WSR 17-23-021
EXPEDITED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed November 6, 2017, 1:39 p.m.]

Title of Rule and Other Identifying Information: This rule is being proposed under an expedited rule-making process. If you object to the use of this expedited rule-making process your objections must be sent in writing to Barbara Sandahl, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504 or email pdc@pda.wa.gov [pdc@pdc.wa.gov].

Technical amendments to WAC 390-32-030.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Two WAC are referenced in WAC 390-32-030 which have been decodified and reference should be made to the current citations. This change will have no material effect on the WAC and will reduce possible confusion by the public.

Reasons Supporting Proposal: WAC 390-32-030 references WAC 390-37-055, the correct reference is WAC 390-37-060, and WAC 390-37-056 should be referenced as WAC 390-37-061. The changes will reflect the correct WAC in both cases.

Statutory Authority for Adoption: RCW 42.17A-110(1) [42.17A.110(1)].

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

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Barbara Sandahl, Olympia, Washington 98501, 360-753-1111.

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: Will remove decodified WAC reference and replace with current WAC reference. Technical in nature.

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 Barbara Sandahl, PDC, 711 Capitol Way, phone 360-753-1111, email pdc@pdc.wa.gov [pdc@pdc.wa.gov], AND RECEIVED BY January 23, 2018.

November 3, 2017
B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 17-03-028, filed 1/6/17, effective 2/6/17)

WAC 390-32-030 Complaint publication—Fair Campaign Practices Code—Alternative to investigation or adjudicative proceeding. (1) Written and signed complaints alleging a violation of one or more specific provisions of WAC 390-32-010. The Fair Campaign Practices Code may be submitted to the commission by any person.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint under subsection (1) of this section, the executive director shall forward a copy of the complaint to the respondent within twenty-four hours, accompanied by a request for a response to the complaint returned within five business days from the date of mailing.

(b) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five business days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five business days, the complaint shall be made public without a response.

(c) The commission will not issue comments or opinions about complaints or responses received under this subsection.

(2) As provided by WAC ((~~390-37-055~~)) 390-37-060, and considering the factors set forth in WAC ((~~390-37-056~~)) 390-37-061, the executive director may authorize the processing of a complaint alleging violations of chapter 42.17A RCW or Title 390 WAC according to the complaint publication process provided in this section.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint authorized by the executive director for processing under this subsection, the executive director shall forward a copy of the complaint to the respondent, accompanied by a request for a response to the complaint to be returned within five business days from the date of mailing.

(b) Complaints authorized by the executive director for processing under this subsection shall be forwarded to the respondent within eight days prior to the date that ballots must be available under RCW 29A.40.070(1).

(c) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five business days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five days, the complaint shall be made public without a response.

(d) Except as provided under (a) or (b) of this subsection, the publication of complaints or responses under this subsection shall constitute the final disposition of complaints authorized by the executive director for processing under this section.

(3) Following the processing of a complaint under subsection (2) of this section, the executive director shall review the complaint and any response received. Whenever a complaint and response indicate that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant stat-

utes and rules, considering the factors set forth in WAC ((~~390-37-056~~)) 390-37-061, the executive director may:

(a) Dispose of the complaint through an additional alternative response as provided in WAC ((~~390-37-055~~)) 390-37-060; or

(b) Direct a formal investigation be conducted.

(4) The commission will make no attempt to secure a reply to and will make no public release of complaints received within eight days of the date that ballots must be mailed to voters under RCW 29A.40.070(1).

(5) The filing of a complaint with the commission under this section or any provision of chapter 390-37 WAC constitutes implied consent to have the complainant's identity disclosed.

WSR 17-23-045
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed November 8, 2017, 1:34 p.m.]

Title of Rule and Other Identifying Information: WAC 458-14-005 Definitions, 458-14-046 Regularly convened session—Board duties—Presumption—~~Equalization to revaluation year~~, 458-14-116 Orders of the board—Notice of value adjustment—Effective date, 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption, 458-19-070 Five dollars and ninety cents statutory aggregate limit calculation, and 458-19-075 Constitutional one percent limit calculation.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-14-005, 458-14-046, and 458-14-116 are being amended to incorporate language from:

- SSB 5133 (2017) that clarifies when boards of equalization must begin its regularly convened session and when the board must serve its order for value adjustments; and
- SSB 5275 (2015) that explains all counties are on an annual revaluation cycle for real and personal property.

WAC 458-16-165 is being amended to incorporate language from:

- SHB 1526 (2017) that created a new property tax exemption for senior citizen multipurpose centers; and
- SSB 6211 (2016) that created a new property tax exemption for nonprofit homeownership development entities.

WAC 458-19-070 and 458-19-075 are being amended to incorporate language from:

- SHB 1467 (2017) that explains prorating for regional fire protection service authorities;
- EHB 2242 (2017) that provides for basic education funding;
- HB 1940 (2015) that explains prorating for flood control zone districts; and
- 2ESB 5638 (2011) that explains the prorating for metropolitan park districts.

All rules listed above also include 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: WAC 458-14-005, 458-14-046, and 458-14-116 are being updated so boards of equalization understand when it must meet for its regularly convened session, when to send notice to appellants when a value adjustment is made, and to remove outdated language regarding county revaluation cycles.

WAC 458-16-165 is being updated so county assessor staff and applicants understand the applicable requirements for two new property tax exemptions.

WAC 458-19-070 and 458-19-075 are being updated so county assessor staff have guidelines for prorating different types of levies if the levies for that year exceed either the $5.90 statutory aggregate limit or the constitutional one percent rate.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.36.389, 84.52.0502, 84.55.060.

Statute Being Implemented: RCW 84.36.049, 84.36.670, 84.41.030, 84.41.041, 84.48.010, 84.48.034, 84.52.010, 84.52.043, 84.52.065, 84.52.120, 84.52.125, 84.52.816, 84.55.092.

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: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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 2011, 2015, 2016, and 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 LeslieMu@dor.wa.gov, AND RECEIVED BY January 22, 2018.

November 8, 2017
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-034, filed 6/14/06, effective 7/15/06)

WAC 458-14-005 Definitions. This rule includes the definitions of terms used throughout chapter 458-14 WAC regarding county boards of equalization. For the purposes of chapter 458-14 WAC, the following definitions apply ((~~to chapter 458-14 WAC~~)) unless the context requires otherwise:

(1) "Alternate member" means a board member appointed by the county legislative authority to serve in the temporary absence of a regular board member.

(2) "Arm's length transaction" means a transaction between parties under no duress, not motivated by special purposes, and unaffected by personal or economic relationships between themselves, both seeking to maximize their positions from the transaction.

(3) "Assessed value" means the value of real or personal property determined by an assessor.

(4) "Assessment roll" means the record which contains the assessed values of real and personal property in the county.

(5) "Assessment year" means the calendar year when ((~~the~~)) real and personal property is listed and valued by the assessor and precedes the calendar year when the tax is due and payable.

(6) "Assessor" means a county assessor or any person authorized to act on behalf of the assessor.

(7) "Board" means a county board of equalization.

(8) "County financial authority" means the county treasurer or any other person in a county responsible for billing and collecting property taxes.

(9) "County legislative authority" means the board of county commissioners or the county legislative body as established under a home rule charter.

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

(11) "Documentary evidence" means comparable sales data, cost data, income data, or any other item of evidence, including maps or photographs, which makes the existence of relevant facts more or less probable.

(12) "Equalize" means ensuring that comparable properties are comparably valued and refers to the process by which the county board of equalization reviews the valuation of real and personal property on the assessment roll as ((~~returned~~)) certified by the assessor, so that each tract or lot of real property and each article or class of personal property is entered on the assessment roll at one hundred percent of its true and fair value.

(13) "Interim member" means a board member appointed by the county legislative authority to fill a vacancy ((~~caused by the resignation or permanent incapacity~~)) of a regular board member. The interim member ((~~shall~~)) serves for the balance of the regular board member's term.

(14) "Manifest error" means an error in listing or assessment, which does not involve a revaluation of property, including the following:

(a) An error in the legal description;

(b) A clerical or posting error;

(c) Double assessments;

(d) Misapplication of statistical data;

(e) Incorrect characteristic data;

(f) Incorrect placement of improvements;

(g) Erroneous measurements;

(h) The assessment of property exempted by law from taxation;

(i) The failure to deduct the exemption allowed by law to the head of a family; or

(j) Any other error which can be corrected by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment.

(15) "Market value" means 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 in reason be applied. True and fair value is the same as market value or fair market value.

(16) ((~~"May" as used in this chapter is expressly intended to be permissive.~~

~~(17)~~)) "Member" means a regular member of a board.

(((~~18~~))) (17) "Reconvene" refers to the board's limited power to meet to equalize assessments in the current assessment year after the board's regularly convened session is adjourned, or to meet to hear matters concerning prior years.

(((~~19~~))) (18) "Regularly convened session" means the statutorily mandated session of three to twenty-eight days ((~~period~~)) commencing annually on the later of:

(a) July 15th((~~, or~~));

(b) The first business day following July 15th ((~~if it should fall~~)) when it occurs on a Saturday, Sunday, or holiday; or

(c) Within fourteen days of the assessor certifying the county assessment roll to the board.

(((~~20~~))) (19) "Revaluation" means a change in value of property based upon an exercise of appraisal judgment.

(((~~21~~))) (20) "Shall" as used in this chapter, unless the context indicates otherwise, is expressly intended to be mandatory.

(((~~22~~))) (21) "Taxpayer" means the person or entity whose name and address ((~~appears~~)) is listed on the assessment rolls, or their duly authorized agent, personal representative, or guardian. "Taxpayer" also includes the person or entity whose name and address should ((~~appear~~)) be listed on the assessment rolls as the owner of the property, but because of a mistake((~~,~~)) or delay,((~~or inadvertence does not so appear;~~)) is not listed. For example, ((~~in an instance~~)) when the assessment rolls have not yet been updated after a transfer of property.

A lessee may also be considered a "taxpayer" solely for pursuing a property tax appeal if the property owner ((~~may contract~~)) contracted with ((~~a~~)) the lessee for the purpose of making the lessee responsible for the payment of the property

tax ((~~and the lessee may be deemed to be a taxpayer solely for the purpose of pursuing property tax appeals in his or her own name~~)). If the contract is made, the lessee ((~~shall be~~)) is responsible for providing the county assessor with a proper and current mailing address.

(((~~23~~))) (22) "Tax year" means the calendar year when property taxes are due and payable.

AMENDATORY SECTION (Amending WSR 06-13-034, filed 6/14/06, effective 7/15/06)

WAC 458-14-046 Regularly convened session—Board duties—Presumption((~~—Equalization to revaluation year~~)). (1) **Introduction.** This rule explains the process described in RCW 84.48.010 ((~~requires~~)), requiring the boards of equalization (board) to meet annually ((~~beginning July 15th~~)) for its regularly convened session.

(2) **Other rules to reference.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-14-015 Jurisdiction of county boards of equalization.

(b) WAC 458-14-025 Assessment roll adjustments not requiring board action.

(c) WAC 458-14-026 Assessment roll corrections agreed to by taxpayer.

(d) WAC 458-14-076 Hearings on petitions—Withdrawal.

(3) **Definitions.** The definitions found in WAC 458-14-005 apply to this rule.

(4) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(5) **Regularly convened session.**

(a) The board must meet in open session for the purpose of equalizing property values in the county and to hear taxpayer appeals. The board must ((~~remain in session not less than three days, nor more than twenty-eight days, provided that the board,~~)) meet annually, on the later of:

(i) July 15th;

(ii) The first business day following July 15th when it occurs on a Saturday, Sunday, or holiday; or

(iii) Within fourteen days of the assessor certifying the county assessment roll to the board.

(b) The board must meet for a minimum of three days during their regular convened session, which can last up to twenty-eight days.

(c) With the approval of the county legislative authority, the board may ((~~convene~~)) reconvene at any time ((~~when~~)) if the number of taxpayer petitions filed exceeds twenty-five, or ten percent of the number of petitions filed in the preceding year, whichever is greater((~~. It is only during this twenty-eight day session that the board has the authority to equalize property values on its own initiative~~)).

(((~~2~~))) (d) The board has the authority, on its own initiative, to equalize property values during its regularly convened session.

(e) At its regularly convened session, the board must adjust the current assessment year's value of property, both real and personal, to its true and fair value, but only if the board finds that the assessed value is not correct based upon:

(((~~a~~))) (i) Information available to the board and/or the board's own examination and comparison of the assessment roll; or

(((~~b~~))) (ii) A request by the assessor, together with necessary valuation information, for correction of an error which correction requires appraisal judgment.

(((~~3~~))) (f) The board must ((~~also~~)) hold hearings ((~~in accordance with WAC 458-14-076~~)) on properly and timely filed taxpayer petitions.

(((~~4~~))) (g) The board must consider any taxpayer appeals from an assessor's decision with respect to a tax exemption of real or personal property, and determine:

(i) If the taxpayer is entitled to the tax exemption; and

(ii) If so, the amount of the tax exemption.

(h) At the conclusion of a board's regularly convened session, it must provide the department with its adjournment date. The adjournment date assists the department in determining whether a board is eligible to reconvene.

(6) **Presumption of correctness.** The assessor's valuation as certified to the board of equalization under RCW 84.40.320 is presumed correct, except with respect to subsection (((~~2~~)(~~b~~))) (5)(e)(ii) of this ((~~section~~)) rule. The taxpayer may overcome the presumption of correctness in favor of the assessor's valuation as follows:

(a) If a taxpayer shows by clear, cogent, and convincing evidence that the assessor's overall approach to valuation, or the assessor's valuation method, is flawed or invalid, then the presumption of correctness does not apply. For example, the taxpayer may be able to prove that the assessor failed to deduct any amount for depreciation when using the cost approach to value on an existing improvement. In such a case, the taxpayer only needs to prove the correct value of the property by a preponderance of the evidence.

(b) If a taxpayer shows by clear, cogent, and convincing evidence that a specific value within an overall assessed value is incorrect, then the standard of proof shifts to a preponderance of the evidence for all contested issues related to that specific value. For example, the overall assessment of complex industrial properties is often made up of particular values for portions of the property being appraised. An assessor's error on one value decision does not necessarily invalidate the entire property's assessment, and the presumption of correctness in favor of the assessor remains with respect to the remainder of the property.

(((~~(5) In counties which are not on an annual revaluation cycle, the board must, in relation to a taxpayer appeal or otherwise, equalize real property values to true and fair value as of January 1 of the year in which the property was last revalued by the county assessor according to an approved revaluation cycle.~~

~~(6) The board must also consider any taxpayer appeals from an assessor's decision with respect to tax exemption of real or personal property, and determine:~~

~~(a) If the taxpayer is entitled to an exemption; and~~

~~(b) If so, the amount thereof.~~))

AMENDATORY SECTION (Amending WSR 06-13-034, filed 6/14/06, effective 7/15/06)

WAC 458-14-116 Orders of the board—Notice of value adjustment—Effective date. (1) **Introduction.** This rule explains orders issued by the county boards of equalization (board).

(2) **Other rules to reference.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-14-095 Record of hearings.

(b) WAC 458-14-105 Hearings—Open sessions—Exceptions.

(3) **Definitions.** The definitions found in WAC 458-14-005 apply to this rule.

(4) **Board orders.**

(a) All orders issued by a board must be on ((~~the~~)) a form provided or approved by the department and must state the facts and evidence upon which the decision is based and the reason(s) for the decision.

(((~~2~~))) (b) All orders of the board must be signed by the ((~~chairman~~)) chairperson of the board, provided, ((~~however,~~)) that the ((~~chairman~~)) chairperson may, by written designation, authorize other members or the board clerk to sign orders on behalf of the ((~~chairman~~)) chairperson.

(c) An order issued by the board only applies to the assessment year that was appealed to the board.

(((~~3) After a hearing,~~)) (5) **Valuation adjustments.** If a board adjusts or sustains the valuation of a parcel of real property or an item of personal property, ((~~the board~~)) it must serve or mail notice of the ((~~decision~~)) board order to the ((~~appellant~~)) taxpayer and the assessor within forty-five days of the hearing.

(a) If the valuation is reduced, the new valuation ((~~shall~~)) will take effect immediately, subject to the parties' right to appeal the decision.

(b) If the valuation is increased, the increased valuation ((~~shall~~)) will become effective thirty days after the date of service or mailing of the ((~~notice of the adjustment unless~~)) order. However, if the taxpayer or assessor files a timely appeal petition to the board of tax appeals ((~~in accordance with WAC 458-14-170, before the effective date. If such a petition is filed~~)), the increase does not take effect until the board of tax appeals ((~~disposes of the matter~~)) has issued its decision.

(((~~4~~))) (c) If the valuation is increased without a petition having been filed, the increased valuation ((~~shall~~)) will become effective thirty days after the date of service or mailing of the ((~~notice of the adjustment~~)) order to the assessor and the taxpayer unless the assessor or taxpayer files a petition with the board on or before the effective date of the order.

