowances for the humane holding and care of its occupants for extended periods of time.

(b) Should the imposition of a quarantine become necessary, the possessor must provide an on-site quarantine facility or make arrangements at such possessor's expense to transport the animals to the approved quarantine facility named in the quarantine action plan.

(17) Seizure:

(a) The department of wildlife may seize any unlawfully possessed deleterious exotic wildlife.

(b) The cost of any seizure and/or holding of deleterious exotic wildlife may be charged to the possessor of such animals. The following species are classified as prohibited level 1 aquatic animal species:

(1) Molluscs: Family Dreissenidae: Zebra mussels: All members of the genus Dreissena and all species known as quagga.

(2) Crustaceans:

(a) Family Grapsidae: Mitten crabs: All members of the genus Erochier.

(b) Family Portunidae: European green crab, *Carcinus maenas*.

(3) Fish:

(a) Family Channidae: China fish, snakeheads: All members of the genus Channa.

(b) Family Clariidae: All members of the walking catfish family.

(c) Family Cyprinidae:

(i) Carp, Bighead, *Hypophthalmichthys nobilis*.

(ii) Carp, Black, *Mylopharyngodon piceus*.

(iii) Carp, Silver, *Hypophthalmichthys molitrix*.

(iv) Carp, Largescale Silver, *Hypophthalmichthys harmandi*.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-640-040 ((Classification—Nonnative))
Prohibited level 2 aquatic animal species. ((1) Prohibited aquatic animal species. The following species are classified as prohibited aquatic animal species:

(a) Amphibians:

(i) In the family Hylidae: Cricket frog, in the genus *Hyla* species in the group *Arborea* including: *Hyla annectans*, *Hyla arborea*, *Hyla chinensis*, *Hyla hallowellii*, *Hyla immaculata*, *Hyla japonica*, *Hyla meridionalis*, *Hyla sanchiangensis*, *Hyla simplex*, *Hyla suweonensis*, *Hyla tsinlingensis*, *Hyla ussuriensis*, and *Hyla zhaopingensis*.

(ii) In the family Pelobatidae, spadefoots, all species of the genus *Pelobates* including *P. cultripes*, *P. fuscus*, *P. syriacus*, and *P. varaldii*. All species of the genus *Scaphiopus* including: *S. couchii*, *S. holbrookii*, and *S. hurterii*. All species of the genus *Spea* including: *S. hurterii*, *S. bombifrons*, *S. hammondii*, and *S. multiplicata* with the exception of the native species: *Spea intermontana* the great basin spadefoot.

(iii) In the family Pipidae: African clawed frog, all members of the genera *Silurana*, and *Xenopus*.

(iv) In the family Ranidae:

(A) Bull frog, *Rana catesbeiana*.

(B) Holoartctic brown frogs and Palearctic green frogs of the genus *Rana*, including the following: *Rana arvalis* group (*R. arvalis*, *R. chaochiaoensis*, *R. chevronta*); *Rana chensinensis* group (*R. altaica*, *R. chensinensis*, *R. dybowskii*, *R. kukunoris*, *R. kunyuensis*, *R. ornativentris*, *R. pirica*); *Rana graeca* group (*R. graeca*, *R. italica*); *Rana japonica* group (*R. amurensis*, *R. aragonensis*, *R. japonica*, *R. omeimontis*, *R. zhenhaiensis*); the subgenus *Rugosa* (*Rana rugosa*, *Rana emeljanovi*, *Rana tientaiensis*); *Rana tagoi* group (*R. sakuraii*, *R. tagoi*); *Rana temporaria* group (*R. asiatica*, *R. dalmatina*, *R. honnorate*, *R. huanrenensis*, *R. iberica*, *R. latastei*, *R. macrocnemis*, *R. okinavana*, *R. pyrenaica*, *R. tsushimensis*, *R. zhengi*); and in the *Rana Pelophylax* section, the subgenus *Pelophylax* (*R. bedriagae*, *R. bergeri*, *R. cerigensis*, *R. chosonica*, *R. cretensis*, *R. demarchii*, *R. epirotica*, *R. fukiensis*, *R. graffi*, *R. hubeiensis*, *R. lateralis*, *R. lessonae*, *R. nigrolineata*, *R. nigromaculata*, *R. perezi*, *R. planeyi*, *R. porosa*, *R. ridibunda*, *R. saharica*, *R. shqipericana*, *R. shuchinae*, *R. terentievi*, *R. tenggerensis*); and the *Rana ridibunda*-*Rana lessonae* hybridogenetic complex species *R. esculenta* and *R. hispanica*.

