

WSR 18-02-001
PERMANENT RULES
SEATTLE COLLEGES

[Filed December 20, 2017, 1:04 p.m., effective January 20, 2018]

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

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 17-21-081 on October 16, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 14, 2017.

Shouan Pan
Chancellor

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

WAC 132F-168-060 Copying. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain black and white photocopies for (~~fourteen~~) eleven cents per page or colored photocopies for thirteen cents per page. The district reserves the right to use outside vendors for large projects when an outside vendor can provide copies quicker or for less cost. The requestor will be required to pay the cost charged by the vendor.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Seattle College District VI will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of scanning existing Seattle College District VI paper or other nonelectronic records is (~~four~~) six cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee. A statement of the factors and the manner used to determine this charge is available from the public records officer.

Calculating the actual costs of charges for uploading electronic files or attachments is unduly burdensome, because it is difficult to accurately calculate all costs directly

incident to uploading those records. Instead of calculating the actual costs for uploading electronic files or attachments, the district charges five cents per each four electronic files or attachments uploaded to email, cloud-based data storage service, or other means of electronic delivery as set forth in RCW 42.56.120 (2)(b).

If the requestor asks that the electronic records be provided on CD or DVD, the requestor will be charged the cost of the CD or DVD. If the electronic records are too large to be emailed through the Seattle College District email system, they will be provided on CD or DVD, and the requestor will be charged accordingly.

(3) **Costs of mailing.** The Seattle College District VI may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the Seattle College District VI.

WSR 18-02-004
PERMANENT RULES
SEATTLE COLLEGES

[Filed December 20, 2017, 1:12 p.m., effective January 20, 2018]

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

Purpose: Update language to reflect current practices.

Citation of Rules Affected by this Order: New 1; repealing 10; and amending 5.

Statutory Authority for Adoption: RCW 28B.50.140 (10).

Adopted under notice filed as WSR 17-21-080 on October 16, 2017.

Changes Other than Editing from Proposed to Adopted Version: Changed "campus" to "college." Changed "office" to "department." Changed WAC 132F-116-045(7) to allow appeals to be done in writing as well.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 5, Repealed 10.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 10.

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

Date Adopted: December 14, 2017.

Shouan Pan
Chancellor

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

WAC 132F-116-020 (~~(Permits required for vehicles.)~~ **Parking—Permits and restrictions.** ~~((No person shall park or leave any vehicle, whether attended or unattended, upon any officially designated parking area of Seattle College District VI without a valid parking permit. No vehicle shall be parked in any parking area without a permit for that area, except state-owned vehicles used by the college.~~

~~(1) A valid permit is:~~

~~(a) An unexpired parking decal properly registered and displayed in accordance with instructions.~~

~~(b) An authorized temporary or visitor permit, displayed in accordance with the instructions on the permit.~~

~~(2) Parking permits are not transferable.~~

~~(3) The college reserves the right to refuse the issuance of a parking permit.)~~ (1) Each college president shall delegate to one department or individual on campus the authority to enforce these traffic and parking rules and regulations. This person or office shall hereinafter be referred to as "parking enforcement."

(2) No person shall park or leave any vehicle, whether attended or unattended, upon any officially designated parking area of Seattle College District VI without a valid parking permit. No vehicle shall be parked in any parking area without a permit for that area, except state-owned vehicles used by the college.

A valid permit is:

(a) An unexpired parking decal permit properly registered and displayed in accordance with instructions.

(b) An authorized temporary or visitor permit, displayed in accordance with the instructions on the permit.

(3) The permit issued shall be placed in an easily visible location according to the directions of the campus parking enforcement officer.

(4) Parking permits are not transferable.

(5) The college reserves the right to refuse the issuance of a parking permit.

(6) No vehicle shall be parked on Seattle College District VI properties, except in those areas set aside and designated as parking areas.

(7) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within a parking area.

(8) Purchasers of Seattle College District VI parking permits may be required to park in specified areas as designated by the college or district parking enforcement personnel.

(9) The parking spaces available on the various Seattle College District VI sites shall be assigned to faculty, staff and students in such manner as to best effectuate the objectives of these regulations. Assignments of parking spaces shall be the responsibility of the campus parking enforcement personnel as directed by the president of the college or district to represent the interests of faculty, staff and students.

NEW SECTION

WAC 132F-116-045 Ticketing and enforcement of traffic and parking rules and regulations. (1) Parking violation tickets will be issued for the following violations:

- (a) Parking in wrong area, improperly, or blocking;
 - (b) Parked in a "No Parking" zone;
 - (c) Parked in a fire lane;
 - (d) Failure to display valid parking permit;
 - (e) Violations of traffic safety laws, such as speeding, reckless/negligent driving, failure to yield right of way, failure to stop at a stop sign, and driving the wrong way on a one-way alley or street;
 - (f) Forged or stolen permit;
 - (g) Parking in a handicap space with no valid handicap placard or license plate.
- (2) Parking enforcement shall be applied consistently in a uniform manner across the district.
- (3) The amount of each violation shall be set by the Seattle College District, and is as follows:
- (a) Parked in wrong area, improperly, or blocking: \$25
 - (b) Parked in a "No Parking" zone: \$25
 - (c) Parked in a fire lane: \$100
 - (d) Failure to display valid permit: \$30
 - (e) Violations of traffic safety laws: \$30
 - (f) Forged or stolen permit: \$100
 - (g) Parking in a handicap space without a handicap placard or plates: \$250
- (4) Employees who repeatedly violate traffic safety or parking rules may be subject to permit revocation.
- (5) Students who repeatedly violate traffic safety or parking rules may be subject to student conduct actions and/or permit revocation.
- (6) All parking violation tickets must be paid, unless waived for extenuating circumstances, by the parking enforcement personnel at each campus. A record must be maintained of all waived parking/traffic violation tickets.
- (7) Appeals to reverse or reduce parking violation tickets shall be done in person or in writing with the parking enforcement office at each campus in accordance with WAC 132F-108-050.
- (8) Impounding: This action shall be at the discretion of the college or district parking enforcement regarding any infractions pursuant to these regulations. Impounding may be implemented by mechanical restraints to vehicles on district property or by towing to an approved impounding agency. Release from impound on district property will be made upon payment of an appropriate fee, as determined by the Seattle College District. When a vehicle immobilization device is used (so-called "boot"), the fee to have this removed will be one hundred dollars, in addition to any other fines or fees levied for the infraction.
- (9) Towing companies and/or impounding agencies will be selected on the basis of criteria developed by the colleges and the district.
- (10) Neither the college nor district nor its employees shall be liable for loss or damage of any kind resulting from impounding and storage.
- (11) Any vehicle impounded on or from Seattle College District VI property, shall be at the owner's risk and expense.
- (12) No vehicle other than college owned or leased vehicles shall be parked on District VI property for a period in excess of seventy-two hours, without prior approval from parking enforcement. Vehicles violating this regulation are subject to impounding at the owner's risk and expense.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-140 Permit revocations. (1) Parking permits are the property of the district and may be recalled for any of the following reasons:

- (a) When the purpose for which the permit was issued changes or no longer exists.
- (b) When a permit is used by an unregistered vehicle or by an unauthorized person.
- (c) Continued violations of parking regulations.
- (d) Counterfeiting or altering decals.

(2) Vehicles displaying ~~((cancelled))~~ canceled permits will be subject to penalties indicated in ~~((section 116-120 [codified as WAC 132F-116-130]))~~ WAC 132F-116-040.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-150 Fees and fee payments. (1) The parking permit fees shall be established, as appropriate, by the district board of trustees. The fee structure shall be on file at individual college business offices and the district purchasing office.

(2) ~~((Method of payment. Annual permits — payroll deduction only. Students, hourly and irregular employees — cash in advance (minimum of one quarter).))~~ Students who are registered for six or more credits shall purchase parking at the student rate, even if the student is working as an employee of the college or district.

(3) The parking enforcement personnel for the district parking program shall ensure that the methods of payment for permits are the most convenient for faculty, staff, and students as possible; as technology advances, parking enforcement at each campus may review or revise these methods of payment.

(4) Fees collected from the sale of parking permits shall be used to help offset the expenses of the district's commute trip reduction program, to help maintain the parking facilities at each campus, and to assist with funding of the positions necessary to enforce these parking rules and regulations, and other purposes deemed appropriate.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-160 Reciprocity of parking privileges. (1) Employee and student parking permits issued at a specific campus or district location will be valid at all other Seattle College District VI parking areas, except that an employee having reserved space parking at their home location may not utilize reserved space parking at a secondary site.

(2) Student parking permits are not valid during the non-operating hours of each campus. Any vehicle that displays a student permit while parked on campus during the nonoperating hours of the campus may be subject to parking fines and/or impoundment.

AMENDATORY SECTION (Amending WSR 85-21-016, filed 10/7/85)

WAC 132F-116-170 Disabled parking. No vehicle shall park in a parking space designated for disabled persons without displaying a disabled license plate, card, or decal issued by the Washington state department of licensing (or from equivalent other jurisdictions in other states) that indicates that an occupant of the vehicle is disabled.

(1) Such vehicle must be used to transport the disabled person.

(2) Vehicles meeting these criteria will be allowed to park in the designated spaces upon payment of the standard ~~((nonreserved))~~ parking rate.

(3) The ~~((safety and security officer))~~ parking enforcement personnel of each campus and the district office shall make alternative parking available for short-term disabilities.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
132F-116-100	132F-116-035
132F-116-140	132F-116-055
132F-116-150	132F-116-065
132F-116-160	132F-116-075
132F-116-170	132F-116-085

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132F-116-030	Parking—Permits required.
WAC 132F-116-040	Authorizations for issuance of permits.
WAC 132F-116-050	Parking within designated spaces.
WAC 132F-116-060	Display of permits.
WAC 132F-116-070	Duplicate permits.
WAC 132F-116-080	Responsibility of person issued a permit.
WAC 132F-116-090	Exceptions from parking restrictions.
WAC 132F-116-110	Parking areas and permit designation.
WAC 132F-116-120	Allocation of parking space and priorities.
WAC 132F-116-130	Impounding—Illegal parking—Disabled vehicles.

WSR 18-02-006
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 20, 2017, 1:43 p.m., effective January 20, 2018]

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

Purpose: The proposed rules implement nonretail liquor license legislation passed in the 2017 legislative session. As part of the liquor and cannabis board's ongoing rules review process, rules are being reviewed for relevance, clarity, and accuracy.

Citation of Rules Affected by this Order: New WAC 314-20-260, 314-24-008, 314-24-265, 314-28-210 and 314-28-220; repealing WAC 314-20-120 and 314-20-170; and amending WAC 314-20-001, 314-20-015, 314-20-017, 314-20-018, 314-20-020, 314-20-030, 314-20-055, 314-20-090, 314-20-100, 314-20-110, 314-20-120, 314-20-170, 314-20-260, 314-24-001, 314-24-003, 314-24-006, 314-24-008, 314-24-040, 314-24-060, 314-24-070, 314-24-080, 314-24-090, 314-24-100, 314-24-105, 314-24-115, 314-24-117, 314-24-120, 314-24-160, 314-24-161, 314-24-190, 314-24-220, 314-28-030, 314-28-050, 314-28-070, 314-28-080, 314-28-090, and 314-28-100.

Statutory Authority for Adoption: RCW 66.24.170, 66.24.640, 66.24.695, 66.08.030.

Adopted under notice filed as WSR 17-21-111 on October 18, 2017.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 32, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 32, Repealed 2.