(((~~5) In counties with a multiyear revaluation cycle, orders issued by the board shall have effect up to the end of the revaluation cycle used by the assessor and approved by the department. The board order may contain a specific statement notifying the parties of this effect. If there has been an intervening change in assessed value of the taxpayer's property between the time the petition was filed and the date the board's order is issued, the board's order shall have effect only up to the effective date of the change in assessed value. The same effect will also apply when a valuation adjustment is ordered upon appeal of a board order.~~

(~~6) In counties with a multiyear revaluation cycle, once the board has issued a decision with respect to a taxpayer's real property, and when there has been no intervening change in assessed value, any subsequent appeal to the board:~~

(~~a) By the same taxpayer relating to the same property shall be treated as a motion for reconsideration. The board must hold a hearing on the appeal/motion only if the taxpayer can show that there is newly discovered evidence that materially affects the basis for the board's decision and the taxpayer can show that the evidence could not with reasonable diligence have been discovered and produced at the original hearing;~~

(~~b) By a taxpayer who acquired the property from the taxpayer to whom the board decision was issued, and for a subsequent assessment year, shall be treated as an original appeal.~~))

AMENDATORY SECTION (Amending WSR 15-07-021, filed 3/10/15, effective 4/10/15)

WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption. (1) **Introduction.** This rule describes the conditions in RCW 84.36.805 and 84.36.840 that most nonprofit organizations, associations, and corporations must satisfy in order to receive ((~~the~~)) a property tax exemption ((~~authorized in~~)) under chapter 84.36 RCW((~~, most nonprofit organizations, associations, and corporations must also satisfy the conditions set forth in RCW 84.36.805 and 84.36.840. This rule describes these conditions~~)).

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

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

(b) "Inadvertent use" or "inadvertently used" means the use of the property in a manner inconsistent with the purpose for which the exemption is granted through carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt property.

(d) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of maintenance and operation expenses attributable to the portion of the property loaned or rented.

(e) "Personal service contract" means a contract between a nonprofit organization, association, or corporation and an independent contractor under which the independent contractor provides a service on the organization's, association's, or corporation's tax exempt property. (See example contained in subsection (((~~4~~))) (5)(c) of this rule.)

(3) **Examples**. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(4) **Applicability of this rule.** This rule does not apply to exemptions granted to:

(a) Public burying grounds or cemeteries under RCW 84.36.020;

(b) Churches, parsonages, convents, and church grounds under RCW 84.36.020;

(c) Administrative offices of nonprofit recognized religious organizations under RCW 84.36.032;

(d) Nonprofit homeownership development entities under RCW 84.36.049;

(e) Water distribution property owned by a nonprofit corporation or cooperative association under RCW 84.36.250; ((~~or~~

~~(e)~~)) (f) Nonprofit fair associations under RCW 84.36.480(2); or

(g) Multipurpose senior citizen centers under RCW 84.36.670.

(((~~(4)~~))) (5) **Exclusive use.** Exempt property must be exclusively used for the actual operation of the activity for which the nonprofit organization, association, corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, received the property tax exemption unless the authorizing statute states otherwise. The property exempted from taxation must not exceed an area reasonably necessary to facilitate the exempt purpose.

(a) Loan or rental of exempt property. As a general rule, the loan or rental of exempt property does not make it taxable if:

(i) The rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060 (1)(a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented.

(b) Fund-raising events. The use of exempt property for fund-raising events conducted by an exempt organization, association, corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, does not jeopardize the exemption if the fund-raising events are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising event limited to less than five days in length that disburses fifty-one percent or more of the profits realized from the event to the exempt nonprofit entity conducting the fund-raising event.

(i) Example 1. A nonprofit social service agency holds an art auction in the auditorium of its tax exempt facility to raise funds. The event must be less than five days in length and fifty-one percent of the profits must be disbursed to the social service agency because the fund-raising event is being held on exempt property.

(ii) Example 2. A nonprofit school has a magazine subscription drive to raise funds and the subscriptions are being sold door-to-door by students. There are no limitations on this fund-raising event because the subscription drive is not being held on exempt property.

(c) Personal service contract - Exempt programs. Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(i) The program is compatible and consistent with the purposes of the exempt organization, association, or corporation;

(ii) The exempt organization, association, or corporation maintains separate financial records as to all receipts and expenses related to the program; and

(iii) A summary of all receipts and expenses of the program are provided to the department upon request.

(iv) Example 3. A nonprofit school may decide to contract with a provider to offer aerobic classes to promote general health and fitness. All brochures and bulletins advertising these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobics instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

(d) Personal service contract - Nonexempt programs. Programs provided under a personal service contract (i) that require the contractor to reimburse the nonprofit organization for program expenses or (ii) in which the instructor is paid a fee based on the number of people who attend the program will be viewed as a rental agreement and will subject the property to property tax.

(e) Inadvertent use. An inadvertent use of the property in a manner inconsistent with the purpose for which the exemption was granted does not subject the property to tax if the inadvertent use is not part of a pattern of use. A "pattern of use" is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(((~~(5)~~))) (6) **No discrimination allowed.** The exempt property and the services offered must be available to all persons regardless of race, color, national origin, or ancestry.

(((~~(6)~~))) (7) **Compliance with licensing or certification requirements.** A nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW seeking or receiving a property tax exemption must comply with all applicable licensing and certification requirements imposed by law or regulation.

(((~~(7)~~))) (8) **Property sold subject to an option to repurchase.** Property sold to a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW with an option to be repurchased by the seller cannot qualify for an exemption. This prohibition does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition of RCW 35.82.210 (2)(a); or

(e) A housing authority established under RCW 35.82.300.

(((~~(8)~~))) (9) **Duty to produce financial records.** In order to determine whether a nonprofit entity is entitled to receive

a property tax exemption under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the entity claiming exemption must submit a signed statement made under oath, with the department. This sworn statement must include a declaration that the income, receipts, and donations of the entity seeking the exemption have been used to pay the actual expenses incurred to maintain and operate the exempt facility or for its capital expenditures and to no other purpose. It must also include a statement listing the receipts and disbursements of the organization, association, or corporation. This statement must be made on a form prescribed and furnished by the department.

(a) The provisions of this subsection do not apply to an entity either applying for or receiving an exemption under RCW 84.36.020 or 84.36.030.

(b) This signed statement must be submitted on or before March 31st each year by any entity currently receiving a tax exemption. If this statement is not received on or before March 31st, the department will remove the tax exemption from the property. However, the department will allow a reasonable extension of time for filing if the exempt entity has submitted a written request for an extension on or before the required filing date and for good cause.

(((~~(9)~~))) (10) **Caretaker's residence.** If a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW exempt from property tax under chapter 84.36 RCW employs a caretaker to provide either security or maintenance services and the caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance, patrolling the exempt property, and routine maintenance services;

(b) The nonprofit entity, hospital established under chapter 36.62 RCW, or the public hospital district established under chapter 70.44 RCW demonstrates the need for a caretaker at the facility;

(c) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utility expenses created by the caretaker's presence is not considered rent.

(((~~(10)~~))) (11) **Nonexempt uses of property.** The use of property exempt under this chapter, other than as specifically authorized by this chapter, nullifies the exemption otherwise available for the property for the assessment year. However, the exemption is not nullified by the use of the property by any individual, group, or entity, where such use is not otherwise authorized by this chapter, for not more than fifty days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations do not include days for setup and takedown activities that take place immediately preceding or following a meeting or other event. If these requirements are not met, the exemption is removed for the affected portion of the property for that assessment year.

(((~~(11)~~))) (12) **Segregation of nonqualifying property.** Any portion of exempt property not meeting the qualifications of this rule will lose its exempt status. Nonqualifying property must be segregated from property used for exempt purposes. For example, if a portion of a building owned by a nonprofit hospital is rented to a sandwich shop, this portion of the hospital must be segregated from the remainder of the building that is being used for exempt hospital purposes. The portion of the building rented to the sandwich shop is subject to property tax.

AMENDATORY SECTION (Amending WSR 16-02-126, filed 1/6/16, effective 2/6/16)

WAC 458-19-070 Five dollars and ninety cents statutory aggregate limit calculation. (1) **Introduction.** The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed five dollars and ninety cents per thousand dollars of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recomputes the levy rates and establishes a new consolidated levy rate in the manner set forth in RCW 84.52.010. This ((~~section~~)) rule describes the prorationing process used to establish a consolidated levy rate when the assessor finds the statutory aggregate levy rate exceeds five dollars and ninety cents. If prorationing is required, the five dollar and ninety cents limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value:

(a) Levies by the state;

(b) Levies by or for port or public utility districts;

(c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;

(d) Levies by or for county ferry districts under RCW 36.54.130;

(e) Levies for acquiring conservation futures under RCW 84.34.230;

(f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;

(g) Levies for financing affordable housing for very low-income households under RCW 84.52.105;

(h) The portion of metropolitan park district levies protected under RCW 84.52.120;

(i) The portions of levies by fire protection districts ((~~levies~~)) and regional fire protection service authorities protected under RCW 84.52.125;

(j) Levies for criminal justice purposes under RCW 84.52.135;

(k) Levies for transit-related purposes by a county under RCW 84.52.140;

(l) The protected portion of the levies imposed under RCW ((~~86.15.160~~)) 84.52.816 by flood control zone districts ((~~in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county~~)); and

(m) Levies imposed by a regional transit authority under RCW 81.104.175.

(3) **Prorationing under consolidated levy rate limitation.** RCW 84.52.010 sets forth the prorationing order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. The order contained in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of five dollars and ninety cents.

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this ((~~section~~)) rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate levy rates requested by all affected taxing districts in the tax code area. If this total is less than five dollars and ninety cents per thousand dollars of assessed value, no prorationing is necessary. If this total levy rate is more than five dollars and ninety cents, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from $5.90 the levy rates of the county and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125, a fire protection district((~~s~~)) or regional fire protection service authority may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from prorationing.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.125 come into play; that is, a fire protection district or regional fire protection service authority may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from prorationing under RCW 84.52.043(2), if the total levies would otherwise be prorated under RCW 84.52.010 ((~~(2)(c)~~)) (3)(a)(iii) with respect to the five-dollar and ninety cent per thousand dollars of assessed value limit. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent per thousand dollars of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the twenty-five cent per thousand dollars of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts other than the portion of a levy protected under RCW ((~~84.52.815~~)) 84.52.816.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080 until the remaining levy capacity equals zero.

(4) **Example.**

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County County Road	1.8000 2.2500	NONE NONE	1.8000 2.2500	 1.850
Library Fire Hospital	.5000 .5000 .5000	NONE NONE NONE	.5000 .5000 .5000	 .350
Fire	.2000	NONE	.2000	.150
Cemetery Hospital	.1125 .2500	.4138 .4138	.0466 .1034	
Totals	6.1125		5.90	

((~~1.~~)) (a) Beginning with the limit of $5.90, subtract the original certified levy rates for the county and county road taxing districts leaving $1.85 available for the remaining districts.

((~~2.~~)) (b) Subtract the total of the levy rates for each district within the next tier: The library's $.50, the fire district's $.50 and the hospital's $.50 = $1.50, which leaves $.35 available for the remaining districts.

((~~3.~~)) (c) Subtract the fire district's additional $.20 levy rate, which leaves $.15 available for the remaining districts.

((~~4.~~)) (d) The remaining $.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy $.1125 and the hospital district sought to levy $.25. The proration factor is arrived at by dividing the amount available ($.15) by the original levy rates ($.3625) requested within that tier resulting in a proration factor of .4138. ((~~And~~)) Finally, the original levy rates in this tier of $.1125 and $.25 for the cemetery and hospital, respectively, are multiplied by the proration factor.

AMENDATORY SECTION (Amending WSR 16-02-126, filed 1/6/16, effective 2/6/16)

WAC 458-19-075 Constitutional one percent limit calculation. (1) **Introduction.** The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based upon the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in computing property taxes. This ((~~section~~)) rule explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the $5.90 statutory aggregate dollar rate limit is not exceeded.

(2) **Preliminary calculations.** After prorationing under RCW 84.52.043 (the five dollar and ninety cent per thousand dollars of assessed value limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add all the regular levy rates, except the rates for port and public utility districts, in the tax code area, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after prorationing under RCW 84.52.043 has occurred. The

levy rates for port and public utility districts are not included in this computation because they are not subject to the constitutional one percent limit. The rates for the following regular levies are used to calculate the combined levy rate of any particular tax code area:

(i) The local aggregate rate specified in RCW 84.52.065 for the state levy;

(ii) Levies by or for county ferry districts under RCW 36.54.130;

(iii) Levies for acquiring conservation futures under RCW 84.34.230;

(iv) Levies for emergency medical care or emergency medical services under RCW 84.52.069;

(v) Levies for financing affordable housing for very low-income households under RCW 84.52.105;

(vi) The portion of metropolitan park district levies protected under RCW 84.52.120;

(vii) The portions of levies by fire protection districts ((~~levies~~)) and regional fire protection service authorities protected under RCW 84.52.125;

(viii) Levies for criminal justice purposes under RCW 84.52.135;

(ix) Levies for transit-related purposes by a county with a population of one million five hundred thousand or more under RCW 84.52.140;

(x) The protected portion of the levies imposed under RCW ((~~86.15.160~~)) 84.52.816 by flood control zone districts ((~~in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county~~)); and

(xi) Levies imposed, if any, by a regional transit authority under RCW 81.104.175.

(b) Second, divide ten dollars by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Prorationing - Constitutional one percent limit.** RCW 84.52.010 sets forth the prorationing order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded.

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this ((~~section~~)) rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the constitutional one percent limit is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis.

If the constitutional one percent limit is exceeded after performing the preliminary calculations described in subsection (2) of this ((~~section~~)) rule, the following levies must be reduced or eliminated until the combined levy rate no longer exceeds the maximum effective levy rate:

(a) Step one: Subtract the aggregate levy rate calculated for the state for the support of common schools from the effective rate limit;

(b) Step two: Subtract the levy rates for the county, county road district, regional transit authority, and for city or town purposes;

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance from step four. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the levy rates for all other junior taxing districts if those levies are not listed in steps three through five or steps seven through seventeen of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate for flood control zone districts other than the portion of a levy protected under RCW ((~~84.52.815~~)) 84.52.-816.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step six. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.-145, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080.

(i) If the balance is zero, there is no remaining levy capacity from any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, the levy is reduced to the remaining balance in step eight. There is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed to step ten.

(j) Step ten: Subtract from the remaining levy capacity the levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step nine. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eleven.

(k) Step eleven: Subtract from the remaining levy capacity the levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing for very low-income households under RCW 84.52.105, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step twelve.

(l) Step twelve: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district with a population of one hundred fifty thousand or more that is protected under RCW 84.52.120.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step eleven. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step thirteen.

(m) Step thirteen: Subtract from the remaining levy capacity the levy rates for county ferry districts under RCW 36.54.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step twelve. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step fourteen.

(n) Step fourteen: Subtract from the remaining levy capacity the levy rate for criminal justice purposes imposed under RCW 84.52.135.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step thirteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step fifteen.

(o) Step fifteen: Subtract from the remaining levy capacity the levy rate for a fire protection district((~~s~~)) or regional fire protection service authority protected under RCW 84.52.125.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step fourteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step sixteen.

(p) Step sixteen: Subtract from the remaining levy capacity the levy rate for transit-related purposes by a county under RCW 84.52.140.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step fifteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seventeen.

(q) Step seventeen: Subtract from the remaining levy capacity the protected portion of the levy imposed under RCW ((~~86.15.160~~)) 84.52.816 by a flood control zone district ((~~in a county with a population of seven hundred seventy-five thousand or more that is coextensive with a county.~~

~~(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.~~

~~(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step sixteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.~~

~~(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eighteen.~~

~~(r) Step eighteen: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district that has a population of less than one hundred fifty thousand and is located in a county with a population of one million five hundred thousand or more that is protected under RCW 84.52.120~~)) until the remaining levy capacity equals zero.

WSR 17-23-072
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed November 13, 2017, 12:34 p.m.]

Title of Rule and Other Identifying Information: WAC 458-12-140 Taxing district boundaries—Designation of tax code area, 458-16-080 Improvements to single family dwellings—Definitions—Exemption—Limitation—Appeal rights, 458-16A-100 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Definitions, 458-16A-140 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Exemption granted—Exemption denied—Freezing property values, and 458-16A-150 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Requirements for keeping the exemption.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-12-140 is being amended to incorporate language from:

- SHB 2617 (2012) that provides information about the boundary establishment date for school districts required to receive or annex territory due to the dissolution of a financially insolvent school district.
- ESSB 5628 (2017) that provides information about the boundary establishment date for newly established fire protection districts when approved by the voters.

WAC 458-16-080 is being amended to incorporate language from:

- SSB 5275 (2015) that explains all counties are on an annual revaluation cycle for real and personal property.

WAC 458-16A-100, 458-16A-140, and 458-16A-150 are being amended to incorporate language from:

- EHB 2242 (2017) that provides for basic education funding.

Reasons Supporting Proposal: WAC 458-12-140 is being updated so taxing districts know when their district boundaries must be established.

WAC 458-16-080 is being updated to remove outdated language regarding county revaluation cycles.

WAC 458-16A-100, 458-16A-140, and 458-16A-150 are being updated to clarify the part of the state school levy that does not apply to this exemption.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.36.389.

Statute Being Implemented: RCW 84.09.030, 84.36.381, 84.41.030, 84.41.041.

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: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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 2012, 2015, and 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 LeslieMu@dor.wa.gov, AND RECEIVED BY January 22, 2018.