(v) In the family Ambystomatidae: Mole salamanders. In the genus *Ambystomata*: *A. californiense*, *A. laterale*, *A. opacum*, *A. rosaceum*, *A. tigrinum*, except for the native species *A. tigrinum mavortium* Western tiger salamander, and *A. tigrinum melanostictum* Tiger salamander.

(vi) In the family Amphiumidae one, two, and three toed salamanders or congo eels: All members of the genus *Amphiuma*.

(vii) In the family Cryptobranchidae: Giant salamanders and hellbenders, all members of the genera *Andrias* and *Cryptobranchus*.

(viii) In the family Dicamptodontidae, American giant salamanders, all members of the genus *Dicamptodon*, except for the native species: *Dicamptodon tenebrosus*, Pacific giant salamander, and *Dicamptodon copei*, Cope's giant salamander.

(ix) In the family Hynobiidae: Mountain salamanders, all members of the genera *Batrachuperus*, *Hynobius*, *Liua*, *Onychodactylus*, *Pachyhynobius*, *Pseudohynobius*, *Ranodon*, and *Salamandrella*.

(x) In the family Plethodontidae, subfamily Desmognathinae: All members of the genus *Desmognathus*, dusky salamander.

(xi) In the family Plethodontidae, subfamily Plethodontinae: All members of the genera *Aneides* (climbing salamanders); *Batrachoseps* (slender salamanders); *Eurycea* (American brook salamanders); *Gyrinophilus* (cave salamanders); *Hemidactylium* (four toed salamanders); *Hydromantes* (web-toed salamanders); *Plethodon* (woodland and slimy salamanders); *Pseudotriton* (mud or red salamanders), and *Speleomantes* (European salamanders).

(xii) In the family Proteidae, mudpuppies, all members of the genus *Necturus* and *Proteus*.

(xiii) In the family Salamandridae: Newts, all members of the genera *Chioglossa*; *Eichmotriton* (mountain newts);

Euproctus (European mt. salamander); *Neurergus* (Kurdistan newts); *Notophthalmus* (red-spotted newts); *Pachytriton* (Chinese newts); *Paramesotriton* (warty newts); *Salamandrina* (speckled salamander); *Taricha* except for the native species *Taricha granulosa granulosa* the Northern rough-skinned newt, and *Triturus* (alpine newts).

(xiv) In the family Sirenidae, sirens, all species of the genera *Pseudobranchius* and *Siren*.

(b) Reptiles:

(i) In the family Chelydridae, snapping turtles, all species:

(ii) In the family Emydidae:

(A) Chinese pond turtles, all members of the genus *Chinemys*.

(B) Pond turtles, all members of the genus *Clemmys*.

(C) European pond turtle, *Emys orbicularis*.

(D) Asian pond turtle, all members of the genus *Mauremys*.

(iii) In the family Trionychidae, American soft shell turtles, all members of the genus *Apalone*.

(c) Crustaceans:

(i) Family Cercopagidae:

(A) Fish hook water flea, *Cercopagis pengoi*.

(B) Spiny water flea, *Bythotrephes cederstroemi*.

(ii) Family Grapsidae: Mitten crabs: All members of the genus *Erochier*.

(iii) Family Cambaridae: Crayfish: All genera, except a person may possess and transport dead prohibited crayfish species obtained under the department's recreational crayfishing rules (WAC 220-330-090 and 220-330-100). There is no daily limit, size limit, or sex restriction for prohibited crayfish species. All nonnative crayfish must be kept in a separate container from native crayfish. Release of any live crayfish species into waters other than the water being fished is prohibited.