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

Date Adopted: December 13, 2017.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-20-001 Definitions. ~~((Per RCW 66.04.010 (2), an "authorized representative" means a person who:~~

~~(1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;~~

~~(2) Has its business located in the United States outside of the state of Washington;~~

~~(3) Acquires ownership of beer that is produced anywhere outside Washington by a brewery who does not dis-~~

~~tribute those brands for transportation into and resale in the state of Washington;~~

~~(4) Is appointed by the brewery referenced in subsection (3) of this section as its authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the brewery.)) (1) The following terms are defined in RCW 66.04.010:~~

~~(a) Authorized representative;~~

~~(b) Beer;~~

~~(c) Beer distributor;~~

~~(d) Beer importer;~~

~~(e) Brewer or brewery;~~

~~(f) Domestic brewery;~~

~~(g) Flavored malt beverage;~~

~~(h) Malt beverage and strong beer; and~~

~~(i) Sale and sell.~~

~~(2) COA means certificate of approval.~~

~~(3) COLA means certificate of label approval issued by TTB.~~

~~(4) Contract production is defined in RCW 66.24.244.~~

~~(5) Domestic brewery alternating proprietorship means two or more entities taking turns using the same space and equipment to produce beer.~~

~~(6) TTB means the Alcohol Tax and Trade Bureau: U.S. Code - Title 27 of the Code of Federal Regulations.~~

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-20-015 Licensed brewers—Retail sales of beer on brewery premises—Beer served without charge on premises—Spirit, beer and wine restaurant operation.

(1) A licensed brewer may sell:

(a) Beer of its own production at retail on the brewery premises;

(b) Beer produced by another microbrewery or a domestic brewery for on- and off-premises consumption from its premises as long as the other breweries brands do not exceed twenty-five percent of the microbrewery's on-tap offering of its own brands. Beer not of its own production must be purchased through normal distribution channels; and

(c) Cider produced by a domestic winery. Cider must be purchased through normal distribution channels.

(2) In selling beer and/or cider at retail, as provided in subsection (1) of this section, a brewer shall conduct such operation in conformity with the statutes and regulations applicable to holders of such beer and/or wine retailers' licenses. The brewer shall maintain records of such retail operation separate from other brewery records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, beer of a licensed brewer's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the licensed brewer.

(4) A licensed brewer or a lessee of a licensed brewer operating a spirit, beer and wine restaurant, licensed pursuant to RCW 66.28.010, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A brewer may serve its own beer and beer not of its own production without charge on the brewery premises, as authorized by RCW 66.28.040.

(6) No retail license or fee is required for the holder of a brewer's license to serve beer without charge on the brewery premises as set forth in subsection (5) of this section. Before exercising this privilege, however, such brewer shall obtain approval of the proposed service area and facilities from the board. Such brewer shall maintain a separate record of all beer so served.

(7) A brewery is required to obtain the appropriate retail license to sell beer, wine, or spirits on the brewery premises that is not of its own production except as set forth in subsection (1) of this section pursuant to RCW 66.24.244.

(8) Licensed beer manufacturers and their employees may:

(a) Sample beer of their own manufacture for manufacturing, evaluating, or pricing product in areas where the public is not served so long as the licensee employee does not become apparently intoxicated; and

(b) The licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public.

AMENDATORY SECTION (Amending WSR 15-01-001, filed 12/3/14, effective 1/3/15)

WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers. A brewery or microbrewery licensed under RCW 66.24.240 or 66.24.244 may hold up to two retail liquor licenses to operate a spirits, beer, and wine restaurant, a tavern, a beer and/or wine restaurant, or any combination thereof.

(1) Definitions. ~~((a))~~ For the purposes of this section, a "container" is a sealable receptacle, such as a carton, jug, growler or keg, and has no minimum holding requirement. A "keg" is a container holding four gallons or more beer.

~~((b) "Malt liquor" is a specific type of "beer" (as explained in RCW 66.04.010).~~

~~(c) "Beer" includes malt liquor and flavored malt beverages (as explained in RCW 66.04.010).))~~

(2) Applicable to retail licenses for spirits, beer, and wine restaurants, beer and/or wine restaurants, and taverns.

(a) A retail license is separate from a brewery or microbrewery license.

(b) All containers of beer must be sold from the retail premises.

(c) A retail location may be located on or off the brewery or microbrewery premises.

(3) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell containers of beer of its own production and cider as defined in RCW 66.24.210(6) without a kegs-to-go endorsement provided that it sells this beer and cider for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer, and filled at the tap at the time of sale.

(4) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell kegs of malt liquor of another brewery's or microbrewery's production provided that it:

(a) Sells this malt liquor for off-premises consumption only;

(b) Has a kegs-to-go endorsement; and

(c) Supplies the kegs.

(5) A tavern or beer and/or wine restaurant that is operated by a brewery or microbrewery and has an off-premises beer and wine retailer's privilege may:

(a) Sell kegs of malt liquor for ~~((either on-premises or))~~ off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery;

(b) Sell containers of beer for ~~((either on-premises or))~~ off-premises consumption provided that the customer supplies the container. The beer may be of the licensee's own production or the production of another brewery or microbrewery; and

(c) Sell containers of cider as defined in RCW 66.24.210(6) for off-premises consumption in a sanitary container brought to the premises by the customer or provided by the licensee and filled at the tap at the time of sale, provided the licensee has a license to sell wine. The licensee must comply with federal regulations.

AMENDATORY SECTION (Amending WSR 14-03-084, filed 1/16/14, effective 2/16/14)

WAC 314-20-018 Farmer's market beer and wine sampling. (1) To conduct beer and wine tasting at a farmer's market, the following criteria must be met:

(a) The farmer's market must be authorized to allow breweries, microbreweries, and wineries to sell sealed bottled wine and/or beer at retail.

(b) The farmer's market must hold an endorsement to allow sampling of beer and wine or both.

(c) A brewery, microbrewery, or winery offering samples at a farmer's market must have an endorsement from the board to sell beer or wine of its own production at a farmer's market (see RCW 66.24.170, 66.24.240, and 66.24.244).

(d) No more than three breweries, microbreweries, or wineries combined may offer samples at a qualifying farmer's market per day.

(e) A brewery, microbrewery, or winery may advertise that it offers samples only at its designated booth, stall, or anywhere within the farmer's market.

(2) Samples of beer or wine may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of two ounces per customer per day.

(b) Beer and wine samples are to be conducted at the booth or stall of the brewery, microbrewery, or winery with a barrier at least forty-two inches in height, where licensees are able to observe and control customers participating in the samples. The barriers may be moveable (an example would be ropes and stanchions).

(c) A brewery, microbrewery, or winery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(d) Customers must remain in the designated sampling area while sampling beer or wine.

(e) Brewery, microbrewery, or winery employees serving beer or wine during sampling events must hold a valid MAST permit.

(f) The brewery, microbrewery, or winery is required to send a list of scheduled beer and wine samplings to the liquor control board at MIWenforce@liq.wa.gov at the beginning of each month. The date for each beer and wine sampling must be included.

(g) The farmer's market is also required to send a list of scheduled beer and wine samplings to the liquor control board at MIWenforce@liq.wa.gov at the beginning of each month. The date for each beer and wine sampling, and the names of the brewery, microbrewery, and winery providing the samples must be included.

(h) The farmer's market is required to provide a sketch to the licensing division of the area where beer and wine samples will be conducted and to any adjacent food booths.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-20-020 Beer labels—Certificate of label approval required—Labels to be submitted. (1) Every bottle or can containing beer intended for sale in the state of Washington shall bear a label in compliance with RCW 66.28.120. No beer shall be imported or sold within the state of Washington until the licensed brewery, or certificate of approval holder, ~~((shall have obtained from the board a certificate of label approval for such beer.~~

~~((2))~~ (2) A request for certificate of label approval must be submitted on a form prescribed by the board which is submitted to the board, one copy of the federal certificate of label approval for such beer, issued by the Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department.

~~((3))~~ (2) Any change in label or product which requires reissuance of federal certificate of label approval, must also be submitted to the board, in accordance with the foregoing provisions of this regulation.

~~((4))~~ (3) No label shall be used that is misleading.

~~((5))~~ (4) Every producer, importer, distributor of beer, or beer certificate of approval holder shall, upon request of the board or its authorized representative, furnish without cost to the board, samples of any brand of beer upon its premises for the purpose of analysis in order to determine whether the beer conforms to commercial standards.

~~((6))~~ (5) No label will be approved which is designed to be especially appealing to children or other persons under legal age to consume. Persons who appear to be under legal age to consume may be depicted on a label when, in the discretion of the board, the depiction is dignified and does not promote illegal consumption of liquor.

~~((7))~~ (6) For strong beer, the label must contain the beer's alcohol content, stated in terms of percentage of alcohol by volume. Per RCW 66.04.010, strong beer means any malt beverage that contains more than eight percent of alcohol by weight, which is approximately ten percent of alcohol by volume.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-20-030 Packages—Classification. (1) No manufacturer, distributor, importer, or beer certificate of approval holder shall sell beer for use in the state of Washington in any packages or containers differing in sizes and case quantities from the manufacturer's original packages.

(2) Net contents—Packaged beer. Net contents shall be stated in a clearly legible manner on the label in fluid ounces or as follows:

(a) If less than 1 pint, in fluid ounces, or fractions of a pint;

(b) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated;

(c) If more than 1 pint, but less than 1 quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces;

(d) If more than 1 quart, but less than 1 gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces;

(e) If more than 1 gallon, the net contents shall be stated in gallons and fractions thereof;

(f) The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

(3) Container size limitations—Barrels. Whole barrels (31 gallons), 1/2 barrels (15.5 gallons), 1/4 barrels (7.75 gallons), 1/6 barrels (5.16 gallons). Packaged beer—Maximum capacity for individual containers, 170 fluid ounces ~~((= Provided, however, That))~~. The board may, in its discretion, authorize other container and/or barrel size packages which have been approved for marketing within the United States by the Bureau of Alcohol, Tobacco, and Firearms, United States Treasury Department: Provided further, That the board may, in its discretion, authorize a brewery with spirit, beer and wine restaurant privileges to dispense beer directly from conditioning tanks/vessels to the spirit, beer and wine restaurant area provided the taxes have been paid prior to dispensing.

(4) The net contents of individual containers shall be stated on the outside of any multicontainer package where the individual container label or bottle size is not visible to the consumer at the point of purchase.

(5) Gift packages. A beer importer or beer wholesaler may prepare and sell "gift packages" consisting of containers of beer differing in case quantities from the manufacturer's original case capacities provided the tax has been paid on the previously purchased beer in accordance with RCW 66.24.-290 and provided written approval by the board has been obtained.

AMENDATORY SECTION (Amending WSR 09-02-009, filed 12/29/08, effective 1/29/09)

WAC 314-20-055 Microbrewery warehouse license. (1) A licensee holding a microbrewery license under RCW 66.24.244 and acting as a distributor of its own products may

apply for a microbrewery warehouse license. There is no fee for this license.

(2) A microbrewery warehouse is a premises located off the microbrewery premises that is used for the storage of their own bulk beer, finished product, and distribution of the microbrewery's own products.

(3) There may be no retail sales from the microbrewery warehouse.

(4) Microbreweries may not share warehouse space.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-20-070 Claims for defective keg beer—Replacement of overaged packaged beer—Procedures.