November 13, 2017
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-04-033, filed 1/29/09, effective 3/1/09)

WAC 458-12-140 Taxing district boundaries—Designation of tax code area. (1) **Introduction.** This rule explains when the boundaries of a taxing district, as defined in WAC 458-19-005, must be established for the purpose of levying property taxes. No property tax levy can be made for a given year on behalf of any taxing district whose boundaries are not established as of the dates provided in this rule.

This rule also explains that county assessors are required to transmit taxing district boundary information to the property tax division of the department of revenue (department) when there is a change in taxing district boundaries or when a new taxing district is established.

Lastly, this rule provides guidance to assessors in designating tax code areas to be used in the listing of real and personal property.

((~~For purposes of this rule, the definition of "taxing district" is the same as in WAC 458-19-005.~~))

(2)(a) **Establishment of taxing district boundaries.** Except as ((~~set forth~~)) provided in (b) ((~~and~~)), (c), (d), and (e) of this subsection, for the purpose of property taxation and the levy of property taxes, the boundaries of counties, cities, and all other taxing districts must be the established official boundaries of the taxing districts existing on August 1st of the year in which the property tax levy is made.

(b) **Newly incorporated port districts and regional fire protection service authorities.** The boundaries for a newly incorporated port district or regional fire protection service authority must be the established official boundaries existing on October 1st of the year in which the initial property tax levy is made if the boundaries of the newly incorporated port district or regional fire protection service authority are coterminous with the boundaries of another taxing district or districts, as they existed on August 1st of that year.

(c) **Mosquito control districts.** Boundaries of a mosquito control district must be the established official boundary existing on September 1st of the year in which the property tax levy is made.

(d) **Newly established fire protection district.** The boundaries of a newly established fire protection district, as described in RCW 52.02.160, are the official boundaries of the district as of the date the voter-approved proposition is certified.

(e) **Annexing a financially insolvent school district.** The boundaries of a school district that is required to receive or annex territory due to the dissolution of a financially insolvent school district under RCW 28A.315.225 must be the established official boundaries of such districts existing on September 1st of the year in which the property tax levy is made.

(3) **Withdrawal of certain areas of a library district, metropolitan park district, fire protection district, or public hospital district.** ((~~Notwithstanding~~)) Aside from the provisions of RCW 84.09.030 and subsection (2) of this ((~~section~~)) rule, the boundaries of a library district, metropolitan park district, fire protection district, or public hospital district, that withdraws an area from its boundaries under RCW 27.12.355, 35.61.360, 52.04.056, or 70.44.235, which area has boundaries that are coterminous with the boundaries of a tax code area, will be established as of October 1st in the year in which the area is withdrawn.

(4) **School district boundary changes.** Each school district affected by a transfer of territory from one school district to another school district under chapter 28A.315 RCW must retain its preexisting boundaries for the purpose of the collection of excess tax levies authorized under RCW 84.52.053 before the effective date of the transfer.

The preexisting boundaries must be retained for such tax collection years and for such excess tax levies as the regional committee on school district organization (committee) may approve. The committee may order that the transferred territory will either be subject to or relieved of such excess levies.

For the purpose of all other excess tax levies previously authorized under chapter 84.52 RCW and all excess tax levies authorized under RCW 84.52.053 subsequent to the effective date of a transfer of territory, the boundaries of the

affected school districts must be modified to recognize the transfer of territory subject to RCW 84.09.030 and subsection (2) of this ((~~section~~)) rule.

(5) **Copy of instrument ((~~setting forth~~)) indicating taxing district boundary changes must be provided to the department.** Any instrument ((~~setting forth~~)) indicating the official boundaries of a newly established taxing district, or ((~~setting forth~~)) indicating any change in taxing district boundaries, that is required by law to be filed in the office of the county auditor or other county official, must be filed in triplicate.

The county official ((~~with whom the instrument is filed~~)) must forward two copies of the instrument to the county assessor. The assessor must provide one copy of the instrument, together with a copy of a plat showing the new boundaries, to the property tax division of the department of revenue within thirty days of the establishment of the boundaries of ((~~such~~)) the taxing district.

(6) **Designation of tax code areas.** Assessors must designate the name or number of each tax code area, as defined in WAC 458-19-005, in which each description of real or personal property is located and assessed. The tax code area designation must be entered opposite each assessment in a column provided for that purpose in the detail and assessment list.

((~~For purposes of this rule, the definition of "tax code area" is the same as in WAC 458-19-005.~~))

(a) **Personal property.** Assessors must designate the tax code area on all listings of personal property in accordance with the applicable rules controlling "taxable situs" as of the assessment date.

(b) **Property located in more than one tax code area.** When real and personal property of any person is located and assessable in more than one tax code area, a separate listing must be made on the detail and assessment list and identified by the name or number of the tax code area in which each portion of the property or properties is located.

AMENDATORY SECTION (Amending WSR 00-09-004, filed 4/5/00, effective 5/6/00)

WAC 458-16-080 Improvements to single family dwellings—Definitions—Exemption—Limitation—Appeal rights. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available to taxpayers when they make physical improvements to their single family dwelling under the provisions of RCW 84.36.400. It explains the process by which this exemption is obtained and how the amount of the exemption is calculated.

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

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

(b) "Single family dwelling" or "dwelling" means a structure maintained and used as a residential dwelling that is designed exclusively for occupancy by one family.

(i) It is an independent and free-standing structure containing one dwelling unit and having a permanent foundation.

(ii) For the purposes of this exemption, a manufactured home, mobile home, or park model trailer will be considered a "single family dwelling" if it has substantially lost its identity as a mobile unit by virtue of its being permanently fixed in location upon land owned or leased by the owner of the manufactured home, mobile home, or park model trailer and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, or other utilities.

(c) "Physical improvement" means any addition, improvement, remodel, renovation, or structural enhancement that materially adds to the value of an existing single family dwelling. It is an actual, material, and permanent change that increases the value of the dwelling.

(i) The term includes the addition of a garage, carport, patio, or other improvement to the dwelling that materially adds to its value.

(ii) The term does not include a swimming pool, outbuilding, fence, landscaping, barn, shed, shop, or other item that enhances the land upon which the dwelling stands, but is not common to or normally recognized as a structural component of a single family dwelling.

(iii) The term does not include repairs to or deferred maintenance of a dwelling.

(d) "Physical inspection" means, at a minimum, an exterior observation of the dwelling to determine what physical improvements have been made and whether they increase its true and fair value.

(e) "Real property" has the same meaning as contained in RCW 84.04.090 and chapter 458-12 WAC; these definitions should be consulted as a matter of course in interpreting and administering this exemption.

(f) "Repairs" means work that preserves the dwelling or returns it to its original condition or use.

(g) "Taxpayer" means any person charged, or whose property is charged, with property tax for the dwelling.

(3) **Exemption - Taxpayer's obligations.** Physical improvements to a single family dwelling upon real property are exempt from property tax for three assessment years after the improvements are completed. The amount of the exemption is the difference between the true and fair value of the dwelling before and after the physical improvement. However, the amount of the exemption cannot exceed thirty percent of the true and fair value of the dwelling prior to the improvements.

(a) The following conditions must be met to receive this exemption:

(i) The dwelling must be a "single family dwelling" as defined in subsection (2) of this ((~~section~~)) rule;

(ii) The taxpayer must file a claim for the exemption with the assessor of the county in which the real property is located before the improvements are completed. All claims ((~~shall~~)) must be made on forms prescribed by the department and signed by the taxpayer or the taxpayer's authorized agent. Claim forms may be obtained from the assessor's office or the department; and

(iii) The taxpayer may not claim this exemption more than once in a five-year period on the same dwelling. The five-year period begins the first assessment year the exemption appears on the county's assessment roll.

(b) When the improvements are completed, the taxpayer must submit a written notice of completion to the assessor.

(c) The following examples show how eligibility requirements for this exemption will be applied. These exam-

ples should be used only as a general guide and cannot be relied upon for any other purpose.

(i) Example 1. The addition of a garage or carport to a single family dwelling may qualify for exemption because it may increase the value of and is compatible with the existing residential dwelling. Conversely, the construction of a swimming pool, shed, barn, or shop, which are not commonly attached to a dwelling, does not qualify for the exemption; even though the construction of such a structure may increase the value of the parcel as a whole.

(ii) Example 2. The replacement of a composition roof with a tile roof on a dwelling may qualify for exemption because a tile roof may increase the value of the dwelling. If the composition roof is repaired or replaced with the same type of composition roofing materials, the repair or replaced roof will not qualify for the exemption.

(4) **Assessor's duties.** Upon receipt of a taxpayer's claim for exemption, the assessor ((~~shall~~)) will determine the true and fair value of the unimproved dwelling. This value may be determined by means of a physical inspection and appraisal or a statistical update of the value shown on the county's current assessment roll. After receiving a notice of completion from the taxpayer, the assessor ((~~shall~~)) will revalue the improved dwelling by means of a physical inspection to determine the amount of the exemption.

(5) **Amount of exemption.** The amount of the exemption is the difference between the dwelling's true and fair value before and after improvements, but this amount cannot exceed thirty percent of the true and fair value of the original unimproved dwelling. In other words, the amount of the exemption is determined by subtracting the true and fair value of the unimproved dwelling from the true and fair value of the dwelling including improvements. The cost of the physical improvements is not the basis for the exemption granted under RCW 84.36.400 and, as a result, the exemption granted is not normally equivalent to the costs incurred by the taxpayer.

(a) The amount of the exemption ((~~shall~~)) will be deducted from the assessed value of the improved dwelling for the three assessment years immediately following completion of the improvement.

(b) The dwelling must at all times be a "single family dwelling" as defined in subsection (2) of this ((~~section~~)) rule. If the assessor determines the dwelling does not meet this definition, the exemption will be denied or canceled.

(c) When an exemption has been granted and placed on the assessment roll, the exemption will continue for the three-year exemption period even if the single family dwelling is sold. The exemption pertains to the dwelling and is not personal to the individual property owner.

(d) Example 3. The following example should be used only as a general guide and cannot be relied upon for any other purpose. In 1998, Taxpayer A completed the addition of a family room and the renovation of the kitchen. These improvements cost the taxpayer $60,000. (As the following example will show, the cost of improvements is not the basis of the amount of the exemption.)

True & fair value of dwelling prior to improvements	$150,000
True & fair value of improved dwelling	$200,000
Difference (value of physical improvements)	$50,000
Amount of exemption	$45,000

The difference between the value of the improved dwelling and the value of the unimproved dwelling ($50,000) or 30% of the unimproved dwelling ($150,000 x 30% = $45,000), whichever is less.

The assessed value of the improved dwelling will be reduced by $45,000 for the next three assessment years (1999, 2000, and 2001).

(6) **Limitation.** This exemption may not be claimed on the same dwelling more than once in a five-year period. This five-year period begins the first year the exemption appears on the county's assessment roll. (In the example above, the taxpayer may not file another claim for an exemption on this dwelling under RCW 84.36.400 until 2003.)

(7) **Relationship to revaluation cycle.** Chapter 84.41 RCW requires each county to establish and maintain a systematic program to revalue all taxable real property within the county ((~~at least once every four years~~)) on an annual basis.

(((~~a~~))) When an exemption has been granted under RCW 84.36.400, the dwelling ((~~may be~~)) is revalued during the three assessment years the exemption is in effect ((~~in accordance with the county's scheduled revaluation plan. The revaluation program will proceed as usual~~)), but the amount of the exemption will remain unchanged.

(((~~b) Example. The following example, which is a continuation of the example set out in subsection (5)(d) of this section, should be used as a general guide and cannot be relied upon for any other purpose.~~

~~The scheduled revaluation plan for the county in which the single family dwelling is located calls for all property to be revalued every four years. The unimproved dwelling was revalued in 1997. The dwelling is improved and a claim for exemption is submitted and approved in June 1998. The first year the exemption will be reflected on the assessment roll is 1999.~~

	~~1997 Revaluation & Assessment Year~~	~~1998 Assessment Year Improvements are completed~~	~~1999 Assessment Year~~	~~2000 Assessment Year~~	~~2001 Revaluation & Assessment Year~~	~~2002 Assessment Year~~
~~True & fair value of dwelling~~	~~$150,000~~	~~$150,000 + 50,000*~~	~~$200,000~~	~~$200,000~~	~~$225,000~~	~~$225,000~~
~~Amount of exemption~~	~~none~~	~~none~~	~~-45,000**~~	~~-45,000~~	~~-45,000~~	~~none~~
~~True & fair value of dwelling minus exemption~~	~~n/a~~	~~n/a~~	~~$155,000~~	~~$155,000~~	~~$180,000~~	~~$225,000~~
~~Assessed value of dwelling~~	~~$150,000~~	~~$200,000~~	~~$155,000~~	~~$155,000~~	~~$180,000~~	~~$225,000~~
~~*New construction value on 7/31~~	~~n/a~~	~~$50,000*~~	~~n/a~~	~~n/a~~	~~n/a~~	~~n/a~~

~~*RCW 36.21.080 authorizes the assessor to place the increased value of any property that is increased in value due to construction or alteration for which a building permit was issued, or should have been issued, on the assessment rolls for the purposes of tax levy up to August 31st of each year. The assessed value of the property shall be considered as of July 31st of that year.~~

~~**Even though the value of the dwelling increased by $50,000, the amount of the exemption cannot exceed 30% of the true and fair value of the unimproved single family dwelling (i.e., $150,000 x 30% = $45,000).~~))

(8) **Exemption in relationship to destroyed property.** If the value of a dwelling has been reduced under the provisions of chapter 84.70 RCW because it was destroyed, the dwelling is ineligible to receive the exemption authorized by RCW 84.36.400.

(9) **Right to appeal.** A taxpayer who applies for an exemption under RCW 84.36.400 may file an appeal with the county board of equalization under the following circumstances:

(a) The application for exemption is denied;

(b) The exemption is removed prior to the expiration of the three-year exemption period; or

(c) The taxpayer disputes the amount of the exemption granted.

AMENDATORY SECTION (Amending WSR 16-11-032, filed 5/10/16, effective 6/10/16)

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

(2) **Annuity.** "Annuity" means a series of long-term periodic payments, under a contract or agreement. It does not include payments for the care of dependent children. For purposes of this subsection, long-term means a period of more than one full year from the annuity starting date.

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

(3) **Assessment year.** "Assessment year" means the year when the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes become due and payable. It is always the year before the claimant receives a reduction in his or her property taxes because of the senior citizen, disabled person, and one hundred percent disabled veteran exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property (other than inventory) over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller adjusts (increases and decreases) the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen, disabled person, and one hundred percent disabled veteran exemption by filing an application with the county assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any

cotenant reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

(a) Legally prescribed drugs;

(b) Home health care;

(c) Nursing home, boarding home, or adult family home expenses; and

(d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., medicare or medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

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

(9) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(10) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. (RCW 84.36.383(7); 42 U.S.C. Sec. 423 (d)(1)(A).)

(11) **Disabled veteran.** "Disabled veteran" means a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs at a total disability rating for a service-connected disability. (RCW 84.36.381 (3)((~~(b)~~)).)

(12) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383.)

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Losses. Amounts deducted for loss;

(c) Depreciation. Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than:

(i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(ii) Disability compensation, defined as payments made by the VA to a veteran because of service-connected disability;

(iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death.

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

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

(13) **Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(14) **Domestic partnership.** "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(15) **Excess levies.** "Excess levies" has the same meaning as provided in WAC 458-19-005 for "excess property tax levy."

(16) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for the federal income tax while others are excluded from their gross income. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

(17) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

(18) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially

licensed. The treatment and care must meet at least one of the following criteria. It must be for:

(a) Medical treatment or care received in the home;

(b) Physical therapy received in the home;

(c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include improvements or repair of the home itself.

(19) **Lease for life.** "Lease for life" means a lease that terminates upon the demise of the lessee.

(20) **Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction**.**

(21) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to himself or herself the beneficial interest directly in his or her principal residence, or the part of the trust containing his or her personal residence, for at least the period of his or her life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

(22) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

(23) **Ownership by a marital community or domestic partnership.** "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. Example: A person qualifying for the exemption by virtue of age, disability, or one hundred percent disabled veteran status cannot claim exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate therein.

(24) **Pension.** "Pension" generally means an arrangement providing for payments, not wages, to a person (or to that person's family) who has fulfilled certain conditions of service or reached a certain age. Pension distributions may be triggered by separation from service, attainment of a specific age, disability, death, or other events. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

(25) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as his or her principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each year.

(b) Confinement of the claimant to a hospital or nursing home does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home, hospital, boarding home or adult family home costs.

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

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

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

((~~(28)~~)) (29) **Residence.** "Residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides.

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

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which a mobile home is located if both the land and mobile home are owned by the same qualified claimant and it

includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size.

(((~~(29)~~))) (30) **Veteran.** "Veteran" means a veteran of the armed forces of the United States.

(((~~(30)~~))) (31) **Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

AMENDATORY SECTION (Amending WSR 16-06-042, filed 2/24/16, effective 3/26/16)

WAC 458-16A-140 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values. (1) **Introduction.** This rule explains how county assessors process a claimant's application form for the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption. The rule describes the exemption and what happens when the exemption is granted or denied by the assessor.