(iv) Family Parastacidae: Crayfish: All genera except *Engaeos*, and except the species *Cherax quadricarinatus*, *Cherax papuanus*, and *Cherax tenuimanus*.

(v) Family Portunidae: European green crab, *Carcinus maenas*.

(vi) Family Spheromatidae: Burrowing isopod, *Sphaeroma quoyanum*.

(d) Fish:

(i) Family Amiidae: Bowfin, grinnel, or mudfish, *Amia calva*.

(ii) Family Channidae: China fish, snakeheads: All members of the genus *Channa*.

(iii) Family Characidae: Piranha or caribe: All members of the genera *Pygocentrus*, *Rooseveltiella*, and *Serrasalmus*.

(iv) Family Clariidae: Walking catfish: All members of the family.

(v) Family Cyprinidae:

(A) Fathead minnow, *Pimephales promelas*.

(B) Carp, Bighead, *Hypophthalmichthys nobilis*.

(C) Carp, Black, *Mylopharyngodon piceus*.

(D) Carp, Grass (in the diploid form), *Ctenopharyngodon idella*.

(E) Carp, Silver, *Hypophthalmichthys molitrix*.

(F) Ide, silver orfe or golden orfe, *Leuciscus idus*.

(G) Rudd, *Scardinius erythrophthalmus*.

(vi) Family Gobiidae: Round goby, *Neogobius melanostomus*.

(vii) Family Esocidae: Northern pike, *Esox lucius*: A person may possess and transport dead prohibited Northern pike obtained under the department's recreational sport fishing rules (WAC 220-300-160 and 220-310-110). There is no minimum size, no daily limit, and no possession limit. Release of any live Northern pike into water other than the water being fished is prohibited.

(viii) Family Lepisosteidae: Gar-pikes: All members of the family.

(e) Mammals:

Family Myocastoridae: Nutria, *Myocastor coypu*.

(f) Molluses:

(i) Family Dreissenidae: Zebra mussels: All members of the genus *Dreissena* and all species known as quagga.

(ii) Family Gastropoda: New Zealand mud snail, *Potamopyrgus antipodarum*.

(2) Regulated aquatic animal species. The following species are classified as regulated aquatic animal species:

(a) Crustaceans:

All nonnative crustaceans classified as shellfish.

(b) Fish:

(i) All nonnative fish classified as food fish and game fish.

(ii) Family Cichlidae: Tilapia: All members of the genera *Tilapia*, *Oreochromis*, and *Sarotherodon*.

(iii) Family Clupeidae: Alewife, *Alosa pseudoharengus*.

(iv) Family Cyprinidae:

(A) Common carp, koi, *Cyprinus carpio*.

(B) Goldfish, *Carassius auratus*.

(C) Tench, *Tinca tinca*.

(D) Grass carp (in the triploid form), *Ctenopharyngodon idella*.

(v) Family Poeciliidae: Mosquito fish, *Gambusia affinis*.

(e) Molluses:

(i) All nonnative molluscs classified as shellfish.

(ii) Family Psammobiidae: Mahogany clam or purple varnish clam, *Nuttalia obscurata*.

(3) Unregulated aquatic animal species.) The following ((species)) are classified as ((unregulated)) prohibited level 2 aquatic animal species: None.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-640-050 ((Request for classification of nonnative)) Prohibited level 3 aquatic animal species. ((Any person requesting classification of a nonnative aquatic animal species as a food fish, game fish, or shellfish must follow the procedure for request for designation prior to approval for release in WAC 220-640-010(1).)) The following species are classified as prohibited level 3 aquatic animal species:

(1) Amphibians:

(a) In the family Hylidae: Cricket frog, in the genus *Hyla* species in the group Arborea including: *Hyla annectans*, *Hyla arborea*, *Hyla chinensis*, *Hyla hallowellii*, *Hyla immaculata*, *Hyla japonica*, *Hyla meridionalis*, *Hyla sanchiangensis*, *Hyla*

simplex, *Hyla suweonensis*, *Hyla tsinlingensis*, and *Hyla zhaopingensis*.