(1) In the case of beer in barrels, beer which is not in salable condition due to defective beer or a defective container may be returned by the retailer to the beer distributor for a claim adjustment. The brewer or supplier may make a credit adjustment to the distributor for such claim;

(2) No claim adjustment shall be accepted unless the same shall be made by the retailer within ten days after the defect in the beer or container has been discovered;

(3) All documentary evidence relating to the claim shall be preserved by the retailer, beer distributor, brewer, or beer importer for ~~((two))~~ three years after the date of the claim;

(4) No brewer, beer distributor, or beer importer shall allow, or shall any retailer make claim for adjustment for defective keg beer unless the container or the beer is in fact defective;

(5) In the case of package beer, other than beer in barrels, beer which is not in a salable condition or overaged may be returned by a retail licensee to the beer distributor from whom the beer was purchased, provided it is immediately replaced by the beer distributor with an identical quantity, type and brand of beer ~~((: Provided further, That))~~. If the brand of beer is not presently in the beer distributor's stock and is not available to the distributor in the immediate future, a cash refund may be made to the retail licensee;

(6) Beer different from that ordered which has been delivered in error to a retail licensee may be returned to a beer distributor and either replaced with that beer which was ordered or a cash refund may be made: Provided, That the error in delivery shall be discovered and corrected within eight days of the date the delivery was made;

(7) Distributors who replace unsalable or overaged packaged beer as provided in subsection (5) of this section, shall maintain complete records of all such transactions, with such records to be readily available for inspection by authorized employees of the board;

(8) Salable or unsalable beer may be returned by a retail licensee or by a governmental agency who has seized the same to the beer distributor selling such beer in the event the retailer goes out of the business of selling beer at retail, and in such case a cash refund may be made upon return of the beer, provided that consent of the board is first had and obtained;

(9) ~~((Except as provided herein,))~~ No other adjustment, by way of cash refund or otherwise, shall be made by the beer distributor, brewer or beer importer.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-20-090 Cash sales. No beer distributor nor brewer or beer importer holding a beer distributor's license shall sell or deliver beer to any retailer except for cash paid at the time of the delivery ~~((thereof. Provided, That))~~. Cash may be paid prior to the delivery of beer sold to any retailer. Failure by licensees to keep accurate accounting records which result in the extension of credit, in violation of RCW 66.28.-010 through the use of a prior cash deposit which is overextended may result in administrative action being taken against the liquor license.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-20-100 Beer suppliers and distributors. RCW 66.28.180 requires beer distributors and suppliers to maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions~~((—))~~.**—For the purposes of this chapter:

(a) A "price list" means a declaration of the prices at which any and all brands of beer and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each manufacturer functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of beer sold by the supplier or distributor shall be available to retailers within the state.

(b) A "beer supplier" means a microbrewery, domestic brewery, certificate of approval holder, beer importer, beer distributor acting as the first United States importer, or a distributor selling beer to another distributor.

(c) A "beer distributor" means a distributor selling to a retailer, a domestic brewery acting as a distributor, a microbrewery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling beer of its own production to a retailer.

(d) Third-party delivery is prohibited.

(2) **Products and price lists~~((—))~~.**—If a beer supplier or distributor lists selected items on which prices are temporarily reduced, these prices must clearly reflect all items and the selling price. All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

(3) **Distributor changes~~((—))~~.**

(a) The following guidelines apply when a beer supplier makes a distributor change outside of the regular distributor appointment timelines. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

(b) A beer supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Price lists for new distributors~~((—))~~.**—When the board issues a new beer distributor license, the licensee must have a price list available.

(5) **Accommodation sales**~~((—))~~—The provisions of this rule do not apply when a beer distributor makes an accommodation sale to another beer distributor and this sale is made at a selling price that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending Rule 50, filed 6/13/63)

WAC 314-20-110 Beer importers—Principal office.

Each beer importer shall keep the board informed at all times of the location of the principal office required by section 23-G, subdivision (2) of the Washington State Liquor Act (RCW 66.24.260) and shall, not less than two days prior thereto notify the board in writing ~~((or by telegraph))~~ of any change in the location of such office.

NEW SECTION

WAC 314-20-260 Consumer orders, internet sales, and delivery for domestic brewery and microbrewery licensees. (1) A domestic brewery and microbrewery licensee may accept orders for beer from, and deliver beer to, customers.

(a) Beer shall not be for resale.

(b) Beer must come directly from a licensed domestic brewery or microbrewery possession.

(c) Beer may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(2) Sales and payment.

(a) Only a domestic brewery or microbrewery licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a domestic brewery or microbrewery licensee, except for transmittal of payment through a third-party service. The use of internet or mobile application for retail customers to purchase alcohol in Washington state is allowed under the following conditions:

(i) The internet sale will be made by the domestic brewery or microbrewery;

(ii) The payment for the sale will be processed by the domestic brewery or microbrewery; and

(iii) The domestic brewery or microbrewery pays the owner of the internet or mobile application a service fee.

(b) All orders and payments shall be fully processed before beer transfers ownership or, in the case of delivery, leaves a licensed domestic brewery's or microbrewery's possession.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account.

(d) Internet. To sell wine via the internet, a domestic brewery or microbrewery applicant must request internet sales privileges from the board prior to beginning internet sales.

(3) Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(4) Beer may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(5) Age requirement.

(a) Under chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(6) Delivery of liquor is prohibited to any person who shows signs of intoxication.

(7) Beer must be sold in original containers.

(8) Packages delivered by a third party must have language stating that:

(a) The package contains liquor;

(b) The recipient must be twenty-one years of age or older; and

(c) Delivery to intoxicated persons is prohibited.

(9) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(a) Name of the purchaser;

(b) Name of the person who accepts delivery;

(c) Street addresses of the purchaser and the delivery location; and

(d) Time and date of purchase and delivery.

(i) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(ii) A sales record does not have to include the name of the delivery person, but it is encouraged.

(10) When selling over the internet, all web site pages associated with the sale of liquor must display the domestic brewery or microbrewery licensee's registered trade name.

(11) A domestic brewery or microbrewery licensee shall be accountable for all deliveries of liquor made on its behalf.

(12) The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-20-120 Beer importers—Warehouses.

WAC 314-20-170 Holders of certificates of approval.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-24-001 Definitions. (~~Per RCW 66.04.010 (2), an "authorized representative" means a person who:~~

(1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

(2) Has its business located in the United States outside of the state of Washington;

(3) Acquires ownership of wine that is produced anywhere outside Washington by a winery which does not distribute those brands for transportation into and resale in the state of Washington;

(4) Is appointed by the winery referenced in subsection (3) of this section as its authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the winery.) (1)

The following terms are defined in RCW 66.04.010:

(a) Authorized representative;

(b) Domestic winery;

(c) Manufacturer;

(d) Package;

(e) Sale and sell;

(f) Wine;

(g) Wine distributor;

(h) Wine importer; and

(i) Winery.

(2) COA means certificate of approval.

(3) COLA means certificate of label approval.

(4) Custom crush - A custom crush arrangement involves an agreement or formal contract where one domestic winery (customer) pays another domestic winery (producer) to produce wine to order. (It is not an alternating proprietorship arrangement.)

(5) TTB means the Alcohol and Tax and Trade Bureau.

U.S. Code - Title 27 of the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 85-19-030, filed 9/12/85)

WAC 314-24-003 Standards of identity for wine.

((H)) Application of standards. The standards of identity for ((the several)) all classes and types of wine shall meet the standards set forth ((herein shall be)) by TTB and is applicable to all wines produced, imported, bottled, offered for sale, or sold within this state for beverage use or any other purpose, except as hereinafter prescribed. The standards herein established are minimum standards for all wine((s of the several)) classes and types defined.

((2) Standards of identity. The several classes and types of wine set forth herein shall be as follows:

(a) Wine (or grape wine). "Wine" is the product of the normal alcoholic fermentation of the juice of sound, ripe grapes (including pure condensed must), with or without added grape brandy or other spirits derived from grapes or grape products, and containing not to exceed 24 percent alcohol by volume, but without any other addition or abstraction whatsoever except such as may occur in normal cellar treatment. Provided, That the product may be ameliorated before, during or after fermentation by the use of pure dry sugar, a

combination of water and pure dry sugar, liquid sugar, invert sugar syrup, grape juice or concentrated must, but only in accordance with federal regulations 27 C.F.R. part 240, and the total solids of the wine shall in no case exceed 21 percent by weight. The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for red table wine, more than 0.14 gram, and for all other wine, more than 0.12 gram in both cases per 100 cubic centimeters (20 degrees C.). The maximum sulphur dioxide content of any wine shall not be greater than 350 parts per million of total sulphur dioxide or sulphites expressed as sulphur dioxide.

Pure condensed must. "Pure condensed must" means the dehydrated juice or must of sound, ripe grapes, or other fruit or agricultural products, concentrated to not more than 80° Brix, the composition thereof remaining unaltered except for removal of water; the term "restored pure condensed must" means pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process; and the term "sugar" means pure cane, beet, or dextrose sugar in dry form containing, respectively, not less than 95 percent of actual sugar calculated on a dry basis.

(b) Natural wine is the product of the juice of sound, ripe grapes, or the product of the juice of sound ripe fruit or berries other than grapes, produced in accordance with section 5381, I.R.C., and federal regulations 27 C.F.R. part 240, as applicable.

(c) Red and white wine. Red wine is wine which contains the red coloring matter of the skins, juice, or pulp of grapes; pink, amber or rose wine is wine which contains partial red coloring of the skins, juice, or pulp of grapes; and white wine is wine which does not contain the red coloring matter of the skins, juice, or pulp of grapes.

(d) Table wine (including light wine, light grape wine, light red wine, light white wine, and natural wine) is wine containing not to exceed 14 percent alcohol by volume. The maximum Balling or Brix saccharometer test for any table wine shall not be more than 14 percent (at 20 degrees C. using a saccharometer calibrated at this temperature) when the test is made in the presence of the alcoholic content provided herein.

(e) Dessert wine (including appetizer wine) is wine containing more than 14 percent alcohol by volume, and not to exceed 24 percent alcohol by volume. Angelica, madeira, malaga, marsala, muscatel, port, white port, sherry, and tokay are types of dessert wine containing added grape brandy or other spirits derived from grapes or grape products, possessing the taste, aroma and other characteristics generally attributed to these products, and having an alcoholic content of not less than 17 percent by volume in the case of sherry, and not less than 18 percent in the case of all other types named in this paragraph.

(f) Aperitif wine is grape wine, containing added grape brandy or other spirits derived from grapes or grape products and having an alcoholic content of not less than 15 percent by volume flavored with herbs and other natural aromatic flavoring materials and possessing the taste, aroma and other characteristics generally attributed to wine of this class.

(g) Vermouth is a type of aperitif wine made from grape wine and possessing the taste, aroma and other characteristics generally attributed to vermouth.

(h) The term vintage wine means a wine produced wholly from (i) grapes gathered and (ii) the juice therefrom fermented, in the same calendar year and in the same viticultural area (e.g., county, state, department, province, or equivalent geographic area, or subdivision thereof), as identified on the label of such wine.

(i) Sacramental wine. Wine used solely for sacramental purposes may possess such alcoholic content not exceeding 24 percent by volume as required by ecclesiastical codes.

(j) Sparkling grape wine (including sparkling wine, sparkling red wine, and sparkling white wine) is grape wine made effervescent with carbon dioxide resulting solely from the fermentation of the wine within a closed container, tank or bottle.

(k) Champagne is a type of sparkling light white wine which derives its effervescence solely from the secondary fermentation of the wine within glass containers of not greater than one gallon capacity, and which possesses the taste, aroma, and other characteristics attributed to champagne as made in the Champagne District of France.

(l) A sparkling light wine having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for champagne may, in addition to but not in lieu of the class designation sparkling wine, be further designated as champagne style, or champagne type or American (or New York state, California, etc.) champagne—bulk process; all the words in such further designation shall appear in lettering of substantially the same size and such lettering shall not be substantially larger than the words "sparkling wine."

(m) Pink (or rose) champagne is a type of sparkling pink wine otherwise conforming to the definition of champagne, and shall be labeled in the same manner as champagne except that the designation pink (or rose) champagne shall be used in lieu of the designation champagne.

(n) Sparkling burgundy and sparkling moselle are types of sparkling wine possessing the taste, aroma and characteristics attributed to these products.

(o) Carbonated wine (including carbonated grape wine, carbonated red wine, carbonated pink (or rose) wine and carbonated white wine) is wine made effervescent with carbon dioxide other than that resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle.