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's, disabled person's, or one hundred percent disabled veteran's principal residence. Except for benefit charges made by a fire protection district, this exemption does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exceptions related to this program is for benefit charges made by a fire protection district, a regional fire protection service authority, or by a city or town for enhancement of fire protection services. Fire protection benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090, 52.26.270, and 35.13.256.

(a) **Excess levies.** A qualifying claimant receives an exemption from excess levies on his or her principal residence.

(b) **Regular levies.** A qualifying claimant receives an exemption from the state property tax levy imposed under RCW 84.52.065(2) on his or her principal residence. Depending upon the claimant's combined disposable income, the exemption may also apply to all or a portion of the regular property tax levies, including all or a portion of the state property tax levy imposed under RCW 84.52.065(1), on the claimant's principal residence. Both the level of the claimant's combined disposable income and the assessed value of the home determine the amount of the regular levy exempted from property taxes. The exemption applies to all the regular and excess levies when the assessed value of the claimant's principal residence falls below the amount of exempt assessed value identified in RCW 84.36.381 (5)(b) and the claimant's combined disposable income is also below the levels set in that ((~~section~~)) subsection.

(c) **Property taxes due.** Generally the owner pays the property taxes on the principal residence and obtains directly the benefit of this exemption. If the claimant is not the property's owner, or is not otherwise obligated to pay the property taxes on the principal residence, but "owned" the principal residence for purposes of this exemption, the property owner that owes the tax must reduce any amounts owed to them by the claimant up to the amount of the tax exemption. If the amounts owed by the claimant to this property owner are less than the tax exemption, the owner must pay to the claimant in cash any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(6).

(3) **Processing exemption applications.** County assessors process applications for the senior citizen, disabled person, or one hundred percent disabled veteran exemption. The assessors grant or deny the exemption based upon these completed applications.

(a) **Application review.** The county assessor reviews a completed application and its supporting documents.

The assessor:

(i) Notes on a checklist for the claimant's file the supporting documents received;

(ii) Reviews the supporting documents;

(iii) Records relevant information from the supporting documents into the claimant's file. In particular, the assessor records into the file the claimant's age and a summary of the income information received; and

(iv) After reviewing the supporting documents, must either destroy or return the supporting documents used to verify the claimant's age and income.

(b) **Incomplete applications.** A county assessor may return an incomplete application or a duplicate application. An incomplete application may be missing:

(i) Signatures;

(ii) Information upon the form; or

(iii) Supporting documents.

Upon returning an incomplete application, the assessor should provide the claimant with a dated denial form listing the signatures, information, or documents needed to complete the application. The denial of an incomplete application may be appealed in the same manner as a denial of the exemption.

(c) The assessor may accept any late filings for the exemption even after the taxes have been levied, paid, or become delinquent. An application filed for the exemption in previous years constitutes a claim for a refund under WAC 458-18-210.

(4) **Exemption timing if approved.** Property taxes are reduced or eliminated on the claimant's principal residence for the year following the year the claimant became eligible for the program. When a late application is filed, the exemption may only result in:

(a) A refund for any paid property taxes that were due within the previous three years; and

(b) Relief from unpaid property taxes for any previous years.

(5) **Exemption procedure when claim granted.** When the exemption is granted, the county assessor:

(a) Freezes the assessed value of the principal residence upon the assessment roll;

(b) Determines the level of exemption the claimant qualifies for;

(c) Notifies the claimant that the exemption has been granted;

(d) Notifies the claimant of his or her duty to file timely renewal applications;

(e) Notifies the claimant of his or her duty to file change of status forms when necessary;

(f) Notifies the claimant of the need to reapply for the exemption if the claimant moves to a replacement residence;

(g) Notifies the claimant that has supplied estimated income information whether or not follow-up income information is needed;

(h) Places the claimant on a notification list for renewal of the exemption;

(i) Places the claimant on a notification list if supporting documents are needed to confirm estimated income information prior to May 31st of the following year;

(j) Exempts the residence from all or part of its property taxes; and

(k) Provides the department with a recomputation of the assessed values for the immediately preceding year as a part of the annual recomputation process.

(6) **Exemption procedure when claim denied.** The assessor denies the exemption when the claimant does not qualify. The assessor provides a dated denial form listing his or her reasons for this denial. A claimant may appeal the exemption's denial to the county board of equalization as provided for in WAC 458-14-056.

(7) **Freezing the property value.** The assessor freezes the assessed value of the principal residence either on the latter of January 1, 1995, or January 1st of the year when a claimant first qualifies for the exemption. The assessor then tracks both the market value of the principal residence and its frozen value. The assessor provides both the principal residence's market value and its frozen value in the valuation notices sent to the owner.

(a) **Adding on improvement costs.** The assessor adds onto the frozen assessed value the cost of any improvements made to the principal residence.

(b) **One-year gaps in qualification.** If a claimant receiving the exemption fails to qualify for only one year because of high income, the previous frozen property value must be reinstated on January 1st of the following year when the claimant again qualifies for the program.

(c) **Moving to a new residence.** If an eligible claimant moves, the county assessor freezes the assessed value of the new principal residence on January 1st of the assessment year in which the claimant transfers the exemption to the replacement residence.

AMENDATORY SECTION (Amending WSR 13-08-028, filed 3/27/13, effective 4/27/13)

WAC 458-16A-150 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Requirements for keeping the exemption. (1) **Introduction.** This rule explains how and when a senior citizen, disabled person, or one hundred percent disabled veteran must file additional reports with the county assessor to keep the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

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

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on the claimant's continued qualification for the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption. The claimant keeps the assessor up to date in three ways. First, the claimant submits a change in status form when any change affects his or her exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, a surviving domestic partner, or a purchaser to notify the county of a change in status affecting the exemption. Second, the claimant submits a renewal application for the exemption either upon the assessor's request following an amendment of the income requirement, or every six years. Third, the claimant applies to transfer the exemption when moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects his or her qualification for the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of such change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving spouse or surviving domestic partner, should submit a change in status form to avoid interest and in some cases the penalty for willfully claiming the exemption based upon erroneous information.

(b) **Changes in status described.** Changes in status include:

(i) Changes that affect the property (i.e., changes in land use regulations, new construction, boundary line changes, rentals, ownership changes, etc.);

(ii) Changes to the property owner's annual income that increase or decrease property taxes due under the program; or

(iii) Changes that affect the property owner's eligibility for the exemption (i.e., death, moving to a replacement residence, moving to another residence the claimant does not own, moving into a hospice, a nursing home, or any other long-term care facility, marriage, registration in a state registered domestic partnership, improvement of a disability for a disabled person's claim, or a disabled person entering into gainful employment).

(c) **Change in status form.** The county assessor designs the change in status form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed. The claimant, the claimant's agent, or a subsequent owner of

the residence must use a change in status form from the county where the principal residence is located. The person filing the form must provide true and accurate information on the change in status form.

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where his or her principal residence is located.

(e) **Failure to submit the form after a change in status occurs.** If the claimant fails to submit the change in status form, the application information relied upon becomes erroneous for the period following the change in status. Upon discovery of the erroneous information, the assessor determines the status of the exemption, and notifies the county treasurer to collect any unpaid property taxes and interest from the claimant, the claimant's estate, or if the property has been transferred, from the subsequent property owner. The treasurer may collect any unpaid property taxes, interest, and penalties for a period not to exceed five years as provided for under RCW 84.40.380. In addition, if a person willfully fails to submit the form or provides erroneous information, that person is liable for an additional penalty equal to one hundred percent of the unpaid taxes. RCW 84.36.385. If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were due as provided in chapter 84.69 RCW.

(f) **Loss of the exemption.** If the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based upon the current full assessed value of the property and paid from the date the change in status occurred. RCW 84.40.360. For example, the exemption is lost when the claimant dies (unless the spouse or domestic partner is also qualified). The property taxes are recalculated to the full assessed amount of the principal residence on a pro rata basis beginning the day following the date of the claimant's death for the remainder of the year.

(g) **Loss of exemption on part of the property.** If the change in status removes a portion of the property from the exemption, property taxes in their full amount on that portion of the property that is no longer exempt must be recalculated based upon the current full assessed value of that portion of the property and paid from the date the change in status occurred. For example, a property owner subdivides his or her one-acre lot into two parcels. The parcel that does not have the principal residence built upon it no longer qualifies for the exemption. The property taxes are recalculated to the full assessed amount of that parcel on a pro rata basis for the remainder of the year beginning the day following the date the subdivision was given final approval.

(h) **Exemption reduced.** If the change in status reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies and the state property tax levy imposed under RCW 84.52.065(2) on the principal residence are exempt. The claimant's income is based upon the assessment year. The following year when the taxes are collected, the property taxes due are calculated with only an exemption for excess levies and an exemption for the state property tax levy imposed under RCW 84.52.065(2).

(4) **Renewal application.** The county assessor must notify claimants when to file a renewal application with updated supporting documentation.

(a) **Notice to renew.** Written notice must be sent by the assessor and must be mailed at least three weeks in advance of the expected taxpayer response date.

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

(c) **Processing renewal applications.** Renewal applications are processed in the same manner as the initial application.

(d) **The renewal application form.** The county assessor may design the renewal application form or adapt either its own application form or the application master form obtained from the department. The county must obtain approval of the final renewal application form from the department before it may be distributed. The property owner must use a renewal form from the county where the principal residence is located. The claimant must provide true and accurate information on the renewal application form.

(e) **Obtaining the form.** The assessor provides this form to senior citizens, disabled persons, or one hundred percent disabled veterans claiming the exemption when requesting renewal.

(f) **Failure to submit the renewal application.** If the property owner fails to submit the renewal application form, the exemption is discontinued until the claimant reapplies for the program. The assessor may postpone collection activities and continue to work with an eligible claimant to complete an application for a missed period.

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, the claimant must file a change in status form with the county where his or her former principal residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

(a) **Exemption on the former residence.** The exemption on the former residence applies to the closing date on the sale of the former residence, provided the claimant lived in the residence for most of the portion of that year prior to the date of closing. Property taxes in their full amount must be recalculated based upon the current full assessed value of the property and paid from the day following the date the sale closed. The taxes are paid for the remaining portion of the year. RCW 84.40.360.

(b) **Exemption upon the replacement residence.** Upon moving, the claimant must reapply for the exemption in the county where the replacement residence is located if the claimant wants to continue in the exemption program. The same application, supporting documents, and application process is used for the exemption on the replacement residence as when a claimant first applies. See WAC 458-16A-135. The exemption on the replacement residence applies on a pro rata basis in the year he or she moves, but only from the latter of the date the claimant moves into the new principal residence or the day following the date the sale closes on his or her previous residence.

WSR 17-23-084
EXPEDITED RULES
WASHINGTON STATE PATROL
[Filed November 14, 2017, 2:13 p.m.]

Title of Rule and Other Identifying Information: Commercial motor vehicle regulations, WAC 446-65-010 Transportation requirements.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making amends WAC 446-65-010(1) to bring current to October 1, 2017, all of the parts of Code of Federal Regulations (C.F.R.) relating to regulation of interstate and intrastate drivers and carriers that are incorporated by reference.

Reasons Supporting Proposal: A recent regulatory review performed by the Federal Motor Carrier Safety Administration (FMCSA) noted that many of the C.F.R. adopted in WAC 446-65-010(1) were out-of-date. The lack of conformity was the result of specific language in WAC 446-65-010(1) that adopted the federal regulations "in effect on the effective date" of the rule, which was October 4, 2013. Since the rule adoption in 2013, many of the C.F.R. adopted by reference in the rule have been amended, some to a significant degree.

The Washington state patrol (WSP) was also notified that a petition was submitted to FMCSA alleging that Washington state's administrative rules are out of compliance with a 2015 change to 49 C.F.R. 395 relating to electronic logging devices (ELD). The petition asserts that under the current WAC, Washington will not have authority to enforce the ELD requirement when it goes into effect in December 2017. The petition asks FMCSA to withdraw funds from noncompliant states, such as Washington.

Failure to update WAC 446-65-010(1) to incorporate all of the recent amendments to the C.F.R. adopted by reference therein could jeopardize grant funding to the state. Therefore, the adoption of this rule change, which brings all of the C.F.R. incorporated by reference current to October 1, 2017, will allow enforcement of all of the federal regulations contained in WAC and will enable the uninterrupted receipt of grant funds to Washington.

Statutory Authority for Adoption: RCW 46.32.020, 46.68.170.

Rule is necessary because of federal law, 49 C.F.R. Part 395.

Name of Proponent: Chief John R. Batiste, WSP, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Powell, Olympia, Washington, 360-596-3807; Implementation and Enforcement: WSP, Olympia, Washington, 360-596-4000.

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: An emergency rule-making order was filed on July 24, 2017, for WAC 446-65-010 to allow for the immediate enforcement of the C.F.R. as they exist on October 1, 2017. The proposed rule will allow the permanent adoption of the C.F.R. identified in WAC 446-65-010(1) and will allow the continued enforcement of all of the current federal regulations contained in the WAC and will enable the uninterrupted receipt of grant funds to Washington.

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 Linda Powell, WSP, P.O. Box 42614, Olympia, WA 98504-2614, phone 360-596-3807, fax 360-596-3829, email Linda.Powell@wsp.wa.gov, AND RECEIVED BY January 22, 2018.

November 9, 2017
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 13-18-069, filed 9/3/13, effective 10/4/13)

WAC 446-65-010 Transportation requirements. (1) The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (C.F.R.), ((~~in effect on the effective date of this section~~)) as they exist on October 1, 2017, for motor carriers used in intrastate or interstate commerce in their entirety:

(a) Part 40 Procedures for transportation workplace drug and alcohol testing programs.

(b) Part 325 Compliance with interstate motor carrier noise emission standards.

(c) Part 350 Commercial motor carrier safety assistance program.

(d) Part 355 Compatibility of state laws and regulations affecting interstate motor carrier operations.

(e) Part 365 Rules governing applications for operating authority.

(f) Part 367 Standards for registration with states.

(g) Part 372 Exemptions, commercial zones and terminal areas.

(h) Part 373 Receipts and bills.

(i) Part 376 Lease and interchange of vehicles.

(j) Part 379 Preservation of records.

(k) Part 380 Special training requirements.

(l) Part 381 Waivers, exemptions, and pilot programs.

(m) Part 382 Controlled substances and alcohol use and testing.

(n) Part 383 Compliance with commercial driver's license program.

(o) Part 385 Safety fitness procedures.

(p) Part 387 Minimum levels of financial responsibility for motor carriers.

(q) Part 390 General.

(r) Part 391 Qualification of drivers. Provided that 49 C.F.R. 391 subpart D (Tests), and E (Physical Qualifications and Examinations) do not apply to motor carriers operating vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placarding.

(s) Part 392 Driving of motor vehicles.

(t) Part 393 Parts and accessories necessary for safe operation.

(u) Part 395 Hours of service of drivers: Except if a company has drivers of commercial motor vehicle of any size, hauling logs from the point of production or driving in dump truck operations in intrastate commerce provided that:

(i) The driver must:

(A) Operate within a one hundred air-mile radius of the location where the driver reports to work and the driver must return to the work reporting location at the end of each duty tour;

(B) Have at least ten consecutive hours off duty separating each on-duty period;

(C) Not drive:

• More than twelve hours following at least ten hours off duty; or

• After the fourteenth hour after coming on duty on at least five days of any period of seven consecutive days; and

• After the sixteenth hour after coming on duty on no more than two days of any period of seven consecutive days; and

• After having been on duty for eighty hours in seven consecutive days if the employing motor carrier does not operate commercial motor vehicle every day of the week; or

• After having been on duty for ninety hours in eight consecutive days if the employing motor carrier operates commercial motor vehicle every day of the week; in any period of seven or eight consecutive days may end with the beginning of any off-duty period of twenty-four or more consecutive hours.

(ii) The motor carrier that employs the driver must maintain and retain for a period of twelve months accurate and true time recordings showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The total number of hours the driver drives each day;

(D) The time the driver is released from duty each day; and

(E) The total time the driver is driving and on duty for the preceding seven days.

(v) Part 396 Inspection, repair, and maintenance.

(w) Part 397 Transportation of hazardous materials; driving and parking rules.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined as starting February 1 and ending November 30 of each year.

(3) Links to the C.F.Rs. are available on the Washington state patrol web site at www.wsp.wa.gov. Copies of the C.F.Rs. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.

WSR 17-23-097
EXPEDITED RULES
HEALTH CARE AUTHORITY
[Filed November 15, 2017, 11:29 a.m.]

Title of Rule and Other Identifying Information: WAC 182-535-1090 Dental-related services—Covered—Prosthodontics (removable).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Correct a typographical error.

Reasons Supporting Proposal: The agency is revising this rule to correct a typographical error in a form number. WAC 182-535-1090 (3)(f) should reference HCA 13-965.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.0160.

Statute Being Implemented: RCW 41.05.021, 41.05.-0160.

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: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Pixie Needham, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-9967.

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.

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 Wendy Barcus, HCA Rules Coordinator, Health Care Authority, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1306, fax 360-586-9727, email arc@hca.wa.gov, AND RECEIVED BY January 23, 2018.