(b) In the family Pelobatidae, spadefoots, all species of the genus *Pelobates* including *P. cultripes*, *P. fuscus*, *P. syriacus*, and *P. varaldii*. All species of the genus *Scaphiopus* including: *S. couchii*, *S. holbrookii*, and *S. hurterii*. All species of the genus *Spea* including: *S. bombifrons*, *S. hammondi*, and *S. multiplicata* with the exception of the native species: *Spea intermontana* the great basin spadefoot.

(c) In the family Pipidae: African clawed frog, all members of the genera *Silurana*, and *Xenopus*.

(d) In the family Ranidae:

(i) American Bull frog, *Rana* (*Lithobates*) *catesbeiana*.

(ii) Holarctic brown frogs and Palearctic green frogs of the genus *Rana*, including the following: *Rana arvalis* group (*R. arvalis*, *R. chaochiaoensis*, *R. chevronta*); *Rana chensinensis* group (*R. altaica*, *R. chensinensis*, *R. dybowskii*, *R. kukunoris*, *R. kunyuensis*, *R. ornativentris*, *R. pirica*); *Rana graeca* group (*R. graeca*, *R. italica*); *Rana japonica* group (*R. amurensis*, *R. aragonensis*, *R. japonica*, *R. omeimontis*, *R. zhenhaiensis*); the subgenus *Rugosa* (*Rana rugosa*, *Rana emeljanovi*, *Rana tientaiensis*); *Rana tagoi* group (*R. sakuraii*, *R. tagoi*); *Rana temporaria* group (*R. asiatica*, *R. dalmatina*, *R. honnorate*, *R. huanrenensis*, *R. iberica*, *R. latastei*, *R. macrocnemis*, *R. okinavana*, *R. pyrenaica*, *R. tsushimensis*, *R. zhengi*); and in the *Rana Pelophylax* section, the subgenus *Pelophylax* (*R. bedriagae*, *R. bergeri*, *R. cerigensis*, *R. chosonica*, *R. cretensis*, *R. demarchii*, *R. epirotica*, *R. fukiensis*, *R. grafti*, *R. hubeiensis*, *R. lateralis*, *R. lessonae*, *R. nigrolineata*, *R. nigromaculata*, *R. perezi*, *R. plancyi*, *R. porosa*, *R. ridibunda*, *R. saharica*, *R. shqipericica*, *R. shuchinae*, *R. terentievi*, *R. tenggerensis*); and the *Rana ridibunda*-*Rana lessonae* hybridogenetic complex species *R. esculenta* and *R. hispanica*.

(e) In the family Ambystomatidae: Mole salamanders. In the genus *Ambystomata*: *A. californiense*, *A. laterale*, *A. opacum*, *A. rosaceum*, *A. tigrinum*, except for the native species *A. tigrinum mavortium* Western tiger salamander, and *A. tigrinum melanostictum* Tiger salamander.

(f) In the family Amphiumidae one, two, and three toed salamanders or congo eels: All members of the genus *Amphiuma*.

(g) In the family Cryptobranchidae: Giant salamanders and hellbenders, all members of the genera *Andrias* and *Cryptobranchus*.

(h) In the family Dicamptodontidae, American giant salamanders, all members of the genus *Dicamptodon*, except for the native species: *Dicamptodon tenebrosus*, Pacific giant salamander, and *Dicamptodon copei*, Cope's giant salamander.

(i) In the family Hynobiidae: Mountain salamanders, all members of the genera *Batrachuperus*, *Hynobius*, *Liua*, *Onychodactylus*, *Pachyhynobius*, *Pseudohynobius*, *Ranodon*, and *Salamandrella*.

(j) In the family Plethodontidae, subfamily Desmognathinae: All members of the genus *Desmognathus*, dusky salamander.