(p) Fruit wine is wine produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (other than grape), including pure condensed fruit must, with or without added fruit brandy or fruit spirits distilled from the same type of fruit or fruit products as the wine to which such fruit brandy or fruit spirits is added, and containing not to exceed 24 percent of alcohol by volume but without any other addition or abstraction whatsoever except such as may occur in normal cellar treatment. Provided, That the product may be ameliorated before, during, or after fermentation by the addition of water, pure dry sugar, a combination of water and pure dry sugar, liquid sugar, invert sugar syrup and concentrated and unconcentrated juice of the same fruit, but, only in accor-

dance with federal regulations and the total solids of the wine shall in no case exceed 21 percent by weight.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be for natural fruit wine, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 cubic centimeters (20 degrees C.).

(q) Light fruit wine (including natural fruit wine) is fruit wine containing not to exceed 14 percent alcohol by volume.

(r) Fruit wine derived wholly (except for sugar, water, or added fruit brandy or fruit spirits) from one kind of fruit shall be designated by the word wine, qualified by the name of such fruit; e.g., peach wine, orange wine, blackberry wine, etc. Fruit wine not derived wholly from one kind of fruit shall be designated as fruit wine or berry wine, as the case may be, qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Fruit wines derived wholly (except for sugar, water, or added fruit brandy or fruit spirits) from apples or pears may if desired be designated cider, and perry, respectively, and shall be so designated if lacking in vinous taste, aroma, and other characteristics. Fruit wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as sparkling, and fruit wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as carbonated.

(s) Berry wine is fruit wine produced from berries.

(t) Citrus wine or citrus fruit wine is fruit wine produced from citrus.

(u) Wine from other agricultural products. Sake is wine produced from rice in accordance with the commonly accepted method of producing such product.

(v) Other agricultural wines (such as honey wine), the production or sale of which is not prohibited by these regulations, shall be made in accordance with the commonly accepted standards of such product.

(w) Specialty wine is wine not otherwise herein defined, produced in accordance with commercial standards for such wines. Such wines may bear a fanciful proprietary designation and shall be labeled with a truthful and adequate statement of composition or with any commonly accepted trade designation indicative of such composition.

(x) Specially sweetened natural wine (a wine such as Kosher wine) is wine produced in accordance with federal regulation 27 C.F.R. part 240.

(y) High fermentation wine is a grape or fruit wine made within the limitations of regulation (57)(2)(a) for grape wine, and regulation (57)(2)(p) for fruit wine, except that the alcohol content after complete fermentation or complete fermentation and sweetening is more than 14 percent and that wine spirits may not be added, produced in accordance with federal regulation 27 C.F.R. part 240.

(z) Special natural wine is a flavored wine made on bonded wine cellar premises from a base of natural wine, in conformity with federal regulation 27 C.F.R. part 240.

(3) Grape type designations. A name indicative of variety of grape may be employed as the type designation of a wine if the wine derives its predominate taste, aroma, and other characteristics, and at least 51 percent of its volume, from that variety of grape.

(4) Appellations of origin. A wine shall be entitled to an appellation of origin if:

(a) At least 75 percent of its volume is derived from both fruit or other agricultural products grown in the place or region indicated by such appellation; and

(b) It conforms to the requirements of the laws and regulations of such place or region governing the composition, method of production and designation of wines for consumption within such place or region of origin.

(5) Conformance to state standards required. Wines of any defined class or type labeled or advertised under appellation of origin such as Spanish, New York, Ohio, Finger Lakes, California, etc., shall meet the requirements of standards herein prescribed applicable to such wines and shall, in addition, contain the minimum percentage of alcohol and conform as to composition in all other respects with all standards of identity, quality and purity applicable to wines of such classes or types marketed for consumption in the place or region of origin.

For example, all grape wines bearing labels showing California as the origin of such wine, shall be derived one hundred percent from grapes grown and wine from such grapes fermented within the state of California, shall contain no sugar or material containing sugar, other than pure condensed grape must; and any type of grape dessert wine (except sherry) shall contain not less than 18 percent of alcohol by volume; any type of sherry shall contain not less than 17 percent alcohol by volume; except as hereinbefore provided. Wines subjected to cellar treatment outside the place or region of origin, and blends of wine of the same origin, blended together outside the place or region of origin (if all the wines, in the blend have a common class, type, or other designation which is employed as the designation of the blend), shall be entitled to the same appellation of origin to which they would be entitled if such cellar treatment of blending took place within the place or region of origin.

(6) Grape type designations, generic, semi-generic and nongeneric designations of geographic significance, are subject to the same requirements as set forth under Title 27, Code of Federal Regulations, Part 4.)

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-006 Substandard wines prohibited.

Application of this regulation. The production, importation or sale of, wine, which fails to conform to the standards prescribed ((in regulation (57) hereof)) by TTB, or of any wine fermented from raisins, dried fruits, or dried berries, or of any imitation or substandard wine as hereinafter defined, is hereby prohibited.

(1) Imitation wine shall include:

(a) Any wine containing synthetic materials;

(b) Any wine made from a mixture of water with residues remaining after thorough pressing of grapes, fruit or other agricultural products;

(c) Any class or type of wine, the taste, aroma, color or other characteristics of which have been acquired in whole or in part by treatment with methods or materials of any kind, if the taste, aroma, color or other characteristics of normal

wines of such class or type are acquired without such treatment; or

(d) Any wine made from "must" concentrated at any time to more than 80 degrees (Balling).

(2) Substandard wine shall include:

(a) ((Any wine having a volatile acidity in excess of the maximum prescribed therefor in these regulations;

(b) Any wine for which no maximum volatile acidity is prescribed in these regulations having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20 degrees C.);

(e)) Any wine for which a standard of identity is prescribed in these regulations which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard; or

((d)) (b) Wine of any class or type containing added water, or sugar and water solution, in excess of the quantities expressly authorized for standard wine made from the same kind or kinds of materials as prescribed ((in regulation (57))) by TTB.

(3) Coined names:

(a) The sale in this state of wines, identified on labels or in advertisements by a type of brand designation which implies mixtures of wines for which standards of identity are established in these regulations, or which identifying type or brand designation resembles an established wine type name such as Angelica, Madeira, Muscatel, Port, White Port, Sherry, Tokay, Sauterne, Claret, Burgundy, etc., is hereby prohibited.

(b) The sale in this state of wine or combinations of wine and other alcoholic beverages which contain on the label statements such as whiskey wine, rum and wine, gin and wine, beer and wine, etc., or simulations of such combinations, is hereby prohibited.

(4) Containers:

(a) The sale of wine in any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents, is hereby prohibited.

(b) The sale of wine in containers which have blown, branded or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, distributor, or bottler or any other person different from the person whose name is required to appear on the brand label, is hereby prohibited.

NEW SECTION

WAC 314-24-008 Application procedure for domestic wineries. (1) There shall be a license for domestic wineries pursuant to RCW 66.24.170. Applications for a domestic winery shall be accompanied by information the board may request including, but not limited to:

(a) A floor plan showing the complete winery premises, including the production, storage, public tasting areas, office, and other spaces.

(b) A written description of the proposed method of production with appropriate documentation indicating the winery will be producing wine on the licensed premises.

(2) The domestic winery shall be physically separated from any other use as prescribed by the board.

(3) Provide the board with a copy of an approved producer/blender TTB permit.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-24-040 Wine labels—Federal certificate of label approval required—Labels to be submitted. (1) No wine shall be imported or sold within the state of Washington until the certificate of approval holder, or domestic winery, or United States importer of foreign wine, shall have submitted to the board:

(a) The federal certificate of label approval for such wine which has been issued by the ~~((Tax and Trade Bureau, U.S. Treasury Department))~~ TTB; and/or

(b) One label of the brand and type for which tracking is requested for wines under seven percent alcohol by volume.

(2) Any change in label or product which requires reissuance of federal approval under the ~~((provisions of 27 C.F.R. Part 4))~~ TTB, must also be submitted to the board in accordance with the foregoing provisions of this regulation.

(3) Every producer, importer, bottler, distributor, or wine certificate of approval holder shall, upon request of the board or its authorized representative, furnish without cost to the board, samples of any brand of wine upon its premises for the purpose of analysis in order to determine whether the wine conforms to the quality standards set by the board in WAC 314-24-060 and conforms with commercial standards.

(4) No label shall be used that is misleading.

(5) No label shall be used that is designed to be appealing to children or other persons under legal age to consume. Persons who appear to be under legal age to consume may be depicted on a label when, in the discretion of the board, the depiction is dignified and does not promote illegal consumption of liquor.

(6) Wineries are not required to submit labels for tracking to the board for wine sold directly to Washington consumers under a direct shipper's permit. Wine labels may not be misleading and may not be designed to appeal especially to persons under the age of twenty-one.

AMENDATORY SECTION (Amending WSR 88-11-009, filed 5/10/88)

WAC 314-24-060 Quality standards. All wines of the types and classes hereinafter set forth sold in the state of Washington shall meet the ~~((following))~~ minimum requirements set by TTB.

~~((Acid content:~~

~~(1) Volatile acids:~~

~~(a) Red table wines Not over 0.14%, exclusive of sulfur dioxide, calculated as acetic acid.~~

~~(b) All other wines Not over 0.12%, exclusive of sulfur dioxide, calculated as acetic acid.~~

~~(c) Exception A higher volatile acidity level is permitted of 0.15 grams per 100 milliliters for white wine and 0.17 grams per 100 milliliters for red wine produced from unameliorated juice having a minimum solids content of 28 degrees Brix.~~

~~(2) Fixed acids:~~

~~(a) Grape wine:~~

~~(i) Table wine Not less than 0.4% calculated as tartaric acid.~~

~~(ii) Dessert wine Not less than 0.25% calculated as tartaric acid.~~

~~(b) Apple wine Not less than 0.15% calculated as malic acid.~~

~~(c) Fruit wine Not less than 0.5% calculated as citric acid.~~

~~(d) Berry wine Not less than 0.5% calculated as citric acid.~~

~~(3) Brix (balling):~~

~~(a) Port wine Minimum of 5.5 Brix at 20 degrees centigrade.~~

~~(b) White port wine Minimum of 5.5 Brix at 20 degrees centigrade.~~

~~(c) Muscatel wine Minimum of 5.5 Brix at 20 degrees centigrade.~~

~~(d) Tokay wine Minimum of 3.5 Brix at 20 degrees centigrade.~~

~~(e) Dry sherry wine Under 0.5 Brix at 20 degrees centigrade.~~

~~(f) Sherry wine Under 3 Brix at 20 degrees centigrade.~~

~~(g) Creme or sweet sherry wine Above 3 Brix at 20 degrees centigrade.~~

~~(4) Sulfur dioxide: Maximum of 350 parts per million total.~~

~~((5))~~ (1) Preservatives: No wines shall contain preservatives such as benzoic acid, salicylic acid or monochloroacetic acid, or their derivatives except that wines classified as specialty wine in accordance with WAC 314-24-003 ~~((2)(w))~~ may use benzoic acid or its derivatives if such use has been approved by the United States Food and Drug Administration.

~~((6))~~ (2) Stability: All wines shall be free from precipitates, colloidal matter, metallic casse, haze due to yeast, bacteria, tartrates, or other causes as determined by usual stability tests: Provided, however, That sediment may be allowed at the discretion of the board when it occurs in accordance with commercial standards commonly accepted by trade designations as normal and indicative of the wine's composition.

AMENDATORY SECTION (Amending WSR 14-06-109, filed 3/5/14, effective 4/5/14)

WAC 314-24-070 Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington. (1) Domestic wineries may purchase and/or receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in RCW 66.24.140, or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's fiscal year, and are subject to renewal at that time upon written request and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirits addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall make and file with the board, not later than the tenth day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1) of this section, and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced and bottled in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity, a licensed wine distributor or bonded wine warehouse.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery, a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must comply with tax collection

and tracking requirements initiated by the liquor control board.