November 15, 2017
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

WAC 182-535-1090 Dental-related services—Covered—Prosthodontics (removable). Clients described in WAC 182-535-1060 are eligible to receive the prosthodontics (removable) and related services, subject to the coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Prosthodontics.** The medicaid agency requires prior authorization for removable prosthodontic and prosthodontic-related procedures, except as otherwise noted in this section. Prior authorization requests must meet the criteria in WAC 182-535-1220. In addition, the agency requires the dental provider to submit:

(a) Appropriate and diagnostic radiographs of all remaining teeth.

(b) A dental record which identifies:

(i) All missing teeth for both arches;

(ii) Teeth that are to be extracted; and

(iii) Dental and periodontal services completed on all remaining teeth.

(2) **Complete dentures.** The agency covers complete dentures, including overdentures, when prior authorized, except as otherwise noted in this section.

The agency considers three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the delivery (placement) date of the complete denture as part of the complete denture procedure and does not pay separately for this care.

(a) The agency covers complete dentures only as follows:

(i) One initial maxillary complete denture and one initial mandibular complete denture per client.

(ii) Replacement of a partial denture with a complete denture only when the replacement occurs three or more years after the delivery (placement) date of the last resin partial denture.

(iii) One replacement maxillary complete denture and one replacement mandibular complete denture per client, per client's lifetime. The replacement must occur at least five years after the delivery (placement) date of the initial complete denture or overdenture. The replacement does not require prior authorization.

(b) The agency reviews requests for replacement that exceed the limits in this subsection (2) under WAC 182-501-0050(7).

(c) The provider must obtain a current signed Denture Agreement of Acceptance (HCA 13-809) form from the client at the conclusion of the final denture try-in and at the time of delivery for an agency-authorized complete denture. If the client abandons the complete denture after signing the agreement of acceptance, the agency will deny subsequent requests for the same type of dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement must be kept in the provider's files and be available upon request by the agency. Failure to submit the completed, signed Denture Agreement of Acceptance form when requested may result in recoupment of the agency's payment.

(3) **Resin partial dentures.** The agency covers resin partial dentures only as follows:

(a) For anterior and posterior teeth only when the following criteria are met:

(i) The remaining teeth in the arch must be free of periodontal disease and have a reasonable prognosis.

(ii) The client has established caries control.

(iii) The client has one or more missing anterior teeth or four or more missing posterior teeth (excluding teeth one, two, fifteen, and sixteen) on the upper arch to qualify for a maxillary partial denture. Pontics on an existing fixed bridge do not count as missing teeth. The agency does not consider closed spaces of missing teeth to qualify as a missing tooth.

(iv) The client has one or more missing anterior teeth or four or more missing posterior teeth (excluding teeth seventeen, eighteen, thirty-one, and thirty-two) on the lower arch to qualify for a mandibular partial denture. Pontics on an existing fixed bridge do not count as missing teeth. The agency does not consider closed spaces of missing teeth to qualify as a missing tooth.

(v) There is a minimum of four functional, stable teeth remaining per arch.

(vi) There is a three-year prognosis for retention of the remaining teeth.

(b) Prior authorization is required.

(c) The agency considers three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the delivery (placement) date of the resin partial denture as part of the resin partial denture procedure and does not pay separately for this care.

(d) Replacement of a resin-based partial denture with a new resin partial denture or a complete denture if it occurs at least three years after the delivery (placement) date of the resin-based partial denture. The replacement partial or complete denture must be prior authorized and meet agency coverage criteria in (a) of this subsection.

(e) The agency reviews requests for replacement that exceed the limits in this subsection (3) under WAC 182-501-0050(7).

(f) The provider must obtain a signed Partial Denture Agreement of Acceptance (HCA ((~~13-809~~)) 13-965) form from the client at the time of delivery for an agency-authorized partial denture. A copy of the signed agreement must be kept in the provider's files and be available upon request by the agency. Failure to submit the completed, signed Partial Denture Agreement of Acceptance form when requested may result in recoupment of the agency's payment.

(4) **Provider requirements.**

(a) The agency requires a provider to bill for a removable partial or complete denture only after the delivery of the prosthesis, not at the impression date. Refer to subsection (5)(e) of this section for what the agency may pay if the removable partial or complete denture is not delivered and inserted.

(b) The agency requires a provider to submit the following with a prior authorization request for a removable resin partial or complete denture for a client residing in an alternate living facility or nursing facility:

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the Denture/Partial Appliance Request for Skilled Nursing Facility Client (HCA 13-788) form available from the agency's published billing instructions which can be downloaded from the agency's web site.

(c) The agency limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (b) of this subsection.

(d) The agency requires a provider to deliver services and procedures that are of acceptable quality to the agency. The agency may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(5) **Other services for removable prosthodontics.** The agency covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs:

(i) To complete dentures, once in a twelve-month period, per arch. The cost of repairs cannot exceed the cost of the replacement denture. The agency covers additional repairs on a case-by-case basis and when prior authorized.

(ii) To partial dentures, once in a twelve-month period, per arch. The cost of the repairs cannot exceed the cost of the replacement partial denture. The agency covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory reline or rebase to a complete or partial denture, once in a three-year period when performed at least six months after the delivery (placement) date. The agency does not pay for a denture reline and a rebase in the same three-year period. An additional reline or rebase may be covered for complete or partial dentures on a case-by-case basis when prior authorized.

(d) Laboratory fees, subject to the following:

(i) The agency does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The agency may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

(A) Is not eligible at the time of delivery of the partial or complete denture;

(B) Moves from the state;

(C) Cannot be located;

(D) Does not participate in completing the partial or complete denture; or

(E) Dies.

(iii) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

WSR 17-23-106
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed November 16, 2017, 7:52 a.m.]

Title of Rule and Other Identifying Information: WAC 458-07-035 Listing of property—Subdivisions and segregation of interests.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-07-035 to delete language relating to advance tax deposits under RCW 58.08.040.

Reasons Supporting Proposal: HB 1283 from the 2017 legislative session amended RCW 84.56.345, 84.40.042, and repealed RCW 58.08.040. RCW 58.08.040 required certain advance property tax deposits, and that requirement was referenced in RCW 84.56.345 and 84.40.042.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Statute Being Implemented: RCW 84.56.345, 84.40.042, and the repeal of RCW 58.08.040.

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: Rex Munger, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1554; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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.

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 rule is updated to reflect the 2017 amendments to RCW 84.56.345, 84.40.042, and the repeal of RCW 58.08.040 per RCW 34.05.353 (1)(b). Also adds statutory definition of "subdivision."

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 Rex Munger, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1554, fax 360-534-1606, email RexM@dor.wa.gov, AND RECEIVED BY January 22, 2018.

November 16, 2017
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-059, filed 7/30/08, effective 8/30/08)

WAC 458-07-035 Listing of property—Subdivisions and segregation of interests. (1) **Introduction.** This rule explains when the assessor must begin the listing and valuation of property in the county. It also provides information relating to the listing and valuation of subdivisions of real property. Finally, this rule explains when a person will be allowed to pay property taxes on their partial interest in a parcel of real property.

(2) **Listing of property.** The assessor must begin the listing and valuation of all property in the county, except new construction and mobile homes not previously assessed in this state, not later than December 1st of each year, and complete the listing and valuation not later than May 31st of the succeeding year. The listing and valuation of new construction and mobile homes not previously assessed in this state must be completed by August 31st of each year.

(3) **Valuation of subdivisions.** For purposes of this subsection, "subdivision" means a division of land into two or more lots. The assessor must list and value all subdivisions of real property at one hundred percent of true and fair value as follows: (((~~(a) If an advance tax deposit was paid in accordance with RCW 58.08.040,~~)) Each lot of a subdivision must be valued by October 30th of the year following the recording of the plat, replat, or altered plat. The value established will be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year((~~; and~~

~~(b) If no advance tax deposit was paid, each lot of a subdivision must be valued by the end of the calendar year following the recording of the plat, map, subdivision, or replat. The value established must be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year~~)).

(4) **Petition for payment of taxes on partial interest.** Any person desiring to pay taxes on only their interest in a parcel of real property, whether their interest is a divided interest or an undivided interest, may do so by applying to the assessor of the county where the property is located. The assessor must determine the value of the applicant's interest and certify that value to the county treasurer who will accept payment of taxes for the applicant's interest in the property. No segregation of the property can be made unless all current year and delinquent taxes and assessments on the entire parcel have been paid in full, except for the following situations, in which all current year and delinquent taxes and assessments on the entire parcel need not first be paid in full:

(a) When property is being acquired for public use; and

(b) When a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise.

WSR 17-23-107
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed November 16, 2017, 7:58 a.m.]

Title of Rule and Other Identifying Information: WAC 458-19-045 Levy limit—Removal of limit (lid lift).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-19-045 to add language reflecting that the redemption payments on bonds which cannot exceed nine years, may not exceed twenty-five years for taxes levied for collection in 2018 and thereafter in Thurston County.

Reasons Supporting Proposal: SHB 1344 from the 2017 legislative session amended RCW 84.55.050 to change the number of years redemption payments may be made for the county in which the state capitol is located, which is Thurston County.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.48.080, 84.48.200, 84.52.0502, 84.55.060.

Statute Being Implemented: RCW 84.55.050 (4)(c).

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: Rex Munger, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1554; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, (360) 534-1605.

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

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 rule is

updated to reflect the 2017 amendment to RCW 84.55.050 (4)(c)(1)[(i)] per RCW 34.05.353 (1)(b).

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 Rex Munger, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1554, fax 360-534-1606, email RexM@dor.wa.gov, AND RECEIVED BY January 22, 2018.

November 16, 2017
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-023, filed 6/23/14, effective 7/24/14)

WAC 458-19-045 Levy limit—Removal of limit (lid lift). (1) **Introduction.** The levy limit may be exceeded when authorized by a majority of the voters voting on a proposition to "lift the lid" of the levy limit in accordance with RCW 84.55.050. This "lid lift" is intended to allow the levy limit to be exceeded for the levy made immediately following the vote on the proposition. The purpose of the lid lift is to allow additional property taxes to be collected at a time when the levy limit in chapter 84.55 RCW is the effective legal constraint to the collection of additional property taxes. Lid lifts may result in increasing the limit factor for one year or up to six consecutive years. The result of the limit factor increase can temporarily or permanently impact subsequent levy limit calculations. The requirements for the text of a ballot title and measure differ depending on whether the levy limit will be exceeded for a single year or multiple years, up to six consecutive years. This rule explains the procedures for implementing a lid lift ballot measure when a taxing district wants to ask its voters for the authority to exceed the levy limit.

(2) **Election for approval of lid lift proposition—when held.** The election to approve a lid lift proposition must be held within the taxing district and may be held at the time of a general election, or at a special election called by the governing body of the taxing district for that purpose. The election must be held not more than twelve months prior to the date the proposed levy is to be made. For purposes of this rule, a levy is "made" when the taxing district's budget is certified. The ballot title and measure proposing the lid lift are prepared by the county prosecutor or city attorney, as applicable, in accordance with RCW 29A.36.071. RCW 29A.36.071 requires a ballot title to include a concise description of the measure, not to exceed seventy-five words. A simple majority vote is required for approval of a lid lift.

(3) **Single year lid lift.** A "single year lid lift" allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1986 for one year. The text of a ballot title and measure for a single year lid lift must contain the following:

(a) The dollar rate of the proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district;

(b) Any of the following limitations that are applicable:

(i) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years, except for taxes levied for collection in 2018 and thereafter in Thurston County, the period for which the increased levies are made may not exceed twenty-five years; and/or

(ii) The purpose or purposes of the increased levy; and

(iii) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base.

(4) **Multiple year lid lift.** A "multiple year lid lift" allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1986 for up to six consecutive years.

(a) The text of a ballot title and measure for a multiple year lid lift must contain the following:

(i) The dollar rate of the first year's proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district;

(ii) The limit factor, or specific index used to determine the limit factor (such as the consumer price index), which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years;

(iii) Any of the following limitations that are applicable:

(A) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years, except for taxes levied for collection in 2018 and thereafter in Thurston County, the period for which the increased levies are made may not exceed twenty-five years;

(B) The purpose or purposes of the increased levy; and

(C) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base.

(b) Supplanting of existing funds.

(i) Except as otherwise provided in (b) of this subsection, funds raised by a levy under this section may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of (b) of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the

control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(ii) In counties with a population of less than one million five hundred thousand, funds raised through a lid lift can be used to supplant existing funds beginning with levies submitted and approved by the voters after July 26, 2009.

(iii) In counties with a population of one million five hundred thousand or more, funds raised through a lid lift can be used to supplant existing funds for levies approved by the voters between July 26, 2009, and December 31, 2011.

(5) **Permanent lid lift.** A permanent lid lift occurs when the ballot title and ballot measure expressly state that the levy will be used for the purpose of computing the limitations for subsequent levies as provided in subsection (3)(a)(iii) and (4)(a)(iii)(C) of this section. Approval of a permanent lid lift permanently increases the base used to calculate the levy limit.

(a) The first regular levy of a taxing district made after voter approval of a permanent lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a permanent lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

(6) **Temporary lid lift.** If the ballot title and ballot measure do not expressly indicate that the final levy will be used for the purpose of computing subsequent levies, the levy increase is presumed temporary.

(a) The first regular levy of a taxing district made after voter approval of a temporary lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a temporary lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

WSR 17-23-111
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE
[Filed November 16, 2017, 12:24 p.m.]

Title of Rule and Other Identifying Information: Chapter 16-157 WAC, Organic food standards and certification.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to: (1) Adopt the current version of the United States Department of Agriculture (USDA) organic regulations (21 C.F.R. Part 205); and (2) repeal the organic mushroom production standards specified in rule.

The current rule adopts the October 9, 2008, version of the USDA organic regulations. This proposal updates the language to adopt the current version of the federal regulation in order to remain consistent with the National Organic Program.

WAC 16-157-120 adopted standards for the organic production of mushrooms, a crop with unique production methods not specifically addressed in the USDA organic regulations. Since adopting mushroom standards in rule, USDA has clarified mushrooms fall under the crop certification scope. Removing the existing language will eliminate conflicting standards.

Reasons Supporting Proposal: Updating this chapter will ensure the rule remains compliant with RCW 15.86.060(1), which directs the director to adopt rules "… appropriate for the adoption of the national organic program." Further, this change will ensure compliance with RCW 15.86.065(3), which states the program "shall not be inconsistent with the requirements of the national organic program." The mushroom standard specified in WAC 16-157-120, is not parallel with USDA crop certification.

The department adopts these national standards for organically-produced agricultural products in order to remain uniform with the National Organic Program. These standards assure consumers that products with the USDA organic seal meet consistent, uniform standards that are in compliance with federal regulations.

Statutory Authority for Adoption: RCW 15.86.060(1), [15.86.]065(3); and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.86 RCW.

Rule is necessary because of federal law, 7 C.F.R. Part 205.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Rice, P.O. Box 42560, Olympia, WA 98504-2560, 360-359-3021; Implementation and Enforcement: Brenda Book, P.O. Box 42560, Olympia, WA 98504-2560, 360-902-2090.

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.

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

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Part one of the rule proposal (adopting the current version of 7 C.F.R. Part 205) meets the criteria for expedited adoption under

RCW 34.05.353 (1)(b) by adopting federal regulations; part two of the rule proposal (repealing the existing mushroom standard) meets the criteria for expedited repeal under RCW 34.05.353 (2)(c) because the existing mushroom standard in rule is no longer necessary since USDA has clarified mushrooms fall within the crop certification scope under federal regulation.

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, Agency Rules Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560 or 1111 Washington Street, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email WSDARulesComments @agr.wa.gov, AND RECEIVED BY January 22, 2018.

November 16, 2017
Candace A. Jacobs
Assistant Director

((~~PART I~~

~~GENERAL PROVISIONS~~))

AMENDATORY SECTION (Amending WSR 09-15-152, filed 7/21/09, effective 8/21/09)

WAC 16-157-020 Adoption of the National Organic Program. The Washington state department of agriculture adopts the standards of the National Organic Program, 7 C.F.R. Part 205, effective ((~~October 9, 2008~~)) August 7, 2017, for the production and handling of organic crops, livestock, and processed food products. The National Organic Program rules may be obtained from the department by emailing the organic program at organic@agr.wa.gov, by phone at 360-902-1805 or accessing the National Organic Program's web site at https://www.ams.usda.gov/rules-regulations/organic.

((~~PART II~~

~~ORGANIC PRODUCTION AND HANDLING STANDARDS~~))

((~~PART III~~

~~ORGANIC CERTIFICATION~~))

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-157-120 Organic mushroom standard.

WSR 17-23-114
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed November 16, 2017, 1:50 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-134 Commercial or industrial use and 458-20-121 Sales of heat or steam—Including production by cogeneration.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend both WAC 458-20-134 and 458-20-121 to add definitions of "biomass fuel." Both rules also are amended to describe the new limit to just biomass fuel on the prior use tax exemption in RCW 82.12.0263 for extractors or manufacturers.

Reasons Supporting Proposal: EHB 2163 (Part 1B [IB]) from the 2017 legislative session amended RCW 82.12.0263 to provide a definition of "biomass fuel" and to limit the use tax exemption in that statute to just biomass fuel.

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

Statute Being Implemented: RCW 82.12.0263.

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: Rex Munger, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1554; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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 rule is updated to reflect the 2017 amendments to RCW 82.12.0263 per RCW 34.05.353 (1)(b).