(k) In the family Plethodontidae, subfamily Plethodontinae: All members of the genera *Eurycea* (American brook salamanders); *Gyrinophilus* (cave salamanders); *Hemidac-*

tylium (four-toed salamanders); Hydromantes and Pseudotriton (mud or red salamanders).

(l) In the family Proteidae, mudpuppies, all members of the genus Necturus and Proteus.

(m) In the family Salamandridae: Newts, all members of the genera Chioglossa; Echinotriton (mountain newts); Euproctus (European mt. salamander); Neurergus (Kurdistan newts); Notophthalmus (red-spotted newts); Pachytriton (Chinese newts); Paramesotriton (warty newts); Salamandrina (speckled salamander); Taricha except for the native species Taricha granulosa granulosa the Northern rough-skin newt, and Ichthyosaura and Triturus (alpine newts).

(n) In the family Sirenidae, sirens, all species of the genera Pseudobranchius and Siren.

(2) Reptiles:

(a) In the family Chelydridae, snapping turtles, all species.

(b) In the family Emydidae:

(i) Chinese pond turtles, all members of the genus Chinemys.

(ii) Pond turtles, all members of the genus Clemmys.

(iii) European pond turtle, Emys orbicularis.

(iv) Asian pond turtle, all members of the genus Mauremys.

(c) In the family Trionychidae, American soft shell turtles, all members of the genus Apalone.

(3) Crustaceans:

(a) Family Cercopagidae:

(i) Fish hook water flea, Cercopagis pengoi.

(ii) Spiny water flea, Bythotrephes cederstroemi.

(b) Family Cambaridae: Crayfish: All genera, except a person may possess and transport dead prohibited crayfish species obtained under the department's recreational crayfishing rules (WAC 220-56-336 (repealed) and 220-56-315 (repealed)). There is no daily limit, size limit, or sex restriction for prohibited crayfish species. All nonnative crayfish must be kept in a separate container from native crayfish. Release of any live crayfish species into waters other than the water being fished is prohibited.

(c) Family Parastacidae: Crayfish: All genera except Engaeos, and except the species Cherax quadricarinatus, Cherax papuanus, and Cherax tenuimanus.

(d) Family Spheromatidae: Burrowing isopod, Sphaeroma quoyanum.

(4) Fish:

(a) Family Amiidae: Bowfin, grinnel, or mudfish, Amia calva.

(b) Family Characidae: Piranha or caribe: All members of the genera Pygocentrus, Rooseveltiella, and Serrasalmus.

(c) Family Clariidae: Walking catfish: All members of the family.

(d) Family Cyprinidae:

(i) Fathead minnow, Pimephales promelas.

(ii) Carp, Grass (in the diploid form), Ctenopharyngodon idella.

(iii) Ide, silver orfe or golden orfe, Leuciscus idus.

(iv) Rudd, Scardinius erythrophthalmus.

(e) Family Gobiidae: Round goby, Neogobius melanostomus.

(f) Family Esocidae: Northern pike, Esox lucius: A person may possess and transport dead prohibited Northern pike obtained under the department's recreational sport fishing rules (WAC 220-56-100 (repealed) and 220-56-115 (repealed)). There is no minimum size, no daily limit, and no possession limit. Release of any live Northern pike into water other than the water being fished is prohibited.

(g) Family Lepisosteidae: Gar-pikes: All members of the family.

(5) Mammals: Family Myocastoridae: Nutria, Myocastor coypu.

(6) Molluscs: Family Gastropoda: New Zealand mud snail, Potamopyrgus antipodarum.

NEW SECTION

WAC 220-640-060 Prohibited level 3 aquatic animal species. The following species are classified as prohibited level 3 aquatic animal species:

(1) Amphibians:

(a) In the family Hylidae: Cricket frog, in the genus Hyla species in the group Arborea including: Hyla annectans, Hyla arborea, Hyla chinensis, Hyla hallowellii, Hyla immaculata, Hyla japonica, Hyla meridionalis, Hyla sanchiangensis, Hyla simplex, Hyla suweonensis, Hyla tsinlingensis, and Hyla zhaopingensis.