(e) A domestic winery, a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must keep on file for audit purposes clear source records (shipping documents, etc.) with reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-080 Containers—Sizes and types permitted. (1) All wine sold for consumption in the state shall be sold in packages or container sizes approved by the (~~Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department~~) TTB for marketing within the United States. A copy of the federal certificate of label approval must be submitted with each such request for authorization.

(2) No domestic winery or wine distributor, or wine importer shall adopt or use any packages for wine differing in sizes and case capacities from: Manufacturer's original full cases. The board may, in its discretion, authorize other container and/or keg size packages it deems appropriate.

(3) Wine referred to in subsections (1) and (2) of this regulation may also be packaged and sold in metric standards of fill and in case sizes as are established in 27 Code of Federal Regulations (~~, to wit: 3 liters (101 fl. oz.) 4 bottles per case; 1.5 liters (50.7 fl. oz.) 6 bottles p/e; one liter (33.8 fl. oz.) 12 bottles p/e; 750 milliliters (25.4 fl. oz.) 12 bottles p/e; 375 milliliters (12.7 fl. oz.) 24 bottles p/e; 187 milliliters (6.3 fl. oz.) 48 bottles p/e; 100 milliliters (3.4 fl. oz.) 60 bottles p/e~~). Wine may be bottled or packed in containers of four liters or larger if the containers are filled and labeled in quantities of even liters.

(4) Wine imported from foreign countries may be packaged and container sizes approved by the (~~Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department~~) TTB for marketing within the United States. A copy of the federal certificate of label approval must be submitted with each such request for authorization.

(5) For taxing purposes and in all reports to the board, the (~~above~~) approved enumerated designations of package sizes, and no others, shall be used.

AMENDATORY SECTION (Amending WSR 87-21-036, filed 10/13/87)

WAC 314-24-090 Wine labels. (1) Every package or container of wine intended for sale within the state of Washington shall bear a label in compliance with RCW 66.28.110. Such label shall show:

(a) The brand name of the wine.

(b) Class, type or other designation.

(c) The name, city, and (~~address~~) state of the bottler or packager, which shall be stated as follows "Bottled by" Where a bottler or packager has made not less than 75% of the wine in a particular package or container by crushing the grapes or other materials, fermenting the must and clarifying the resulting wine, there may be stated in lieu of the words

"bottled by" the words "manufactured and bottled by" or "produced and bottled by." In addition to the name and address of the bottler or packager, but not in lieu thereof, there may be stated the name and address of the manufacturer or producer.

(d) The alcoholic content of the wine by volume, stated as provided in either (i) or (ii) of this subsection:

(i) "Alcohol % by volume."

(ii) "Alcohol % to % by volume."

(e) The net contents of the package or container: Provided, That the net contents need not be stated on any label if the net contents are displayed by having the same blown or branded in the package or container as the brand label, in letters or figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part.

(2) No label shall be used until after the same has been ~~((submitted to, and has received a written approval of, the board (see WAC 314-24-040)))~~ approved by TTB and submitted to the board. For labels not requiring federal COLA, a form prescribed by the board shall be completed and submitted to the board for approval.

(3) No label shall be used that is misleading.

AMENDATORY SECTION (Amending WSR 86-11-014, filed 5/13/86)

WAC 314-24-100 Domestic wineries—Responsibility for fruits used—Records. Every domestic winery shall keep proper records as required by ~~((the Bureau of Alcohol, Tobacco and Firearms, United States Treasury Department))~~ TTB, in a form approved by the board showing the place of origin and/or purchase of all fruits and fruit products used by such winery in the manufacture of wine, which records shall be kept at the office of such winery for a minimum of three years and available at all times for inspection by the board.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-105 Application procedure—Wine distributor's or importer's license. Any person making application for a new wine distributor's or importer's license shall submit to the board, as a condition precedent to the board considering the application, such information as may be requested by the board to include a copy of an approved wholesaler permit issued by TTB, and shall additionally submit a written commitment from a manufacturer or importer that the product the applicant proposes to distribute is available to him should a license be issued.

The decision as to whether a license will or will not be issued in a particular case is, pursuant to RCW 66.24.010, a matter of board discretion. The submission of the above information and written commitment shall not be construed as creating a vested right in the applicant to have a license issued.

AMENDATORY SECTION (Amending Order 26, filed 8/14/73)

WAC 314-24-115 Wine importers—Requirements.

(1) Principal office: Each wine importer shall keep the board informed at all times of the location of the principal office required by the Washington State Liquor Act and shall, not less than ~~((two))~~ thirty days prior thereto notify the board in writing ~~((or by telegraph))~~ of any change in the location of such office.

(2) Warehouses: Wine importers maintaining warehouses at which wine imported by such importer is stored shall ~~((at all times keep))~~ have the location approved by the board ~~((advised of the location of such warehouses))~~.

(3) Certain duties: No wine importer shall import or transport or cause to be transported into the state of Washington any brand of wine manufactured within the United States but outside the state of Washington, unless such importer shall have first filed with the board a notice of his intention so to do, and shall have ascertained from the board that the winery manufacturing such wine has obtained from the Washington state liquor control board a certificate of approval as provided in the Washington State Liquor Act (section 10, chapter 21, Laws of 1969 ex. sess.).

AMENDATORY SECTION (Amending WSR 06-11-051, filed 5/11/06, effective 6/11/06)

WAC 314-24-117 Wine certificate of approval ((fee)).

(1) ~~((The fee for a wine certificate of approval license is \$200 per year.))~~ The certificate of approval holder must pay the ~~((\$200))~~ fee for each privilege as described below:

(a) Manufacturer of wine produced in the United States but outside of Washington state, shipping wine to licensed Washington wine distributors or importers.

(b) Authorized representative for wine produced in the United States but outside of Washington state, shipping wine to licensed Washington wine distributors or importers.

(c) Authorized representative for wine produced outside of the United States, shipping wine to licensed Washington wine distributors or importers.

(2) A certificate of approval holder under RCW 66.24.-206 (1)(a) may add an endorsement to the certificate of approval that allows the holder to ship wine of the holder's own production directly to licensed liquor retailers. The fee ~~((for this endorsement is \$100 and))~~ is in addition to the fee required for a certificate of approval license.

AMENDATORY SECTION (Amending WSR 12-24-091, filed 12/5/12, effective 1/5/13)

WAC 314-24-120 Importation of foreign wine—United States wineries—Reports—Records. (1) Foreign wine. Wine manufactured outside of the United States may be imported by a wine importer or distributor under the following conditions:

(a) The wine importer or distributor importing such wine must obtain label approval in accordance with WAC 314-24-040. Such wine shall be imported and delivered directly to either the warehouse of the importer or distributor or to some

other warehouse previously designated by the importer or distributor and approved by the board.

(b) All matters pertaining to the importation, transportation, storage, keeping of records, and all other matters pertaining to the importation of wine manufactured outside the United States shall be subject at all times to such orders, rules and regulations as the board may from time to time prescribe, and the board reserves the right to make orders applicable to individual and particular cases in addition to general orders, rules and regulations applicable generally.

(2) Holders of certificate of approval—United States wineries, located outside of Washington state. Except as authorized in WAC 314-24-117, each winery holding a certificate of approval may ship wine to licensed wine importers and/or distributors only. ~~((As required by section 10, chapter 21, Laws of 1969 ex. sess., and))~~ By the written agreement embodied in the application for certificate of approval, each winery holding a certificate of approval shall file the report(s) required by WAC 314-19-015.

AMENDATORY SECTION (Amending WSR 15-01-001, filed 12/3/14, effective 1/3/15)

WAC 314-24-160 Domestic wineries—Retail sales of wine on winery premises—Wine served without charge on premises—Spirit, beer and wine restaurant operation.

(1) A domestic winery ~~((holding a proper retail license, pursuant to chapter 66.24 RCW,))~~ may sell wine of its own production at retail on the winery premises.

(2) In selling wine of its own production at retail on its premises as provided in subsection (1) of this regulation, a domestic winery shall conduct such operation in conformity with the statutes and regulations which apply to holders of such wine retailers' licenses. The winery shall maintain records of its retail operation separate from other winery operation records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, wine of a domestic winery's own production and/or liquor products other than wine of a licensee's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the domestic winery.

(4) A domestic winery or a lessee of a licensed domestic winery operating a spirit, beer and wine restaurant, licensed pursuant to RCW 66.28.295, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A domestic winery may serve its own wine and wine not of its own production without charge on the winery premises as authorized by RCW 66.28.295(2).

(6) No retail license or fee is required for the holder of a domestic winery license to serve wine without charge on the winery premises as set forth in subsection (5) of this regulation. Before exercising this privilege, however, such winery shall obtain approval of the proposed service area and facilities. Such winery shall maintain a separate record of all wine so served.

(7) A domestic winery may sell for off-premises consumption wine of its own production in kegs or sanitary containers brought to the premises by the purchaser or furnished

by the licensee in compliance with WAC 314-24-006(4) and filled at the tap at the time of sale.

(8) A winery is required to obtain the appropriate retail license pursuant to chapter 66.24 RCW to sell beer, wine, or spirits on the winery premises that is not of its own production. The winery shall follow the appropriate rules for such retail licenses.

(9) Licensed wine manufacturers and their employees may: Sample wine of their own manufacture for manufacturing, evaluating, or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee is not also engaged in serving alcohol to the public.

AMENDATORY SECTION (Amending WSR 15-01-001, filed 12/3/14, effective 1/3/15)

WAC 314-24-161 Domestic winery—Additional locations for retail sales only. A licensee holding a domestic winery license under RCW 66.24.170 may apply for ~~((two))~~ four additional location licenses.

(1) Wine-related retail activities allowed at an additional location include:

(a) Serving of samples provided with or without charge to customers (must be wine of the winery's own production). Samples are subject to taxes under WAC 314-19-015 (4)(b);

(b) Selling wine of the winery's own production for either on-premises or off-premises consumption;

(c) Selling for off-premises consumption wine of its own production in kegs or sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled at the tap at the time of sale; and

(d) Renting space for public and private events, such as catered events (subject to all of the provisions of this section, to Title 66 RCW covering the "tied house" restrictions, and to RCW 66.24.320 and 66.24.420).

(2) A licensee may request approval for an outside designated area. For the purpose of this section, an "outside designated area" means a specific area located on an outside track of land where alcohol consumption is allowed.

(a) An outside designated area must have prior written approval from the board's licensing division.

(b) The outside designated area shall be marked as such, and shall be enclosed in accordance with WAC 314-02-130(1).

(c) The outside designated area shall be on the licensed premises.

(3) Anyone involved in the selling or serving of wine, including the pouring of samples, at an additional location for on-premises consumption must obtain a Class 12 or Class 13 alcohol server permit.

(4) A winery additional location may hold a beer and wine restaurant license at the additional location premises under the following conditions:

(a) The licensee must apply for a beer and wine restaurant license with fees for the additional location:

(i) If a location is shared with multiple wineries not of the same entity, violations will be addressed per the requirements of RCW 66.24.170(4).

(ii) Where the location is shared with multiple wineries, the applicant will include in their application a list of other license holders at that location as well as a sketch illustrating the location of each licensee.

(iii) The licensee applying for the retail license must provide a letter from each winery sharing the additional location that acknowledges and accepts the conditions in (a)(i) of this subsection.

(b) The licensee must abide by all laws and rules of the retail license ~~(and~~

~~(c) No free samples are allowed on the retail portion of the premises)).~~

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-24-190 Wine suppliers and distributors.

(1) **Definitions** - For the purposes of this chapter:

(a) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

(b) A "wine distributor" means a distributor selling to a retailer, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) **Products** - All products must be made available to all retail licensees to the extent it is reasonably practical to do so.

(3) Distributor changes:

(a) The following guidelines apply when a wine supplier makes a distributor change ~~((outside of the regular distributor appointment timelines))~~. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor ~~((to be effective immediately))~~.