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 Rex Munger, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453,

phone 360-534-1554, fax 360-534-1606, email RexM@dor.wa.gov, AND RECEIVED BY January 22, 2018.

November 16, 2017
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-031, filed 4/26/10, effective 5/27/10)

WAC 458-20-121 Sales of heat or steam—Including production by cogeneration. (1) **Introduction.** This section provides tax reporting information to persons who sell heat and/or steam. Because heat and steam are often the product of a cogeneration facility, this section also provides tax information for persons operating cogeneration facilities. Persons generating electrical power should also refer to WAC 458-20-179 (Public utility tax).

(2) **Definitions.**

(a) The term "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes.

(b) The term "hog fuel" means wood waste and other wood residuals including forest derived biomass. "Hog fuel" does not include firewood or wood pellets.

(3) **Sale of heat or steam - Business and occupation (B&O) tax.** Persons engaging in the business of operating a plant for the production, extraction, or storage of heat or steam for distribution, for hire or sale, are taxable under the service and other business activities classification. This includes heat or steam produced by a biomass system, cogeneration, geothermal sources, fossil fuels, or any other method.

(((~~(3)~~))) (4) **Sale or production of electricity - Cogeneration.** The production of steam, heat, or electricity is not a manufacturing activity within the definition of RCW 82.04.-120. Persons who operate a plant or system for the generation, production or distribution of electrical energy for hire or sale are subject to the provisions of the public utility tax under the light and power tax classification. Persons who generate electrical energy should refer to WAC 458-20-179 (Public utility tax). A deduction may be taken for:

(a) Power generated in Washington and delivered out-of-state. (See RCW 82.16.050(6).)

(b) Amounts derived from the sale of electricity to persons who are in the business of selling electricity and are purchasing the electricity for resale. (See RCW 82.16.050(2).)

(((~~(4)~~))) (5) **Tax incentive programs - Cogeneration.** There were tax incentive programs available for cogeneration projects begun before January 1, 1990. Sales and use tax deferrals may apply under certain conditions for power generation facilities, even though the production of power is not specifically subject to a manufacturing tax. For example, if the cogeneration facilities are part of a manufacturing plant for the production of new articles of tangible personal property and the requirements for tax deferral are met, the business may apply for tax deferral programs. These incentive programs are discussed in WAC 458-20-240 (Manufacturer's new employee tax credits), 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed after March 31, 2004), and 458-20-24002 (Sales and use tax deferral—New manufacturing and research/development facilities).

(((~~(5)~~))) (6) **Fuel.** Persons who produce their own fuel to generate heat, steam, or electricity are subject to the manufacturing B&O tax on the value of the fuel. This includes the value of fuel which is created at the same site as a by-product of another manufacturing process, such as production of hog fuel. The taxable value should be determined based on comparable sales, or on the basis of all costs in the absence of comparable sales. Refer to WAC 458-20-112 (Value of products).

(a) Fuel does not become an ingredient or component of power, steam, or electricity. The sale of fuel to be used by the purchaser to generate heat, steam, or electricity is a retail sale. In most cases, the purchase of fuel for such purposes is subject to payment of retail sales tax to the supplier. (See (b) of this subsection for discussion of a sales and use tax exemption specific to ((~~hog~~)) biomass fuel.)

In the event retail sales tax is not paid to the supplier, and no exemption from retail sales tax is available, deferred sales or use tax must be paid. However, the law provides a specific exemption from the use tax for biomass fuel ((~~which is~~)) used ((~~in the same~~)) by the fuel's extractor or manufacturer when used directly in the operation of the particular extractive operation or manufacturing plant which produced ((~~the~~)) or manufactured the same biomass fuel. For example, if a lumber manufacturer produces wood waste which is used in the same plant to produce heat for drying lumber ((~~and also electricity which is sold to a public utility district~~)), the wood waste is not subject to use tax even though the manufacturing B&O tax ((~~will apply~~)) applies to this biomass fuel. (See RCW 82.12.0263.)

(b) Effective July 1, 2009:

• Sales of hog fuel used to produce electricity, steam, heat, or biofuel are exempt from retail sales tax when the purchaser provides the seller with a properly filled out "buyer's retail sales tax exemption certificate." RCW 82.08.956.

• The use of hog fuel for production of electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956((~~. For these exemptions, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" has the same meaning as provided in RCW 43.325.010~~)).

(((~~(6)~~))) (7) **Equipment and supplies.** Persons who are in the business of producing heat, steam, or electricity are required to pay retail sales tax to suppliers of all equipment and supplies. If the supplier fails to collect retail sales tax, deferred sales or use tax must be paid.

AMENDATORY SECTION (Amending WSR 10-10-031, filed 4/26/10, effective 5/27/10)

WAC 458-20-134 Commercial or industrial use. (1) **((~~Introduction.~~)) Definitions.**

(a) "The term 'commercial or industrial use' means the following uses of products, including by-products, by the same person that extracted or manufactured them:

(((~~(a)~~))) (i) Any use as a consumer; and

(((~~(b)~~))) (ii) The manufacturing of articles, substances or commodities." (RCW 82.04.130.)

(b) The term "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes.

(2) **Examples of commercial or industrial use.** The following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer of that lumber to build a shed for its own use.

(b) The use of a motor truck by the manufacturer of that truck as a service truck for itself.

(c) The use by a boat manufacturer of patterns, jigs and dies which it has manufactured.

(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel which it has extracted.

(3) **Business and occupation tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to tax under the manufacturing or extracting B&O tax classifications, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. (See WAC 458-20-112 for definition and explanation of value of products.)

(4) **Use tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to use tax on the value of the articles used, unless a specific exemption is provided. (See WAC 458-20-178 for further explanation of the use tax and definition of value of the article used.)

(5) **Exemptions.** The following uses of articles produced for commercial or industrial use are expressly exempt of use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of biomass fuel by the same person that extracted or manufactured that biomass fuel when it is used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same biomass fuel.

(b) Property produced for use in manufacturing ferrosilicon which is subsequently used to make magnesium for sale is exempt of use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon. (RCW 82.04.190(1).)

(c) Effective July 1, 2009, hog fuel used to produce electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For the purposes of this exemption, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" has the same meaning as provided in RCW 43.325.010.

(6) **Special provisions regarding value of article used.** RCW 82.12.010 provides the following special valuation provisions to persons manufacturing products for commercial or industrial use:

(a) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the United States Department of Defense, the value of the articles used is determined according to the value of the ingredients of those articles.

(b) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by:

• The retail selling price of such new or improved product when first offered for sale; or

• The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

WSR 17-23-174
EXPEDITED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 21, 2017, 12:00 p.m.]

Title of Rule and Other Identifying Information: Change Log Phase 4: WAC 296-59-060 Vessel or confined area requirements, 296-59-125 Ski lift aerial work platforms, 296-78-835 Vehicles, 296-115-025 Vessel inspection and certification, 296-304-02005 Cleaning and other cold work, 296-304-05001 Scaffolds or staging, 296-304-05003 Ladders, 296-304-06013 Hazardous materials, and 296-823-17005 Establish and maintain medical records.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to fix any outstanding housekeeping issues that are on the department of labor and industries, division of occupational safety and health's (DOSH) change log for the WAC sections listed above. See below for the amendments being proposed:

Amended Sections:

WAC 296-59-060 Vessel or confined area requirements.

- Update outdated reference from "WAC 296-62-145 through 296-62-14529, General occupational health standards for permit—Required" to "chapter 296-809 WAC, Confined spaces."

WAC 296-59-125 Ski lift aerial work platforms.

- Update the reference in the Note at the bottom of the section from "Appendix 2" to "Appendix 1" - no Appendix 2 exists in this chapter.

WAC 296-78-835 Vehicles.

- Update outdated reference in subsection (1)(b) from "WAC 296-24-230 through 296-24-23035 of the general safety and health standards" to the correct current reference of "chapter 296-863 WAC, Forklifts and other powered industrial trucks."

WAC 296-115-025 Vessel inspection and certification.

- Add "or cargo" to subsection (4) for consistency so it reads "No person will operate a passenger or cargo vessel if the vessel does not have a valid certificate of inspection issued by the department."

WAC 296-304-02005 Cleaning and other cold work.

- Update reference in subsection (2)(f)(iv) from "206-304-090" to "296-304-090."

WAC 296-304-05001 Scaffolds or staging.

- Remove letter (a) from subsection (7) since there are no other subdivisions to go along with it under (7). Add word "subsection" in the middle of the sentence before list of "(1), (8) and (9) of this section."

WAC 296-304-05003 Ladders.

- Remove the letter (a) from subsection (3) since there are no other subdivisions to go along with it under (3) and update the roman numerals from (i), (ii) and (iii) to (a), (b) and (c) for consistency.

WAC 296-304-06013 Hazardous materials.

- Remove the number (1) from the definition of "Hazardous Material" at the beginning of the section for consistency across all chapters and renumber the rest of the section. Add the word "definition" before the actual definition of "Hazardous material" for clarification.

WAC 296-823-17005 Establish and maintain medical records.

- Update outdated reference in Reference at the bottom of the section from "WAC 296-62-052, Access to records" to "Chapter 296-802 WAC, Employee medical and exposure records."

Reasons Supporting Proposal: Updating these housekeeping errors will ensure that all readers of these rule sections can clearly understand the rules, keeping employers and employees safe on the job.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, 360-902-5090.

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: No requirements are being changed during this rule making, only clarifying language and updating errors, which fits within the parameters of RCW 34.05.353 Expedited rule making.

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 Chris Miller, Department of Labor and Industries, P.O. Box 44610, Olympia, WA 98504, phone 360-902-5516, email christopher.miller@lni.wa.gov, AND RECEIVED BY January 23, 2018.

November 21, 2017
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 17-16-132, filed 8/1/17, effective 9/1/17)

WAC 296-59-060 Vessel or confined area requirements. The requirements of ((~~WAC 296-62-145 through 296-62-14529, general occupational health standards for permit - Required~~)) chapter 296-809 WAC, Confined spaces, will be applicable within the scope of chapter 296-59 WAC.

AMENDATORY SECTION (Amending WSR 17-16-132, filed 8/1/17, effective 9/1/17)

WAC 296-59-125 Ski lift aerial work platforms. (1) Construction and loading.

(a) All aerial work platforms must be constructed to sustain the permissible loading with a safety factor of four. The load permitted must be calculated to include:

(i) The weight of the platform and all suspension components;

(ii) The weight of each permitted occupant calculated at two hundred fifty pounds per person including limited handtools;

(iii) The weight of any additional heavy tools, equipment, or supplies for tasks commonly accomplished from the work platform.

(b) The floor of the platform must not have openings larger than two inches in the greatest dimension.

(c) The platform must be equipped with toeboards at least four inches high on all sides.

(d) Guardrails.

(i) The platform must be equipped with standard height and strength guardrails where such guardrails will pass through the configuration of all lifts on which it is intended to be used.

(ii) Where guardrails must be less than thirty-six inches high in order to clear carriages, guideage, etc., guardrails must be as high as will clear the obstructions but never less than twelve inches high.

(iii) If the work platform is equipped with an upper work level, the upper level platform must be equipped with a toeboard at least four inches high.

(iv) Each platform must be equipped with a lanyard attachment ring for each permissible occupant to attach a safety belt lanyard.

(v) Each lanyard attachment ring must be of such strength as to sustain five thousand four hundred pounds of static loading for each occupant permitted to be attached to a specific ring.

(vi) Attachment rings must be permanently located as close to the center balance point of the platform as is practical.

(vii) The rings may be movable, for instance, up and down a central suspension rod, but must not be completely removable.

(e) Platform attachment.

(i) The platform must be suspended by either a standard wire rope four part bridle or by solid metal rods, bars, or pipe.

(ii) The attachment means chosen must be of a type which will prevent accidental displacement.

(iii) The attachment means must be adjusted so that the platform rides level when empty.

(f) Maintenance.

(i) Every aerial work platform must be subjected to a complete annual inspection by qualified personnel.

(ii) The inspection must include all structural members, welding, bolted or treaded fittings, and the suspension components.

(iii) Any defect noted must be repaired before the platform is placed back in service.

(iv) A written record must be kept for each annual inspection. The record must include:

(A) The inspector identification;

(B) All defects found;

(C) The identity of repair personnel;

(D) Identity of the postrepair inspector who accepted the platform for use.

(g) The platform must be clearly identified as to the number of permissible passengers and the weight limit of additional cargo permitted.

(i) Signs must be applied on the outside of each side panel.

(ii) Signs must be maintained in clearly legible condition.

(h) Unless the side guardrail assembly is at least thirty-six inches high on all sides, signs must be placed on the inside floor or walls to clearly inform all passengers that they must use a safety belt and lanyard at all times when using the platform.

(2) Work platform use.

(a) Platforms must be attached to the haulrope with an attachment means which develops a four to one strength factor for the combined weight of the platform and all permissible loading.

(b) The haulrope attachment means must be designed to prevent accidental displacement.

(c) Trained and competent personnel must attach and inspect the platform before each use.

(d) Passengers must be provided with and must use the correct safety harness and lanyard for the intended work.

(e) Any time a passenger's position is not protected by a standard guardrail at least thirty-six inches high, the individual must be protected by a short lanyard which will not permit free-fall over the platform edge.

(f) When personnel are passengers on a work platform and their work position requires the use of a safety harness and lanyard, the lanyard must be attached to the work platform, not to the haulrope or tower.

(g) Work platform passengers must face in the direction of travel when the lift is moving.

(h) Tools, equipment and supplies must be loaded on the platform in such a fashion that the loaded platform can safely pass all towers and appurtenances.

(i) Heavy tools, equipment or supplies must be secured in place if they could fall over or roll within the platform and create a hazard for passengers.

(j) When the work crew is traveling on the work platform, the lift must be operated at a speed which is safe for that particular system and the conditions present.

Note: See Appendix ((~~2~~)) 1 for operating procedure requirements.

AMENDATORY SECTION (Amending WSR 17-16-132, filed 8/1/17, effective 9/1/17)

WAC 296-78-835 Vehicles. (1) Vehicles.

(a) Scope. Vehicles must include all mobile equipment normally used in sawmill, planing mill, storage, shipping, and yard operations, including log sorting yards.

(b) Lift trucks must be designed, constructed, maintained and operated in accordance with the requirements of ((~~WAC 296-24-230 through 296-24-23035 of the general safety and health standards~~)) chapter 296-863 WAC, Forklifts and other powered industrial trucks.

(c) Carriers. Drive chains on lumber carriers must be adequately guarded to prevent contact at the pinch points.

(d) Lumber carriers must be designed and constructed so that the operator's field of vision will not be unnecessarily restricted.

(e) Carriers must be provided with ladders or equivalent means of access to the operator's platform or cab.

(f) Lumber hauling trucks.

On trucks where the normal operating position is ahead of the load in the direction of travel, the cab must be protected by a barrier at least as high as the cab. The barrier must be capable of stopping the weight of the load capacity of the vehicle if the vehicle were to be stopped suddenly while traveling at its normal operating speed. The barrier must be constructed in such a manner that individual pieces of a normal load will not go through openings in the barrier.

(i) Stakes, stake pockets, racks, tighteners, and binders must provide a positive means to secure the load against any movement during transit.

(ii) Where rollers are used, at least two must be equipped with locks which shall be locked when supporting loads during transit.

(2) Warning signals and spark arrestors. All vehicles must be equipped with audible warning signals and where practicable must have spark arrestors.

(3) Flywheels, gears, sprockets and chains and other exposed parts that constitute a hazard to workers must be enclosed in standard guards.

(4) All vehicles operated after dark or in any area of reduced visibility must be equipped with head lights and backup lights which adequately illuminate the direction of travel for the normal operating speed of the vehicle. The vehicle must also be equipped with tail lights which are visible enough to give sufficient warning to surrounding traffic at the normal traffic operating speed.

(5) All vehicles operated in areas where overhead hazards exist must be equipped with an overhead guard for the protection of the operator.

(6) Where vehicles are so constructed and operated that there is a possibility of the operator being injured by backing into objects, a platform guard must be provided and so arranged as not to hinder the exit of the driver.

(7) Trucks, lift trucks and carriers must not be operated at excessive rates of speed. When operating on tramways or docks more than six feet above the ground or lower level they must be limited to a speed of not more than twelve miles per hour. When approaching blind corners they must be limited to four miles per hour.

(8) Vehicles must not be routed across principal thoroughfares while employees are going to or from work unless pedestrian lanes are provided.

(a) Railroad tracks and other hazardous crossings must be plainly posted.

(b) Restricted overhead clearance. All areas of restricted side or overhead clearance must be plainly marked.

(c) Pickup and unloading points. Pickup and unloading points and paths for lumber packages on conveyors and transfers and other areas where accurate spotting is required, must be plainly marked and wheel stops provided where necessary.

(d) Aisles, passageways, and roadways must be sufficiently wide to provide safe side clearance. One-way aisles may be used for two-way traffic if suitable turnouts are provided.

(9) Where an operator's vision is impaired by the vehicle or load it is carrying, they must move only on signal from someone so stationed as to have a clear view in the direction the vehicle is to travel.

(10) Reserved.

(11) Load limits. No vehicle must be operated with loads exceeding its safe load capacity.

(12) Vehicles with internal combustion engines must not be operated in enclosed buildings or buildings with ceilings less than sixteen feet high unless the buildings have ventilation adequate to maintain air quality as required by the general occupational health standard, chapter 296-62 WAC.