(b) In the family Pelobatidae, spadefoots, all species of the genus Pelobates including P. cultripes, P. fuscus, P. syriacus, and P. varaldii. All species of the genus Scaphiopus including: S. couchii, S. holbrookii, and S. hurterii. All species of the genus Spea including: S. bombifrons, S. hammondi, and S. multiplicata with the exception of the native species: Spea intermontana the great basin spadefoot.

(c) In the family Pipidae: African clawed frog, all members of the genera Silurana, and Xenopus.

(d) In the family Ranidae:

(i) American Bull frog, Rana (Lithobates) catesbeiana.

(ii) Holarctic brown frogs and Palearctic green frogs of the genus Rana, including the following: Rana arvalis group (R. arvalis, R. chaochiaoensis, R. chevronta); Rana chensinensis group (R. altaica, R. chensinensis, R. dybowskii, R. kukunoris, R. kunyuensis, R. ornativentris, R. pirica); Rana graeca group (R. graeca, R. italica); Rana japonica group (R. amurensis, R. aragonensis, R. japonica, R. omeimontis, R. zhenhaiensis); the subgenus Rugosa (Rana rugosa, Rana emeljanovi, Rana tientaisensis); Rana tagoi group (R. sakuraii, R. tagoi); Rana temporaria group (R. asiatica, R. dalmatina, R. honnorate, R. huanrenensis, R. iberica, R. latastei, R. macrocnemis, R. okinavana, R. pyrenaica, R. tsushimensis, R. zhengi); and in the Rana Pelophylax section, the subgenus Pelophylax (R. bedriagae, R. bergeri, R. cerigensis, R. chosonica, R. cretensis, R. demarchii, R. epeirotica, R. fukiensis, R. grafti, R. hubeiensis, R. lateralis, R. lessonae, R. nigrolineata, R. nigromaculata, R. perezi, R. plancyi, R. porosa, R. ridibunda, R. saharica, R. shqipericica, R. shuchinae, R. terentievi, R. tenggerensis); and the Rana ridibunda-Rana lessonae hybridogenetic complex species R. esculenta and R. hispanica.

(e) In the family Ambystomatidae: Mole salamanders. In the genus Ambystomata: A. californiense, A. laterale, A.

opacum, *A. rosaceum*, *A. tigrinum*, except for the native species *A. tigrinum mavortium* Western tiger salamander, and *A. tigrinum melanostictum* Tiger salamander.

(f) In the family Amphiumidae one-, two-, and three-toed salamanders or congo eels: All members of the genus *Amphiuma*.

(g) In the family Cryptobranchidae: Giant salamanders and hellbenders, all members of the genera *Andrias* and *Cryptobranchus*.

(h) In the family Dicamptodontidae, American giant salamanders, all members of the genus *Dicamptodon*, except for the native species: *Dicamptodon tenebrosus*, Pacific giant salamander, and *Dicamptodon copei*, Cope's giant salamander.

(i) In the family Hynobiidae: Mountain salamanders, all members of the genera *Batrachuperus*, *Hynobius*, *Liua*, *Onychodactylus*, *Pachyhynobius*, *Pseudohynobius*, *Ranodon*, and *Salamandrella*.

(j) In the family Plethodontidae, subfamily Desmognathinae: All members of the genus *Desmognathus*, dusky salamander.

(k) In the family Plethodontidae, subfamily Plethodontinae: All members of the genera *Eurycea* (American brook salamanders); *Gyrinophilus* (cave salamanders); *Hemidactylium* (four-toed salamanders); *Hydromantes* and *Pseudotriton* (mud or red salamanders).

(l) In the family Proteidae, mudpuppies, all members of the genus *Necturus* and *Proteus*.