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Accommodation sales** - The provisions of this rule do not apply when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending WSR 09-02-010, filed 12/29/08, effective 1/29/09)

WAC 314-24-220 Licensing and operation of bonded wine warehouses. (1) There shall be a license for bonded wine warehouses pursuant to RCW 66.24.185, and this type of license shall be known as a bonded wine warehouse licensee. Applications for a bonded wine warehouse license shall be on forms prescribed by the board and shall be accompanied by such information as the board may request including, but not limited to, a written description of the proposed

method of shipping, receiving, inventory control, and security.

(2) The bonded wine warehouse shall be physically separated from any other use in such manner as prescribed by the board, and as a condition of license approval, the applicant must furnish the board appropriate documentation indicating the location of the bonded wine warehouse is properly zoned for the intended use.

(3) A bonded wine warehouse may provide storage for a domestic winery, for another bonded wine warehouse, and for a certificate of approval holder. The Washington wine tax provided in RCW 66.24.210 shall not be due until the wine is removed from bond and shipped to a licensed Washington wine distributor ~~((or, pursuant to RCW 66.12.020, to the liquor control board who will be responsible to pay the tax based on their purchases))~~.

(4) Every bonded wine warehouse licensee shall have on file and available for inspection records of all wine transactions, including receipts and shipments of wine and the total inventory on hand at the bonded warehouse for a period of three years.

(5) Removals of wine from a bonded wine warehouse may be made only for shipment:

(a) To a licensed independent Washington wine distributor;

(b) To another licensed bonded wine warehouse;

(c) ~~((to the liquor control board;~~

~~(d))~~ Out-of-state;

~~((e))~~ (d) For return to the producing winery;

~~((f))~~ (e) To a producing domestic winery licensee; or

~~((g))~~ (f) Directly to a consumer.

(i) For purposes of this section, "producing domestic winery licensee" means the licensed Washington winery that produced the wine and its licensed agents.

(ii) For purposes of this section, a "licensed agent" shall be an accredited representative, licensed pursuant to chapter 314-44 WAC, of only one producing domestic winery at the time of removal by such agent.

(6) A producing domestic winery licensee may take possession of wine from a bonded wine warehouse, after accepting an order therefor, and deliver the wine to a purchasing retail or special occasion licensee only by transporting the wine directly from the bonded wine warehouse to the licensed premises of the purchasing retail or special occasion licensee; provided, however, that in no event may a producing domestic winery licensee remove, in the aggregate, during any one calendar year, more than two thousand cases of wine for delivery directly to retail and special occasion licensees. Producing domestic winery licensees shall maintain records of removals and deliveries of wine from bonded wine warehouses and shall file with the liquor ~~((control))~~ and cannabis board annually reports of the quantity of wine removed and delivered directly to retail and special occasion licensees. Invoicing shall be by the titleholder. The titleholder shall report shipments to, and returns from the bonded wine warehouse and sales to Washington wine distributors, and/or the liquor ~~((control))~~ and cannabis board on the twentieth day of the month following the month of shipment and/or sale on forms furnished by, or acceptable to, the board.

~~((6))~~ (7) At no time shall title to wine stored at the bonded wine warehouse pass to the operator of the bonded wine warehouse.

~~((7))~~ (8) "Storage and handling of bottled wine" as used in RCW 66.24.185(1) shall mean the storage and handling of wine packaged for sale at retail (i.e., other than in bulk form).

~~((8))~~ (9) Any winery contracting with a bonded wine warehouse for direct shipments to consumers must accept and process the orders and payments. This includes, but is not limited to, in-person, mail, telephone, and internet orders and payments. Only a winery licensee or a winery licensee's employees may accept and process such orders and payments. A contractor may not do so on behalf of a winery licensee.

~~((9))~~ (10) A bonded wine warehouse may not accept orders and payments from consumers for direct shipments.

NEW SECTION

WAC 314-24-265 Defining wine of a winery's own production. A domestic winery holding a valid license in both Washington and Oregon may market and distribute wine produced in Oregon utilizing their Washington winery license as the premises for transactions if the following conditions are met:

(1) The licensee must request approval from the WSLCB to market and retail their Oregon wine at their Washington winery premises. Approval will be granted based on the documentation that demonstrates compliance with this regulation.

(2) The licensee must demonstrate a valid Oregon winery license and that the underlying ownership of the Oregon winery license is identical to the Washington winery license.

(3) Both the Washington and Oregon wineries must manufacture wine within the same TTB authorized appellation. Only wine from cross border appellations will be approved.

(4) Oregon wine to be marketed and/or sold in Washington must have the appropriate taxes paid (RCW 66.24.210).

AMENDATORY SECTION (Amending WSR 15-16-049, filed 7/29/15, effective 8/29/15)

WAC 314-28-030 What does a distillery license allow? (1) A distillery license allows the licensee to:

(a) Sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington;

(b) Sell spirits of its own production for consumption off the premises. A distiller selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;

(c) Provide free or for a charge one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery~~((:))~~ under the following conditions:

(i) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.

(ii) The maximum ~~((total))~~ amount of alcohol per person per day is two ounces.

(ii) Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.

(d) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(2) Contract production is when one distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of a distillery license, or manufacturers' license including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as the Revised Code of Washington and the Washington Administrative Code allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(3) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(4) The contractor and contractee are required to obtain any federal approvals.

AMENDATORY SECTION (Amending WSR 15-16-049, filed 7/29/15, effective 8/29/15)

WAC 314-28-050 What does a craft distillery license allow? (1) A craft distillery license allows a licensee to:

(a) Produce one hundred fifty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A craft distiller may not sell liquor products of someone else's production;

(c) Sell spirits of its own production to a licensed spirits distributor;

(d) Sell spirits of its own production to a licensed spirits retailer in the state of Washington;

(e) Sell to out-of-state entities;

(f) Provide, free or for a charge, samples of spirits of its own production to persons on the distillery premises~~((:))~~ subject to the following conditions:

(i) ~~((Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day))~~ The maximum amount of alcohol per person per day is two ounces.

(ii) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.

(iii) Anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit.

(iv) Samples must be in compliance with RCW 66.28.-040;

(g) Provide samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

(h) Contract produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may add a spirits, beer, and wine restaurant license at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license? (1) A distiller or craft distiller must submit monthly reports and payments to the board.

The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the distiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

(3) ~~((On sales on or after March 1, 2012,))~~ A distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first ~~((two years))~~ twenty-seven months of licensure and five percent of their gross spirits revenues to the board in ~~((year three))~~ the twenty-eighth month and thereafter.

(a) ~~((On sales after June 1, 2012, distillery or craft))~~ A distillery must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

(b) Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late? Failure of a distillery or craft distiller to submit its monthly reports and payment to the board as required ~~((in WAC 314-28-070(1)))~~ will be sufficient grounds for the board to suspend or revoke the liquor license.

Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-28-090 Distilleries or craft distilleries—Selling out-of-state. What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?

(1) A distillery or craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and for a craft distillery, the composition of raw materials used in production of the product.

(2) Product produced in-state and sold out-of-state counts toward a craft distillery licensee's ~~((sixty))~~ one hundred fifty thousand proof gallons per calendar year production limit ~~((see WAC 314-28-050))~~.

(3) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

(4) A distillery or craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-28-100 Consumer orders, internet sales, and delivery for distillery and craft distillery licensees. A distillery or craft distillery licensee may accept orders for spirits from, and deliver spirits to, customers.

(1) **Resale.** Spirits shall not be for resale.

(2) **Stock location.** Spirits must come directly from a licensed distillery or craft distillery possession.

(3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a spirits distillery or craft distillery licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits distillery or craft distillery licensee, except for transmittal

of payment through a third-party service. ~~((A third-party service may not solicit customer business on behalf of a spirits distillery or craft distillery licensee.~~

~~(b))~~ The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The internet sale will be made by the distillery;

(ii) The payment for the sale will be processed by the distillery; and

(iii) The distillery pays the owner of the internet or mobile application a service fee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's possession.

(c) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's or craft distillery's possession.

~~((e))~~ (d) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

~~((f))~~ (e) Internet. To sell spirits via the internet, a new spirits distillery or craft distillery license applicant must request internet sales privileges in his or her application. An existing spirits distillery or craft distillery licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits distillery or craft distillery licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display the spirits distillery or craft distillery licensee's registered trade name.

(12) **Accountability.** A spirits distillery or craft distillery licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

NEW SECTION

WAC 314-28-210 Return of spirits by retailer—Replacement—Conditions. No spirits shall be returned by any retail licensee to any spirits distributor except as herein provided.

(1) Spirits which is not in a salable condition may be returned by a retail licensee to the spirits distributor from whom purchased, provided it is immediately replaced by the spirits distributor with an identical quantity, type and brand of spirits. If the brand of spirits is not presently in the spirits distributor's stock and is not available to the distributor in the immediate future, a cash refund may be made to the retail licensee upon the approval of the board first being obtained.

(a) Every spirits distributor shall maintain on the licensed premises for a period of three years complete records of all refunds and exchanges made under this section including an inventory of unsalable spirits returned to such distributor by any retail licensee.

(b) Such unsalable spirits which requires reconditioning or destruction shall be returned by the spirits distributor to the distillery or craft distillery which manufactured or produced the same, or to the importer who imported such spirits. When spirits which has been returned to a distiller or craft distiller by any person for reconditioning or destruction has been assembled at the distillery or craft distillery, a complete inventory in duplicate of unsalable spirits shall be filed with the board by the distillery or craft distillery with a request that inspection be made of the returned spirits before the reconditioning process or destruction is started. When spirits has been returned by the distributor to the importer who imported

such spirits, a complete inventory of said spirits shall be filed in duplicate with enforcement by the importer with a request that inspection be made of the returned spirits before the spirits is destroyed or returned to the out-of-state manufacturer.

(c) Spirits which is not in a salable condition and has been returned to a distillery, craft distillery or importer by a distributor may be replaced by the supplier with an identical quantity, type, and brand of spirits. If the brand of spirits is not presently in the distillery, craft distillery, or importer's stock and is not available to the supplier in the immediate future, a cash refund or credit may be made to the distributor by the supplier. Credit extended for the return of product should be noted on a separate document from the original invoice. Except as provided herein, no other adjustment, by way of a cash refund or otherwise, shall be made by the distillery, craft distillery, or spirits distributor.

(2) Spirits may be returned by a retail licensee or by a governmental agency who has seized the same to the spirits distributor selling such spirits in the event the retailer goes out of the business of selling spirits at retail a cash refund may be made upon return of the spirits, provided that consent of the board is first had and obtained.

(3) Spirits different from that ordered which has been delivered in error to a retail licensee may be returned to a spirits distributor and either replaced with that spirits which was ordered or a cash refund may be made upon the approval of the board first being obtained. The error in delivery shall be discovered and corrected within eight days of the date the delivery was made.

(4) A distributor may return salable spirits to a Washington distillery or craft distillery provided the distillery or craft distillery reimburses the distributor for the cost of the spirits.

NEW SECTION

WAC 314-28-220 Bonded and nonbonded spirits warehouse. (1) There shall be a license that allows the storage and handling of bonded bulk spirits and, to the extent allowed under federal law, bottled spirits and the storage of tax-paid spirits not in bond. The licensee is allowed to store spirits of a distillery, craft distillery or manufacturer.

(2) Spirits in bond (bulk) may be removed from a bonded spirits warehouse for the purpose of being:

- (a) Exported from the state;
- (b) Returned to a distillery or spirits warehouse licensed under this section; or
- (c) Transferred to a distillery, spirits warehouse licensed under this section, or a licensed bottling or packaging facility.

(3) Bottled spirits that are being removed from a spirits warehouse licensed under this section tax-paid may be:

- (a) Transferred back to the distillery that produced them;
- (b) Shipped to a licensed Washington spirits distributor;
- (c) Shipped to a licensed Washington spirits retailer;
- (d) Exported from the state; or
- (e) Removed for direct shipping to a consumer pursuant to RCW 66.20.410.