(13) Vehicles must not be refueled while motor is running. Smoking or open flames must not be allowed in the refueling area.

(14) No employee other than trained operators or mechanics must start the motor of, or operate any log or lumber handling vehicle.

(15) All vehicles must be equipped with brakes capable of holding and controlling the vehicle and capacity load upon any grade or incline over which they may operate.

(16) Unloading equipment and facilities.

(a) Machines used for hoisting, unloading, or lowering logs must be equipped with brakes capable of controlling or holding the maximum load in midair.

(b) The lifting cylinders of all hydraulically operated log handling machines, or where the load is lifted by wire rope, must be equipped with a positive device for preventing the uncontrolled lowering of the load or forks in case of a failure in the hydraulic system.

(c) A limit switch must be installed on powered log handling machines to prevent the lift arms from traveling too far in the event the control switch is not released in time.

(d) When forklift-type machines are used to load trailers, a means of securing the loading attachment to the fork must be installed and used.

(e) A-frames and similar log unloading devices must have adequate height to provide safe clearance for swinging loads and to provide for adequate crotch lines and spreader bar devices.

(f) Log handling machines used to stack logs or lift loads above operator's head must be equipped with overhead protection.

(g) Unloading devices must be equipped with a horn or other plainly audible signaling device.

(h) Movement of unloading equipment must be coordinated by audible or hand signals when operator's vision is impaired or operating in the vicinity of other employees.

Lift trucks regularly used for transporting peeler blocks or cores must have tusks or a similar type hold down device to prevent the blocks or cores from rolling off the forks.

(17) Where spinners are used on steering wheels, they must be of the automatic retracting type or must be built into the wheel in such a manner as not to extend above the plane surface of the wheel. Vehicles equipped with positive antikickback steering are exempted from this requirement.

(18) Mechanical stackers and unstackers must have all gears, sprockets and chains exposed to the contact of workers, fully enclosed by guards as required by WAC 296-78-710 of this chapter.

(19) Manually operated control switches must be properly identified and so located as to be readily accessible to the operator. Main control switches must be designed so they can be locked in the open position.

(20) Employees must not stand or walk under loads being lifted or moved. Means must be provided to positively block the hoisting platform when employees must go beneath the stacker or unstacker hoist.

(21) No person must ride any lift truck or lumber carrier unless a suitable seat is provided, except for training purposes.

(22) Unstacking machines must be provided with a stopping device which must be accessible at all times to at least one employee working on the machine.

(23) Floor of the unstacker must be kept free of broken stickers and other debris. A bin or frame must be provided to allow for an orderly storage of stickers.

(24) Drags or other approved devices must be provided to prevent lumber from running down on graders.

(25) Liquified petroleum gas storage and handling. Storage and handling of liquified petroleum gas must be in accordance with the requirements of WAC 296-24-475 through 296-24-47517 of the general safety and health standards.

(26) Flammable liquids must be stored and handled in accordance with WAC 296-24-330 through 296-24-33019 of the general safety and health standards.

(27) Guarding side openings. The hoistway side openings at the top level of the stacker and unstacker must be protected by enclosures of standard railings.

(28) Guarding hoistway openings. When the hoist platform or top of the load is below the working platform, the hoistway openings must be guarded.

(29) Guarding lower landing area. The lower landing area of stackers and unstackers must be guarded by enclosures that prevent entrance to the area or pit below the hoist platform. Entrances should be protected by electrically interlocked gates which, when open, will disconnect the power and set the hoist brakes. When the interlock is not installed, other positive means of protecting the entrance must be provided.

(30) Lumber lifting devices on all stackers must be designed and arranged so as to minimize the possibility of lumber falling from such devices.

(31) Inspection. At the start of each work shift, equipment operators must inspect the equipment they will use for evidence of failure or incipient failure. Equipment found to have defects which might affect the operating safety must not be used until the defects are corrected.

(32) Cleaning pits. Safe means of entrance and exit must be provided to permit cleaning of pits.

(33) Preventing entry to hazardous area. Where the return of trucks from unstacker to stacker is by mechanical power or gravity, adequate signs, warning devices, or barriers must be erected to prevent entry into the hazardous area.

AMENDATORY SECTION (Amending WSR 17-16-132, filed 8/1/17, effective 9/1/17)

WAC 296-115-025 Vessel inspection and certification. (1) The department must inspect all vessels subject to this chapter to ensure they are safe and seaworthy at least once each year.

(2) The department may also inspect a vessel:

(a) If requested to do so by the owner, operator, or master of the vessel;

(b) After an explosion, fire, or any other accident involving the vessel;

(c) Upon receipt of a complaint from any person;

(d) At the discretion of the department.

(3) The department will charge the owner of a vessel a fee for each certification or recertification inspection. See WAC 296-115-120 for fee schedule.

(4) No person will operate a passenger or cargo vessel if the vessel does not have a valid certificate of inspection issued by the department.

(5) After inspecting a vessel and determining it is safe and seaworthy, the department will issue a certificate of inspection for that vessel. The certificate will be valid for one year after the date of inspection and contain:

(a) The certificate must set forth the date of the inspection;

(b) The names of the vessel and the owner;

(c) The number of lifeboats, if required;

(d) The number of life preservers required;

(e) The number of passengers allowed; and

(f) Any other information the department requires by rule.

(6) Any time a vessel is found to be not safe or seaworthy, or not in compliance with the provisions of this chapter:

(a) The department may refuse to issue a certificate of inspection until the deficiencies have been corrected and may cancel any certificate of inspection currently issued.

(b) The department must give the owner a written statement why the vessel was found to be unsafe, unseaworthy, or not in compliance with the provisions of this chapter, including a specific reference to the statute or rule.

(7) Department inspectors may, upon presenting their credentials to the owner, master, operator, or agent in charge of a vessel, board the vessel without delay to make an inspection.

(a) Inspectors must inform the owner, master, operator, or agent in charge that their intent is to inspect the vessel.

(b) During the inspection, inspectors must have access to all areas of the vessel. Inspectors may question privately the owner, master, operator, or agent in charge of the vessel, or any crew member of or passenger on the vessel.

(c) If any person refuses to allow inspectors to board a vessel for an inspection, or refuses to allow access to any areas of the vessel, the department may request a warrant from the superior court for the county in which the vessel is located. The court will grant the warrant if:

(i) There is evidence that the vessel has sustained a fire, explosion, unintentional grounding, or has been involved in any other accident;

(ii) There is evidence that the vessel is not safe or seaworthy; or

(iii) The department shows that the inspection furthers a general administrative plan for enforcing the safety requirements of chapter 88.04 RCW, the Charter Boat Safety Act.

(8) The owner or master of a vessel must post the certificate of inspection behind glass or other suitable transparent material in a conspicuous area of the vessel.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-02005 Cleaning and other cold work. (1) Locations covered by this section. You must ensure that manual cleaning and other cold work are not performed in the following spaces unless the conditions of subsection (2) of this section have been met:

(a) Spaces containing or having last contained bulk quantities of combustible or flammable liquids or gases; and

(b) Spaces containing or having last contained bulk quantities of liquids, gases or solids that are toxic, corrosive or irritating.

(2) Requirements for performing cleaning or cold work.

(a) Liquid residues of hazardous materials must be removed from work spaces as thoroughly as practicable before employees start cleaning operations or cold work in a space. Special care must be taken to prevent the spilling or the draining of these materials into the water surrounding the vessel, or for shore-side operations, onto the surrounding work area.

(b) Testing must be conducted by a competent person to determine the concentration of flammable, combustible, toxic, corrosive, or irritant vapors within the space prior to the beginning of cleaning or cold work.

(c) Continuous ventilation must be provided at volumes and flow rates sufficient to ensure that the concentration(s) of:

(i) Flammable vapor is maintained below 10 percent of the lower explosive limit; and

Note to (2)(c)(i): Spaces containing highly volatile residues may require additional ventilation to keep the concentration of flammable vapors below 10 percent of the lower explosive limit and within the permissible exposure limit.

(ii) Toxic, corrosive, or irritant vapors are maintained within the permissible exposure limits and below IDLH levels.

(d) Testing must be conducted by the competent person as often as necessary during cleaning or cold work to assure that air concentrations are below 10 percent of the lower explosive limit and within the PELs and below IDLH levels. Factors such as, but not limited to, temperature, volatility of the residues and other existing conditions in and about the spaces are to be considered in determining the frequency of testing necessary to assure a safe atmosphere.

Note to (2)(d): See WAC 296-304-02013—Appendix B, for additional information on frequency of testing.

(e) Spills or other releases of flammable, combustible, toxic, corrosive, and irritant materials must be cleaned up as work progresses.

(f) An employee may not enter a confined or enclosed space or other dangerous atmosphere if the concentration of flammable or combustible vapors in work spaces exceeds 10 percent of the lower explosive limit.

Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment provided:

(i) No ignition sources are present;

(ii) The atmosphere in the space is monitored continuously;

(iii) The atmosphere in the space is maintained above the upper explosive limit; and

(iv) Respiratory protection, personal protective equipment, and clothing are provided in accordance with WAC ((~~206-304-090~~)) 296-304-090 through 296-304-09007.

Note to (2)(f): Other provisions for work in IDLH and other dangerous atmospheres are located in WAC 296-304-090 through 296-304-09007.

(g) A competent person must test ventilation discharge areas and other areas where discharged vapors may collect to determine if vapors discharged from the spaces being ventilated are accumulating in concentrations hazardous to employees.

(h) If the tests required in (g) of this subsection indicate that concentrations of exhaust vapors that are hazardous to employees are accumulating, all work in the contaminated area must be stopped until the vapors have dissipated or been removed.

(i) Only explosion-proof, self-contained portable lamps, or other electric equipment approved by a National Recognized Testing Laboratory (NRTL) for the hazardous location must be used in spaces described in subsection (1) of this section, until such spaces have been certified as "safe for workers."

Note to (2)(i): Battery-fed, portable lamps or other electric equipment bearing the approval of a NRTL for the class, and division of the location in which they are used are deemed to meet the requirements of (i) of this subsection.

(j) You must prominently post signs that prohibit sources of ignition within or near a space that has contained flammable or combustible liquids or gases in bulk quantities:

(i) At the entrance to those spaces;

(ii) In adjacent spaces; and

(iii) In the open area adjacent to those spaces.

(k) All air moving equipment and its component parts, including duct work, capable of generating a static electric discharge of sufficient energy to create a source of ignition, must be bonded electrically to the structure of a vessel or vessel section or, in the case of land-side spaces, grounded to prevent an electric discharge in the space.

(l) Fans must have nonsparking blades, and portable air ducts shall be of nonsparking materials.

Note to (2): See WAC 296-304-02003(3) and applicable requirements of chapter 296-62 WAC, general occupational health standards, for other provisions affecting cleaning and cold work.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-05001 Scaffolds or staging. (1) General requirements.

(a) All scaffolds and their supports whether of lumber, steel or other material, must be capable of supporting the load they are designed to carry with a safety factor of not less than four.

(b) All lumber used in the construction of scaffolds must be spruce, fir, long leaf yellow pine, Oregon pine or wood of equal strength. The use of hemlock, short leaf yellow pine, or short fiber lumber is prohibited.

(c) Lumber dimensions as given are nominal except where given in fractions of an inch.

(d) All lumber used in the construction of scaffolds must be sound, straight-grained, free from cross grain, shakes and large, loose or dead knots. It must also be free from dry rot, large checks, worm holes or other defects which impair its strength or durability.

(e) Scaffolds must be maintained in a safe and secure condition. Any component of the scaffold which is broken, burned or otherwise defective must be replaced.

(f) Barrels, boxes, cans, loose bricks, or other unstable objects must not be used as working platforms or for the support of planking intended as scaffolds or working platforms.

(g) No scaffold must be erected, moved, dismantled or altered except under the supervision of competent persons.

(h) No welding, burning, riveting or open flame work must be performed on any staging suspended by means of fiber rope.

(i) Lifting bridles on working platforms suspended from cranes must consist of four legs so attached that the stability of the platform is assured.

(j) Unless the crane hook has a safety latch or is moused, the lifting bridles on working platforms suspended from cranes must be attached by shackles to the lower lifting block

or other positive means must be taken to prevent them from becoming accidentally disengaged from the crane hook.

(2) Independent pole wood scaffolds.

(a) All pole uprights must be set plumb. Poles must rest on a foundation of sufficient size and strength to distribute the load and to prevent displacement.

(b) In light-duty scaffolds not more than 24 feet in height, poles may be spliced by overlapping the ends not less than 4 feet and securely nailing them together. A substantial cleat must be nailed to the lower section to form a support for the upper section except when bolted connections are used.

(c) All other poles to be spliced must be squared at the ends of each splice, abutted, and rigidly fastened together by not less than two cleats securely nailed or bolted thereto. Each cleat must overlap each pole end by at least 24 inches and must have a width equal to the face of the pole to which it is attached. The combined cross sectional area of the cleats must be not less than the cross sectional area of the pole.

(d) Ledgers must extend over two consecutive pole spaces and must overlap the poles at each end by not less than 4 inches. They must be left in position to brace the poles as the platform is raised with the progress of the work. Ledgers must be level and must be securely nailed or bolted to each pole and must be placed against the inside face of each pole.

(e) All bearers must be set with their greater dimension vertical and must extend beyond the ledgers upon which they rest.

(f) Diagonal bracing must be provided between the parallel poles, and cross bracing must be provided between the inner and outer poles or from the outer poles to the ground.

(g) Minimum dimensions and spacing of members must be in accordance with Table E-1 in WAC 296-304-07011.

(h) Platform planking must be in accordance with the requirements of (8) of this section.

(i) Backrails and toeboards must be in accordance with the requirements of (9) of this section.

(3) Independent pole metal scaffolds.

(a) Metal scaffold members must be maintained in good repair and free of corrosion.

(b) All vertical and horizontal members must be fastened together with a coupler or locking device which will form a positive connection. The locking device must be of a type which has no loose parts.

(c) Posts must be kept plumb during erection and the scaffold must be subsequently kept plumb and rigid by means of adequate bracing.

(d) Posts must be fitted with bases supported on a firm foundation to distribute the load. When wooden sills are used, the bases must be fastened thereto.

(e) Bearers must be located at each set of posts, at each level, and at each intermediate level where working platforms are installed.

(f) Tubular bracing must be applied both lengthwise and crosswise as required.

(g) Platform planking must be in accordance with the requirements of (8) of this section.

(h) Backrails and toeboards must be in accordance with the requirements of (9) of this section.

(4) Wood trestle and extension trestle ladders.

(a) The use of trestle ladders, or extension sections or base sections of extension trestle ladders longer than 20 feet is prohibited. The total height of base and extension may, however, be more than 20 feet.

(b) The minimum dimensions of the side rails of the trestle ladder, or the base sections of the extension trestle ladder, must be as follows:

(i) Ladders up to and including those 16 feet long must have side rails of not less than 1 5/16 x 2 3/4 inch lumber.

(ii) Ladders over 16 feet long and up to and including those 20 feet long must have side rails of not less than 1 5/16 x 3 inch lumber.

(c) The side rails of the extension section of the extension trestle ladder must be parallel and must have minimum dimensions as follows:

(i) Ladders up to and including 12 feet long must have side rails of not less than 1 5/16 x 2 1/4 inch lumber.

(ii) Ladders over 12 feet long and up to and including those 16 feet long must have side rails of not less than 1 5/16 x 2 1/2 inch lumber.

(iii) Ladders over 16 feet long and up to and including those 20 feet long must have side rails of not less than 1 5/16 x 3 inch lumber. (Rev. 2-17-76)

(d) Trestle ladders and base sections of extension trestle ladders must be so spread that when in an open position the spread of the trestle at the bottom, inside to inside, must not be less than 5 1/2 inches per foot of the length of the ladder.

(e) The width between the side rails at the bottom of the trestle ladder or of the base section of the extension trestle ladder must not be less than 21 inches for all ladders and sections 6 feet or less in length. For longer lengths of ladder the width must be increased at least 1 inch for each additional foot of length. The width between the side rails of the extension section of the trestle ladder must be not less than 12 inches.

(f) In order to limit spreading, the top ends of the side rails of both the trestle ladder and of the base section of the extension trestle ladder must be beveled, or of equivalent construction, and must be provided with a metal hinge.

(g) A metal spreader or locking device to hold the front and back sections in an open position, and to hold the extension section securely in the elevated position, must be a component of each trestle ladder or extension trestle ladder.

(h) Rungs must be parallel and level. On the trestle ladder, or on the base section of the extension trestle ladder, rungs must be spaced not less than 8 inches nor more than 18 inches apart; on the extension section of the extension trestle ladder, rungs must be spaced not less than 6 inches nor more than 12 inches apart.

(i) Platform planking must be in accordance with the requirements of (8) of this section, except that the width of the platform planking must not exceed the distance between the side rails.

(j) Backrails and toeboards must be in accordance with the requirements of (9) of this section.

(5) Painters' suspended scaffolds.

(a) The supporting hooks of swinging scaffolds must be constructed to be equivalent in strength to mild steel or wrought iron, must be forged with care, must not be less than

7/8 inch in diameter, and must be secured to a safe anchorage at all times.