(m) In the family Salamandridae: Newts, all members of the genera *Chioglossa*; *Eichinotriton* (mountain newts); *Euproctus* (European mt. salamander); *Neurergus* (Kurdistan newts); *Notophthalmus* (red-spotted newts); *Pachytriton* (Chinese newts); *Paramesotriton* (warty newts); *Salamandrina* (speckled salamander); *Taricha* except for the native species *Taricha granulosa granulosa* the Northern rough-skin newt, and *Ichthyosaura* and *Triturus* (alpine newts).

(n) In the family Sirenidae, sirens, all species of the genera *Pseudobranchius* and *Siren*.

(2) Reptiles:

(a) In the family Chelydridae, snapping turtles, all species.

(b) In the family Emydidae:

(i) Chinese pond turtles, all members of the genus *Chinemys*.

(ii) Pond turtles, all members of the genus *Clemmys*.

(iii) European pond turtle, *Emys orbicularis*.

(iv) Asian pond turtle, all members of the genus *Mauremys*.

(c) In the family Trionychidae, American soft shell turtles, all members of the genus *Apalone*.

(3) Crustaceans:

(a) Family Cercopagidae:

(i) Fish hook water flea, *Cercopagis pengoi*.

(ii) Spiny water flea, *Bythotrephes cederstroemi*.

(b) Family Cambaridae: Crayfish: All genera, except a person may possess and transport dead prohibited crayfish species obtained under the department's recreational crayfishing rules (WAC 220-56-336 (repealed) and 220-56-315 (repealed)). There is no daily limit, size limit, or sex restriction for prohibited crayfish species. All nonnative crayfish

must be kept in a separate container from native crayfish. Release of any live crayfish species into waters other than the water being fished is prohibited.

(c) Family Parastacidae: Crayfish: All genera except *Engaeos*, and except the species *Cherax quadricarinatus*, *Cherax papuanus*, and *Cherax tenuimanus*.

(d) Family Spheromatidae: Burrowing isopod, *Sphaeroma quoyanum*.

(4) Fish:

(a) Family Amiidae: Bowfin, grinnel, or mudfish, *Amia calva*.

(b) Family Characidae: Piranha or caribe: All members of the genera *Pygocentrus*, *Rooseveltiella*, and *Serrasalmus*.

(c) Family Clariidae: Walking catfish: All members of the family.

(d) Family Cyprinidae:

(i) Fathead minnow, *Pimephales promelas*.

(ii) Carp, Grass (in the diploid form), *Ctenopharyngodon idella*.

(iii) Ide, silver orfe or golden orfe, *Leuciscus idus*.

(iv) Rudd, *Scardinius erythrophthalmus*.

(e) Family Gobiidae: Round goby, *Neogobius melanostomus*.

(f) Family Esocidae: Northern pike, *Esox lucius*: A person may possess and transport dead prohibited Northern pike obtained under the department's recreational sport fishing rules (WAC 220-56-100 (repealed) and 220-56-115 (repealed)). There is no minimum size, no daily limit, and no possession limit. Release of any live Northern pike into water other than the water being fished is prohibited.

(g) Family Lepisosteidae: Gar-pikes: All members of the family.

(5) Mammals: Family Myocastoridae: Nutria, *Myocastor coypu*.

(6) Molluscs: Family Gastropoda: New Zealand mud snail, *Potamopyrgus antipodarum*.

NEW SECTION

WAC 220-640-070 Regulated Type A aquatic animal species. The following species are classified as regulated Type A aquatic animal species:

(1) Fish:

(a) All fish classified as food fish under WAC 220-300-370 and game fish WAC 220-300-380.

(b) Family Cichlidae: Tilapia: All members of the genera *Tilapia*, *Oneochromis*, and *Sartheradon*.

(c) Family Clupeidae: Alewife, *Alosa pseudoharengus*.

(d) Family Cyprinidae:

(i) Common carp, koi, *Cyprinus carpio*.

(ii) Goldfish, *Carassius auratus*.

(iii) Tench, *Tinca tinca*.

(iv) Grass carp (in the triploid form), *Ctenopharyngodon idella*.

(e) Family Poeciliidae: Mosquito fish, *Gambusia affinis*.