(4) Handling of bottled spirits that have been removed from bond tax-paid and that reside in the spirits warehouse includes:

- (a) Packaging and repackaging services;

(b) Bottle labeling services;

(c) Creating baskets or variety packs that may or may not include nonspirits products; and

(d) Picking, packing, and shipping spirits orders on behalf of a licensed distillery direct to consumers in accordance with RCW 66.20.410.

A distillery contracting with the operator of a spirits warehouse licensed under this section for handling bottled spirits must comply with all applicable state and federal laws and is responsible for financial transactions in direct to consumer shipping activities.

(5) The license applicant must demonstrate:

(a) The right to have warehoused spirits under a valid federal permit held by the distiller, craft distillery, or manufacturer who maintains ownership and title to the spirits while they are in storage;

(b) The location is physically secure;

(c) Zoned for the intended use; and

(d) Physically separated from any other use.

(6) A licensee must be a sole proprietor, a partnership, a limited liability company, a corporation, a port authority, a city, a county, or any other public entity or subdivision of the state that elects to license a bonded spirits warehouse as an agricultural or economic development activity. One or more domestic distilleries or manufacturers may operate as a partnership, corporation, business co-op, cotenant, or agricultural co-op for the purpose of obtaining a bonded and nonbonded spirits warehouse license or storing spirits in the facility under a common management and oversight agreement free of charge or for a fee.

(7) The ownership and operation of a spirits warehouse facility licensed under this section may be by a person or entity other than those described in this section acting in a commercial warehouse management position under contract for such licensed persons or entities on their behalf.

(8) A licensee must designate clearly in its license application to the board the sections of the warehouse that are bonded and nonbonded with a physical separation between such spaces, be physically secure, zoned for the intended use, and physically separated from any other use.

(9) The proprietor of the warehouse must maintain a plan for tracking spirits being stored in the warehouse to ensure compliance with relevant bonding and tax obligations.

WSR 18-02-037

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 22, 2017, 10:25 a.m., effective January 22, 2018]

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

Purpose: The department is amending WAC 388-444-0030 What additional work requirements and time limits is an able-bodied adult without dependents (ABAWD) subject to in order to be eligible for basic food?, 388-444-0045 How does an ABAWD regain eligibility for basic food after being closed for the three-month limit, and 388-444-0065 Am I eli-

gible for basic food if I quit my job or reduce my work effort, to update the eligibility policies of work registrants, including but not limited to ABAWDs population, in order to bring them into compliance with federal regulations.

Citation of Rules Affected by this Order: Amending WAC 388-444-0030, 388-444-0045, and 388-444-0065.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120.

Adopted under notice filed as WSR 17-21-071 on October 16, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-444-0030 (4)(c), added "Participates in."

WAC 388-444-0045 (1)(d), changed "applied" to "reapplied."

WAC 388-444-0045 (1)(e), added "Meeting an exemption as outlined in WAC 388-444-0035."

WAC 388-444-0045 (2)(a), changed "applied" to "reapplied."

WAC 388-444-0045 (2)(b), added "if you requalify by participating in the workfare program; or (b) The date of reapplication or the date you complete the required number of participation hours in a work or work-like activity, whichever is later."

WAC 388-444-0045(3), added "that we start counting."

WAC 388-444-0045 (3)(c), added "Stop qualifying for an exemption and you are not participating in work requirements."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 18, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-07-003, filed 3/3/16, effective 4/3/16)

WAC 388-444-0030 (~~What additional work requirements and time limits is an~~) Are able-bodied adults without dependents (ABAWD) subject to ((in order)) additional work requirements and time limits to be eligible for basic food? (1) An able-bodied adult without dependents (ABAWD) is a person who:

(a) Is age eighteen through forty-nine; (~~and~~)

(b) Is fit for work and not exempted under WAC (~~388-444-0035(1))~~ 388-444-0035; and

(c) Does not receive food assistance in an assistance unit (AU) that includes a minor child(~~(;))~~ (we will consider the AU to include a minor child even if the minor child is not eligible to receive food assistance (~~(in that AU; or~~

~~(d) Is not otherwise exempt under WAC 388-444-0035))~~.

(2) If you are an ABAWD, you must participate in work activities under subsection (4) (~~(unless you are exempt from ABAWD requirements under WAC 388-444-0035))~~ of this section.

(3) Nonexempt ABAWDs who live outside of King county(~~(; Snohomish county or Pierce county, and nonexempt ABAWDs who live within the city of Tacoma or the city of Lakewood;))~~ or on the Muckleshoot Tribal Reservation may continue to receive food assistance until December 31, (~~(2016;))~~ 2018 even if (~~(the ABAWD fails))~~ they fail to participate in work-related activities.

(4) (~~(Beginning January 1, 2016;))~~ A nonexempt ABAWD is not eligible to receive food assistance for more than three full months (which do not have to be consecutive months), not including any partial benefit months in a thirty-six month period, unless the ABAWD:

(a) Works (~~(at least twenty hours per week, averaged monthly (eighty hours per month). Working includes))~~ an average of eighty hours per month, including:

(i) Work in exchange for money;

(ii) Work in exchange for goods or services ("in kind" work);

(iii) Unpaid work that is verified according to department requirements; or

(iv) Any combination of (~~((4)(a)(i))~~) (a)(i) through (~~((4)(a)(iii). Or))~~ (a)(iii) of this subsection;

(b) Participates in one of the following work programs and is meeting the requirements of that work program:

(i) The Workforce Innovation and Opportunity Act of 2014;

(ii) Section 236 of the Trade Act of 1974;

(iii) A state-approved employment and training program at least an average of eighty hours per month; or

(~~((iv))~~) (c) Participates in an unpaid work program as provided in WAC 388-444-0040.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0045 How does an ABAWD regain eligibility for basic food after ((being closed for)) the three-month limit? (1) If you have (~~(used up your))~~ received three months of benefits as an able-bodied adult without dependents (ABAWD) (~~(under))~~ and are not eligible due to nonparticipation in the work requirements of WAC 388-444-0030, you (~~(can))~~ may regain eligibility after reapplying for basic food by:

(a) Working eighty hours or more during a thirty-day period;

(b) Participating in and meeting the requirements of a work program as outlined in WAC 388-444-0030 for eighty hours or more during a thirty-day period;

(c) Participating in and meeting the requirements of the community service part of a workfare program; ((or))

(d) Meeting any of the work requirements in (a) through (c) of this subsection in the thirty days after the date you have ~~((applied))~~ reapplied for basic food; or

(e) Meeting an exemption as outlined in WAC 388-444-0035.

(2) If you regain eligibility for food assistance under subsection (1) of this section, you are eligible for basic food from:

(a) The date you ~~((applied))~~ reapplied for basic food ~~((and as long as you continue to meet the requirements of WAC 388 444 0030)) if you requalify by participating in the workfare program; or~~

(b) The date of reapplication or the date you complete the required number of participation hours in a work or work-like activity, whichever is later.

(3) If you meet all other requirements for basic food and you have regained eligibility under subsection (1) of this section, you ~~((may))~~ will receive an additional three consecutive months of basic food benefits that we start counting when you:

(a) Lose employment; ~~((or))~~

(b) ~~((Lose the opportunity to participate)) Stop participating in a work or workfare program; or~~

(c) Stop qualifying for an exemption and you are not participating in work requirements.

(4) We only allow the additional three months of basic food ~~((under subsection (3)))~~ once in each thirty-six month period under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-21-126, filed 10/22/13, effective 11/22/13)

WAC 388-444-0065 Am I eligible for basic food if I quit my job or reduce my work effort? (1) You are not eligible for basic food if you voluntarily quit your current job without good cause as defined in WAC 388-444-0070, and:

(a) You were working or self-employed ~~((and working))~~ for thirty hours or more per week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours; ~~((and))~~

(b) The day you quit or the last day you worked was within ~~((sixty))~~ thirty days before you applied for basic food or any time after application; and

(c) At the time ~~((of))~~ you quit or the last day you worked, you would have been required to register for work as defined in WAC 388-444-0005.

(2) You are not eligible for basic food if you voluntarily reduce your work effort without good cause as defined in WAC 388-444-0070, and:

(a) You were working or self-employed ~~((and working))~~ for thirty hours or more per week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours; ~~((and))~~

(b) ~~((The reduction was))~~ You reduced your work effort within ~~((sixty))~~ thirty days before you applied for basic food or any time after application; ~~((and))~~

(c) ~~((If))~~ After the reduction, you are working less than thirty hours per week or your weekly earnings are not at least equal to the federal minimum wage multiplied by thirty hours; and

(d) At the time of the reduction you would have been required to register for work as defined in WAC 388-444-0005.

(3) You are not eligible to receive basic food if you have participated in a strike against a federal, state, or local government and have lost your employment because of such participation within thirty days of application.

(4) The following are not considered voluntary quits:

(a) Ending a self-employment enterprise; or

(b) Resigning at the request of the employer.

WSR 18-02-043

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 26, 2017, 1:20 p.m., effective January 26, 2018]

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

Purpose: The department is amending WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-450-0195, 388-470-0005 and 388-478-0060, in order to decrease maximum allotments to \$640, decrease the minimum benefit to \$15, increase the basic food standard deduction for one to three persons to \$160, increase the maximum shelter deduction increases to \$535, increase the standard utility allowance to \$421, increase the limited utility allowance to \$328, maintain the telephone utility allowance at \$57, increase the maximum gross monthly income and maximum net monthly income limit for households that are not categorically eligible for basic food, increase the maximum asset limit to \$3,500, and increase the one hundred sixty-five percent federal poverty level standard.

Citation of Rules Affected by this Order: Amending WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-450-0195, 388-470-0005, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: 7 C.F.R. 273.1 and 7 C.F.R. 273.9 (d)(iii)(B), supplemental nutrition assistance program (SNAP) Administrative Notice 17-30: SNAP - Fiscal Year (FY) 2018 cost-of-living adjustments, and SNAP utility allowance memo for federal FY 2018 dated August 28, 2017.

Adopted under notice filed as WSR 17-21-024 on October 10, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.
Date Adopted: December 26, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-20-087, filed 10/4/16, effective 2/1/17)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) How we determine monthly allotments:

(a) We calculate your monthly allotment for federally-funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) Maximum allotment:

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) Prorated benefits in the first month. If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) Combined allotment for first and second month's benefits. If you apply for benefits on or after the sixteenth of the month and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) Minimum allotment. Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) ~~((Sixteen))~~ Fifteen dollars if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) ~~((Sixteen))~~ Fifteen dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) Use of food assistance benefits. Your food assistance benefits may only be used to buy eligible food items as

described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	((157)) <u>\$160</u>
2	((157)) <u>\$160</u>
3	((157)) <u>\$160</u>
4	((168)) <u>\$170</u>
5	((197)) <u>\$199</u>
6 or more	((226)) <u>\$228</u>

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
 - (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of five hundred (~~((seventeen))~~) thirty-five dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~((seventeen))~~) thirty-five dollars.

AMENDATORY SECTION (Amending WSR 17-10-069, filed 5/3/17, effective 6/3/17)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASH-CAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts (~~((in this subsection))~~) if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~((eleven))~~) twenty-one dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~((eleven))~~) twenty-one dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this sec-

tion, you get a limited utility allowance (LUA) of three hundred (~~((nineteen))~~) twenty-eight dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of fifty-seven dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 15-02-041, filed 1/2/15, effective 2/2/15)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

(a) "**We**" means the department of social and health services.

(b) "**You**" means a person applying for or getting benefits from the department.

(c) "**Fair market value ((FMV))**" or "**FMV**" means the price at which you could reasonably sell the resource.

(d) "**Equity value**" means the FMV minus any amount you owe on the resource.

(e) "**Community property**" means a resource in the name of the husband, wife, or both.