(b) The ropes supporting a swinging scaffold must be equivalent in strength to first-grade 3/4 inch diameter manila rope properly rigged into a set of standard 6 inch blocks consisting of at least one double and one single block.

(c) Manila and wire ropes must be carefully examined before each operation and thereafter as frequently as may be necessary to ensure their safe condition.

(d) Each end of the scaffold platform must be supported by a wrought iron or mild steel stirrup or hanger, which in turn is supported by the suspension ropes.

(e) Stirrups must be constructed so as to be equivalent in strength to wrought iron 3/4 inch in diameter.

(f) The stirrups must be formed with a horizontal bottom member to support the platform, must be provided with means to support the guardrail and midrail and must have a loop or eye at the top for securing the supporting hook on the block.

(g) Two or more swinging scaffolds must not at any time be combined into one by bridging the distance between them with planks or any other form of platform.

(h) No more than two persons must be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this section. Where heavier construction is used, the number of persons permitted to work on the scaffold must be determined by the size and the safe working load of the scaffold.

(i) Backrails and toeboards must be in accordance with the requirements of (9) of this section.

(j) The swinging scaffold platform must be one of the three types described in (k), (l), and (m) of this section.

(k) The ladder-type platform consists of boards upon a horizontal ladder-like structure, referred to herein as the ladder, the side rails of which are parallel. If this type of platform is used the following requirements must be met:

(i) The width between the side rails must be no more than 20 inches.

(ii) The side rails of ladders in ladder-type platforms must be equivalent in strength to a beam of clear straight-grained spruce of the dimensions contained in Table E-2 in WAC 296-304-07011.

(iii) The side rails must be tied together with tie rods. The tie rods must not be less than 5/16 inch in diameter, located no more than 5 feet apart, pass through the rails, and be riveted up tight against washers at both ends.

(iv) The rungs must be of straight-grained oak, ash, or hickory, not less than 1 1/8 inches diameter, with 7/8 inch tenons mortised into the side rails not less than 7/8 inch and must be spaced no more than 18 inches on centers.

(v) Flooring strips must be spaced no more than 5/8 inch apart except at the side rails, where 1 inch spacing is permissible.

(vi) Flooring strips must be cleated on their undersides.

(l) The plank-type platform consists of planks supported on the stirrups or hangers. If this type of platform is used, the following requirements must be met:

(i) The planks of plank-type platforms must not be less than 2 x 10 inch lumber.

(ii) The platform must not be more than 24 inches in width.

(iii) The planks must be tied together by cleats of not less than 1 x 6 inch lumber, nailed on their undersides at intervals of not more than 4 feet.

(iv) The planks must extend not less than 6 inches nor more than 18 inches beyond the supporting stirrups.

(v) A cleat must be nailed across the platform on the underside at each end outside the stirrup to prevent the platform from slipping off the stirrup.

(vi) Stirrup supports must not be more than 10 feet apart.

(m) The beam-type platform consists of longitudinal side stringers with cross beams set on edge and spaced not more than 4 feet apart on which longitudinal platform planks are laid. If this type platform is used the following requirements must be met:

(i) The side stringers must be of sound, straight-grained lumber, free from knots, and of not less than 2 x 6 inch lumber, set on edge.

(ii) The stringers must be supported on the stirrups with a clear span between stirrups of not more than 16 feet.

(iii) The stringers must be bolted to the stirrups by U-bolts passing around the stirrups and bolted through the stringers with nuts drawn up tight on the inside face.

(iv) The ends of the stringers must extend beyond the stirrups not less than 6 inches nor more than 12 inches at each end of the platform.

(v) The platform must be supported on cross beams of 2 x 6 inch lumber between the side stringers securely nailed thereto and spaced not more than 4 feet on centers.

(vi) The platform must not be more than 24 inches wide.

(vii) The platform must be formed of boards 7/8 inch in thickness by not less than 6 inches in width, nailed tightly together, and extending to the outside face of the stringers.

(viii) The ends of all platform boards must rest on the top of the cross beams, must be securely nailed, and at no intermediate points in the length of the platform must there by any cantilever ends.

(6) Horse scaffolds.

(a) The minimum dimensions of lumber used in the construction of horses must be in accordance with Table E-3 in WAC 296-304-07011.

(b) Horses constructed of materials other than lumber must provide the strength, rigidity and security required of horses constructed of lumber.

(c) The lateral spread of the legs must be equal to not less than one-third of the height of the horse.

(d) All horses must be kept in good repair, and must be properly secured when used in staging or in locations where they may be insecure.

(e) Platform planking must be in accordance with the requirements of (8) of this section.

(f) Backrails and toeboards must be in accordance with (9) of this section.

(7) Other types of scaffolds. (((~~(a)~~))) Scaffolds of a type for which specifications are not contained in this section must meet the general requirements of subsection (1), (8) and (9) of this section, must be in accordance with recognized principles of design and must be constructed in accordance with accepted standards covering such equipment.

(8) Scaffold or platform planking.

(a) Except as otherwise provided in (5)(k) and (m), platform planking must not be less than 2 x 10 inch lumber. Platform planking must be straight-grained and free from large or loose knots and may be either rough or dressed.

(b) Platforms of staging must not be less than two 10 inch planks in width except in such cases as the structure of the vessel or the width of the trestle ladders make it impossible to provide such a width.

(c) Platform planking must project beyond the supporting members at either end by at least 6 inches but in no case must it project more than 12 inches unless the planks are fastened to the supporting members.

(d) Table E-4 in WAC 296-304-07011 must be used as a guide in determining safe loads for scaffold planks.

(9) Backrails and toeboards.

(a) Scaffolding, staging, runways, or working platforms which are supported or suspended more than 5 feet above a solid surface, or at any distance above the water, must be provided with a railing which has a top rail whose upper surface is from 42 to 45 inches above the upper surface of the staging, platform, or runway and a midrail located halfway between the upper rail and the staging, platform, or runway.

(b) Rails must be of 2 x 4 inch lumber, flat bar or pipe. When used with rigid supports, taut wire or fiber rope of adequate strength may be used. If the distance between supports is more than 8 feet, rails must be equivalent in strength to 2 x 4 inch lumber. Rails must be firmly secured. Where exposed to hot work or chemicals, fiber rope rails must not be used.

(c) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted employees working more than 5 feet above solid surfaces must be protected by safety belts and life lines meeting the requirements of WAC 296-304-09021(2), and employees working over water must be protected by personal flotation devices meeting the requirements of WAC 296-304-09017(1).

(d) Employees working from swinging scaffolds which are triced out of a vertical line below their supports or from scaffolds on paint floats subject to surging, must be protected against falling toward the vessel by a railing or a safety belt and line attached to the backrail.

(e) When necessary, to prevent tools and materials from falling on men below, toeboards of not less than 1 x 4 inch lumber must be provided.

(10) Access to staging.

(a) Access from below to staging more than 5 feet above a floor, deck or the ground must consist of well secured stairways, cleated ramps, fixed or portable ladders meeting the applicable requirements of WAC 296-304-05003 or rigid type noncollapsible trestles with parallel and level rungs.

(b) Ramps and stairways must be provided with 36-inch handrails with midrails.

(c) Ladders must be so located or other means must be taken so that it is not necessary for employees to step more than one foot from the ladder to any intermediate landing or platform.

(d) Ladders forming integral parts of prefabricated staging are deemed to meet the requirements of these regulations.

(e) Access from above to staging more than 3 feet below the point of access must consist of a straight, portable ladder meeting the applicable requirements of WAC 296-304-05003 or a Jacob's ladder properly secured, meeting the requirements of WAC 296-304-05007(4).

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-05003 Ladders. (1) General requirements.

(a) The use of ladders with broken or missing rungs or steps, broken or split side rails, or other faulty or defective construction is prohibited. When ladders with such defects are discovered, they must immediately be withdrawn from service. Inspection of metal ladders must include checking for corrosion of interiors of open end, hollow rungs.

(b) When sections of ladders are spliced, the ends must be abutted, and not fewer than 2 cleats must be securely nailed or bolted to each rail. The combined cross sectional area of the cleats must not be less than the cross sectional area of the side rail. The dimensions of side rails for their total length must be those specified in (2) or (3) of this section.

(c) Portable ladders must be lashed, blocked or otherwise secured to prevent their being displaced. The side rails of ladders used for access to any level must extend not less than 36 inches above that level. When this is not practical, grab rails which will provide a secure grip for an employee moving to or from the point of access must be installed.

(d) Portable metal ladders must be of strength equivalent to that of wood ladders. Manufactured portable metal ladders provided by you must be in accordance with the provisions of the United States of America Standard Safety Code for Portable Metal Ladders, A14.2-1972.

(e) Portable metal ladders must not be used near electrical conductors nor for electric arc welding operations.

(f) Manufactured portable wood ladders provided by the employer must be in accordance with the provisions of the United States of America Standard Safety Code for Portable Wood Ladders, A-14.1-1968.

(2) Construction of portable wood cleated ladders up to 30 feet in length.

(a) Wood side rails must be made from west coast hemlock, eastern spruce, Sitka spruce, or wood of equivalent strength. Material must be seasoned, straight-grained wood, and free from shakes, checks, decay or other defects which will impair its strength. The use of low density woods is prohibited.

(b) Side rails must be dressed on all sides, and kept free of splinters.

(c) All knots must be sound and hard. The use of material containing loose knots is prohibited. Knots must not appear on the narrow face of the rail and, when in the side face, must be not more than 1/2 inch in diameter or within 1/2 inch of the edge of the rail or nearer than 3 inches to a tread or rung.

(d) Pitch pockets not exceeding 1/8 inch in width, 2 inches in length and 1/2 inch in depth are permissible in wood side rails, provided that not more than one such pocket appears in each 4 feet of length.

(e) The width between side rails at the base must not be less than 11 1/2 inches for ladders 10 feet or less in length.

For longer ladders, this width must be increased at least 1/4 inch for each additional 2 feet in length.

(f) Side rails must be at least 1 5/8 x 3 5/8 inches in cross section.

(g) Cleats (meaning rungs rectangular in cross section with the wide dimension parallel to the rails) must be of the material used for side rails, straight-grained and free from knots. Cleats must be mortised into the edges of the side rails 1/2 inch, or filler blocks must be used on the rails between the cleats. The cleats must be secured to each rail with three 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength. Cleats must be uniformly spaced not more than 12 inches apart.

(h) Cleats 20 inches or less in length must be at least 25/32 x 3 inches in cross section. Cleats over 20 inches but not more than 30 inches in length must be at least 25/32 x 3 3/4 inches in cross section.

(3) Construction of portable wood cleated ladders from 30 to 60 feet in length. (((~~(a)~~))) Ladders from 30 to 60 feet in length must be in accordance with the specifications of (2) of this section with the following exceptions:

(((~~(i)~~))) (a) Rails must not be less than 2 x 6 inch lumber.

(((~~(ii)~~))) (b) Cleats must not be less than 1 x 4 inch lumber.

(((~~(iii)~~))) (c) Cleats must be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fastenings of equivalent strength.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-06013 Hazardous materials. (((~~(1)~~))) Definition.

Hazardous material. A material with one or more of the following characteristics:

(a) Has a flash point below 140°F, closed cup, or is subject to spontaneous heating;

(b) Has a threshold limit value below 500 p.p.m. in the case of a gas or vapor, below 500 mg./m.3 for fumes, and below 25 m.p.p.c.f. in case of a dust;

(c) Has a single dose oral LD50 below 500 mg./kg.;

(d) Is subject to polymerization with the release of large amounts of energy;

(e) Is a strong oxidizing or reducing agent;

(f) Causes first degree burns to skin in short time exposure, or is systematically toxic by skin contact; or

(g) In the course of normal operations, may produce dusts, gases, fumes, vapors, mists, or smokes that have one or more of the above characteristics.

(((~~(2)~~))) (1) No chemical product, such as a solvent or preservative; no structural material, such as cadmium or zinc coated steel, or plastic material; and no process material, such as welding filler metal; which is a hazardous material may be used until you have ascertained the potential fire, toxic, or reactivity hazards which are likely to be encountered in the handling, application, or utilization of such a material.

(((~~(3)~~))) (2) In order to ascertain the hazards, as required by subsection (1) of this section, you must obtain the following items of information which are applicable to a specific product or material to be used:

(a) The name, address, and telephone number of the source of the information specified in this section preferably those of the manufacturer of the product or material.

(b) The trade name and synonyms for a mixture of chemicals, a basic structural material, or for a process material; and the chemical name and synonyms, chemical family, and formula for a single chemical.

(c) Chemical names of hazardous ingredients(((~~,~~))) including, but not limited to, those in mixtures, such as those in: (i) Paints, preservatives, and solvents; (ii) alloys, metallic coatings, filler metals and their coatings or core fluxes; and (iii) other liquids, solids, or gases (e.g., abrasive materials).

(d) An indication of the percentage, by weight or volume, which each ingredient of a mixture bears to the whole mixture, and of the threshold limit value of each ingredient, in appropriate units.

(e) Physical data about a single chemical or a mixture of chemicals, including boiling point, in degrees Fahrenheit; vapor pressure, in millimeters of mercury; vapor density of gas or vapor (air=1); solubility in water, in percent by weight; specific gravity of material (water=1); percentage volatile, by volume, at 70°F.; evaporation rate for liquids (either butyl acetate or ether may be taken as 1); and appearance and odor.

(f) Fire and explosion hazard data about a single chemical or a mixture of chemicals, including flashpoint, in degrees Fahrenheit; flammable limits, in percent by volume in air; suitable extinguishing media or agents; special firefighting procedures; and unusual fire and explosion hazard information.

(g) Health hazard data, including threshold limit value, in appropriate units, for a single hazardous chemical or for the individual hazardous ingredients of a mixture as appropriate, effects of overexposure; and emergency and first-aid procedures.

(h) Reactivity data, including stability, incompatibility, hazardous decomposition products, and hazardous polymerization.

(i) Procedures to be followed and precautions to be taken in cleaning up and disposing of materials leaked or spilled.

(j) Special protection information, including use of personal protective equipment, such as respirators, eye protection, and protective clothing, and of ventilation, such as local exhaust, general, special, or other types.

(k) Special precautionary information about handling and storing.

(l) Any other general precautionary information.

(((~~(4)~~))) (3) The pertinent information required by subsection (2) of this section must be recorded either on United States Department of Labor Form LSB 00S-4, Material Safety Data Sheet, or on an essentially similar form which has been approved by the department of labor and industries. Copies of Form LSB 00S-4 may be obtained at any of the following regional offices of the occupational safety and health administration:

(a) Pacific region. (Arizona, California, Hawaii, and Nevada.)

10353 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, Calif. 94102.

(b) Region X, OSHA, (Alaska, Washington, Idaho, and Oregon), 300 Fifth Avenue, Suite 1280, Seattle, Washington 98104-2397.

A completed SDS form must be preserved and available for inspection for each hazardous chemical on the worksite.

(((~~(5)~~))) (4) You must instruct employees who will be exposed to the hazardous materials as to the nature of the hazards and the means of avoiding them.

(((~~(6)~~))) (5) You must provide all necessary controls, and the employees must be protected by suitable personal protective equipment against the hazards identified under ((~~subsection (1) of~~)) this section and those hazards for which specific precautions are required in WAC 296-304-020 through 296-304-04013.

(((~~(7)~~))) (6) You must provide adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees. You must encourage good personal hygiene practices by informing the employees of the need for removing surface contaminants by thorough washing of hands and face prior to eating or smoking.

(((~~(8)~~))) (7) You must not permit eating or smoking in areas undergoing surface preparation or preservation or where shiprepairing, shipbuilding, or shipbreaking operations produce atmospheric contamination.

(((~~(9)~~))) (8) You must not permit employees to work in the immediate vicinity of uncovered garbage and must ensure that employees working beneath or on the outboard side of a vessel are not subject to contamination by drainage or waste from overboard discharges.

(((~~(10)~~))) (9) Requirements of WAC 296-901-140, Hazard communication, will apply to shiprepairing, shipbuilding, and shipbreaking when potential hazards of chemicals and communicating information concerning hazards and appropriate protective equipment is applicable to an operation.

AMENDATORY SECTION (Amending WSR 15-23-086, filed 11/17/15, effective 12/18/15)

WAC 296-823-17005 Establish and maintain medical records. (1) You must establish and maintain an accurate medical record for each employee with occupational exposure.

(2) You must make sure this record includes ALL of the following that apply:

(a) Name and Social Security number of the employee;

(b) A copy of the employee's hepatitis B vaccination status, including the dates of all the hepatitis B vaccinations;

(c) Any medical records related to the employee's ability to receive vaccinations;

(d) The HBV declination statement;

(e) A copy of all results of examinations, medical testing, and follow-up procedures related to post-exposure evaluations;

(f) Your copy of the health care professional's written opinion;

(g) A copy of the information provided to the health care professional as required.

(3) You must make sure that employee medical records are:

(a) Kept confidential;

(b) Not disclosed or reported to any person, without the employee's written consent, except as required by this section or as may be required by law.

Note: 1. In some industries, a medical record is also known as the employee health file.

2. You may contract with the medical professional responsible for hepatitis B vaccination and post-exposure evaluation to maintain employee records.

Reference: You need to follow additional requirements for medical records found in ((~~WAC 296-62-052, Access to records~~)) chapter 296-802 WAC, Employee medical and exposure records.