(2) Shellfish: All shellfish classified under WAC 220-320-010.

NEW SECTION

WAC 220-640-080 Regulated Type B aquatic animal species. The following species are classified as regulated Type B aquatic animal species: None.

NEW SECTION

WAC 220-640-090 Regulated Type C aquatic animal species. The following species are classified as regulated Type C aquatic animal species: None.

NEW SECTION

WAC 220-640-100 Scientific research/display permits and monitoring and control programs—Requirements for possession of prohibited aquatic animal species.

(1) Scientific research or display permit: The director may authorize, by prior written permit, a person to possess prohibited level 1, prohibited level 2, or prohibited level 3 species specimens for scientific research or display, provided that:

(a) Specimens are confined to a secure facility, defined as an enclosure that will prevent the escape or release of the prohibited species to include all stages of species development and body parts;

(b) Facility is not a natural watercourse, and is also inaccessible to wildlife or other animals that could transport prohibited species to include all stages of species development and body parts;

(c) Specimens are not transferred to any other facility without written approval by the director or designee;

(d) All zebra and quagga mussels are incinerated or chemically preserved at the conclusion of the project, and the enclosure, holding waters and all equipment are decontaminated. All other prohibited species must be killed at the conclusion of the project and either chemically preserved or disposed of in a landfill; and

(e) The permittee must provide an annual report to the department, no later than January 31st of the following year, on a form provided by the department, describing the number, size, and location of prohibited species enclosures and general nature of the research.

(2) Monitoring and control programs: The director may authorize persons working within the scope and supervision of a department-sponsored monitoring and control program to capture, possess and destroy prohibited level 1, prohibited level 2, or prohibited level 3 species specimens provided that:

(a) The persons have completed a mandatory training program and are certified by the department;

(b) The persons have a permit authorized by the director or designee in possession;

(c) All prohibited species are disposed of in accordance with the monitoring and control program; and

(d) Participants must submit a report to the department within thirty days of any monitoring or control activity in accordance with the specifications outlined in the monitoring and control program.

NEW SECTION

WAC 220-640-110 Importation of live aquatic organisms—Required certification of "zebra/quagga mussel free." (1) It is unlawful to import live aquatic organisms, including plants, for release into state waters from any state or Canadian province east of the Continental Divide without each importation being accompanied by a zebra mussel (*Dreissena polymorpha*)/Quagga mussel (*Dreissena rostriformis bugensis*)-free certificate issued by the department and signed by the supplier of the aquatic organisms.

(2) The original receiver in the state of Washington of the shipment of aquatic organisms is required to retain the zebra and quagga mussel-free certificate for two years.

(3) Secondary receivers, while in possession of live aquatic organisms, are required to retain invoices or other records showing who the original receiver was.

NEW SECTION

WAC 220-640-120 Capture of prohibited aquatic animals in Washington waters—Requirements. (1) Capture of prohibited species in state waters: Any Prohibited level 1, level 2, or prohibited level 3 species that are captured in state waters must be:

(a) Immediately killed and removed from within the riparian perimeter of the body of water; or

(b) Immediately returned to the water from which the species was captured.

(2) The riparian perimeter includes all boat launch, park, private residences, or commercial businesses within a quarter-mile from the edge of the state water.

(3) Any prohibited species captured (killed or released) must be reported to WDFW within forty-eight hours of the capture.

(4) It is lawful to possess the dead prohibited species taken from state waters as long as it has been reported to WDFW. No permit is required for possession under this section.

NEW SECTION

WAC 220-640-130 Allowable possession of prohibited aquatic animals if acquired prior to classification—Requirement of documentation. A person who possessed a prohibited aquatic animal species prior to the time the species was classified as prohibited may continue to hold the animal or animals for the life of the animals, provided that:

(1) The person must maintain proof of possession prior to the classification.

(2) The animals may not be transferred to another owner within the state.

(3) The person must comply with all provisions of this section.

(4) The animals must be prevented from reproducing, or if prevention is impracticable, the progeny must be destroyed.