(f) "**Separate property**" means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:

(a) It is a resource we must count under WAC 388-470-0045 (~~((and))~~) for cash assistance or WAC 388-470-0055 for basic food;

(b) You own the resource(=) and we consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that (~~((doesn't))~~) does not have a title; (~~((and))~~)

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, we use the equity value as the value of your resources.

(a) Applicants ~~((ean))~~ may have countable resources up to one thousand dollars.

(b) Recipients of cash assistance ~~((ean))~~ may have an additional three thousand dollars in a savings account.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:

(a) Three thousand ~~((two))~~ five hundred ~~((fifty))~~ dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand two hundred fifty dollars for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; ~~((or))~~

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of ~~((the))~~ a resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in ~~((column))~~ columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section. The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE ~~((10/1/2016))~~ 10/1/2017

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	((1,287)) <u>\$1,307</u>	((990)) <u>\$1,005</u>	((194)) <u>\$192</u>	((1,634)) <u>\$1,659</u>
2	((1,736)) <u>1,760</u>	((1,335)) <u>1,354</u>	((357)) <u>352</u>	((2,203)) <u>2,233</u>
3	((2,184)) <u>2,213</u>	((1,680)) <u>1,702</u>	((511)) <u>504</u>	((2,772)) <u>2,808</u>
4	((2,633)) <u>2,665</u>	((2,025)) <u>2,050</u>	((649)) <u>640</u>	((3,342)) <u>3,383</u>
5	((3,081)) <u>3,118</u>	((2,370)) <u>2,399</u>	((771)) <u>760</u>	((3,911)) <u>3,958</u>
6	((3,530)) <u>3,571</u>	((2,715)) <u>2,747</u>	((925)) <u>913</u>	((4,480)) <u>4,532</u>
7	((3,980)) <u>4,024</u>	((3,061)) <u>3,095</u>	((1,022)) <u>1,009</u>	((5,051)) <u>5,107</u>

EFFECTIVE (~~(10/1/2016)~~) 10/1/2017

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
8	((4,430)) <u>4,477</u>	((3,408)) <u>3,444</u>	((1,169)) <u>1,153</u>	((5,623)) <u>5,682</u>
9	((4,881)) <u>4,930</u>	((3,755)) <u>3,793</u>	((1,315)) <u>1,297</u>	((6,195)) <u>6,257</u>
10	((5,332)) <u>5,383</u>	((4,102)) <u>4,142</u>	((1,461)) <u>1,441</u>	((6,767)) <u>6,832</u>
Each Additional Member	((+451)) <u>+453</u>	((+347)) <u>+349</u>	((+146)) <u>+144</u>	((+572)) <u>+575</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: December 21, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-022, filed 2/8/16, effective 4/1/16)

WAC 388-71-0105 What definitions apply to adult protective services? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to adult protective services:

"**AL TSA**" means DSHS aging and long-term support administration.

"**Adult family home**" means a home or building licensed under chapter 70.128 RCW.

"**ALJ**" means an administrative law judge, an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DSHS employees or DSHS representatives.

"**APS**" means adult protective services.

"**Basic necessities of life**" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

"**BOA**" means the DSHS board of appeals. The board of appeals consists of lawyers who are members of the Washington State Bar Association. An ALJ's decision can be appealed to the board of appeals, allowing a level of review before an appeal to the court system may be considered.

"**DSHS**" means the department of social and health services.

WSR 18-02-044

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 26, 2017, 1:22 p.m., effective January 26, 2018]

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

Purpose: The department is amending WAC 388-71-0105 What definitions apply to adult protective services?, to strike the term "willful" from the definitions list as a result of an order by the Division III Court of Appeals in *Crosswhite v. DSHS* invalidating the current definition of "willful." Striking the current WAC definition of "willful" is necessary because it is interpreted by the Crosswhite court as being in conflict with Washington state statute.

Citation of Rules Affected by this Order: Amending WAC 388-71-0105.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 17-21-088 on October 17, 2017.

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

"Enhanced service facility" means a home or building licensed under chapter 70.97 RCW.

"Facility" means a residence licensed as an assisted living facility under chapter 18.20 RCW, an adult family home under chapter 70.128 RCW, a nursing home under chapter 18.51 RCW, a soldier's home under chapter 72.36 RCW, a residential habilitation center under chapter 71A.20 RCW, an enhanced services facility under chapter 71.05 RCW, or any other facility or residential program licensed or certified by DSHS's aging and long-term support administration.

"Final finding" means a substantiated initial finding of abandonment, abuse, financial exploitation, or neglect that:

(1) Has been upheld through the administrative appeal described in WAC 388-71-01205 through 388-71-01280(;;); or

(2) Is not timely appealed to the office of administrative hearings. A final finding may be appealed to superior court and the court of appeals under the Administrative Procedure Act, chapter 34.05 RCW.

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means a facility certified under 42 C.F.R. Part 483, Subpart I.

"Legal representative" means a guardian appointed under chapter 11.88 RCW or an attorney-in-fact under chapter 11.94 RCW.

"Nursing assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility ((NF)), "NF," or "medicaid-certified nursing facility" means a nursing home licensed under chapter 18.51 RCW, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the federal Social Security Act ((42 U.S.C. § 1396r)) (42 U.S.C. Sec. 1396r). All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds may also be certified to provide medicare skilled nursing facility services.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Person with a duty of care" includes, but is not limited to, the following:

(1) A guardian appointed under chapter 11.88 RCW; ((or))

(2) A person named in a durable power of attorney as the attorney-in-fact as defined under chapter 11.94 RCW(;;); or

(3) A person providing the basic necessities of life to a vulnerable adult where:

(a) The person is employed by or on behalf of the vulnerable adult; or

(b) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

"Personal aide" means the same as found in RCW 74.39.007.

"Self-directed care" means the same as found in RCW 74.39.007.

"Skilled nursing facility ((SNF)), "SNF," or "medicare-certified skilled nursing facility" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide

nursing services to medicare recipients under section 1819(a) of the federal Social Security Act (42 U.S.C. § 1395i-3).

"Substantiated initial finding" means a determination made by the department upon investigation of an allegation of abandonment, abuse, financial exploitation, neglect, or self-neglect that more likely than not occurred.

~~("Willful" means the nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause harm, injury or a negative outcome.)~~

WSR 18-02-048

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 27, 2017, 4:55 p.m., effective January 27, 2018]

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

Purpose: WAC 246-490-075 Changing sex designation on a birth certificate, the rule establishes procedural requirements for individuals to change the sex designation on their birth certificate. The rule replaces the current department procedure established in 2008 with an updated procedure and includes "male," "female," and "X" as options for sex designation on the birth certificate. The rule only applies to amendments made to birth records after the original record is completed at the time of birth.

Citation of Rules Affected by this Order: New WAC 246-490-075.

Statutory Authority for Adoption: RCW 43.70.150.

Other Authority: RCW 43.70.160.

Adopted under notice filed as WSR 17-22-105 on October 31, 2017.

Changes Other than Editing from Proposed to Adopted Version: Subsection (2) is amended to allow an adult, through a guardian appointed pursuant to chapter 11.92 RCW, to apply for a sex designation change on a birth certificate.

A final cost-benefit analysis is available by contacting Vicki M. Bouvier, Department of Health, Center for Health Statistics, P.O. Box 7814, Olympia, WA 98504-7814, phone 360-236-4233, TTY 360-833-6388 or 711, email GenderChangeRuleMaking@doh.wa.gov.

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

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

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

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

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

Date Adopted: December 27, 2017.

John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-490-075 Changing sex designation on a birth certificate. (1) For the purposes of this section:

(a) "Adult" means a person who is at least eighteen years of age, or is an emancipated minor under chapter 13.64 RCW.

(b) "Minor" means a person under the age of eighteen years of age, but not an emancipated minor under chapter 13.64 RCW.

(c) "X" means a gender that is not exclusively male or female, including, but not limited to, intersex, agender, amalgender, androgynous, bigender, demigender, female-to-male, genderfluid, genderqueer, male-to-female, neutrois, nonbinary, pangender, third sex, transgender, transsexual, Two Spirit, and unspecified.

(2) Only an adult, or an adult through a guardian appointed pursuant to chapter 11.92 RCW, may apply to change sex designation on a birth certificate for oneself.

(3) Only the parent or legal guardian of a minor may apply to change sex designation on the minor's birth certificate.

(4) To change sex designation on a birth certificate, an adult, or parent or legal guardian of a minor, must submit to the department a completed, signed, and dated application provided by the state registrar that includes, at a minimum, the following information for the person named on the birth certificate:

- (a) Full name listed on the birth certificate;
- (b) Date of birth;
- (c) Place of birth;
- (d) Mother or parent's full name listed on the birth certificate;
- (e) Father or parent's full name listed on the birth certificate, if it appears on the record;
- (f) Contact information;
- (g) Sex designation requested (male, female, or X); and
- (h) Other information requested by the state registrar.

(5) If an adult, or parent or legal guardian, cannot provide the information in subsection (4) of this section due to special circumstances; the adult, or parent or legal guardian, must submit a written explanation of the circumstances to the state registrar. The department may change the sex designation on the birth certificate if, in the state registrar's judgment, these circumstances prevent the adult, or parent or legal guardian, from knowing one or more of the required items.

(6) The sex designation change application of an adult must be notarized and signed under penalty of perjury pursuant to chapter 9A.72 RCW.

(7) The sex designation change application of a minor must include a signed statement by the minor's licensed health care provider attesting that:

- (a) The minor identified on the application is under the care of the provider; and

(b) The provider has determined the request to change sex designation on the birth certificate is consistent with the minor's identity.

(8) Only licensed health care providers whose scope of practice allows for attestation of a sex designation change may provide this attestation.

WSR 18-02-058

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 29, 2017, 8:00 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The forest land values rule is required by statute (RCW 84.33.140) to be effective on January 1, 2018. The stumpage value rule is also required by statute (RCW 84.33.091) to be effective on January 1, 2018.

Purpose: WAC 458-40-540 contains the forest land values used by county assessors for property tax purposes. This rule is being revised to provide the forest land values to be used in 2018.

WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the first half of 2018.

Citation of Rules Affected by this Order: Amending WAC 458-40-540 and 458-40-660.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Adopted under notice filed as WSR 17-23-101 on November 15, 2017.

A final cost-benefit analysis is available by contacting Danitza M. Casselman, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606, email danitzac@dor.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: December 29, 2017.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-02-003, filed 12/22/16, effective 1/1/17)

WAC 458-40-540 Forest land values—((2017)) 2018. The forest land values, per acre, for each grade of forest land for the ((2017)) 2018 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2017)) 2018 VALUES PER ACRE
1	1	\$((209)) <u>208</u>
	2	((207)) <u>206</u>
	3	((193)) <u>192</u>
	4	141
2	1	177
	2	171
	3	164
	4	116
3	1	137
	2	133
	3	132
	4	102
4	1	106
	2	103
	3	102
	4	77
5	1	77
	2	68
	3	67
	4	47
6	1	39
	2	37
	3	37
	4	35
7	1	17
	2	17
	3	16
	4	16
8	1	1

AMENDATORY SECTION (Amending WSR 17-14-020, filed 6/23/17, effective 7/1/17)

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

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July 1 through December 31, 2017)) January 1, 2018 through June 30, 2018:

Washington State Department of Revenue
STUMPAGE VALUE TABLE
 ((July)) January 1 through ((December 31, 2017)) June 30, 2018
 Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
 Starting July 1, 2012, there are no separate Quality Codes per Species Code.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
((Douglas-fir ⁽²⁾	DF	1	\$357	\$350	\$343	\$336	\$329
		2	460	453	446	439	432
		3	454	447	440	433	426
		4	497	490	483	476	469
		5	458	451	444	437	430
		6	277	270	263	256	249
Western Hemlock and Other Conifer ⁽³⁾	WH	1	241	234	227	220	213
		2	330	323	316	309	302
		3	264	257	250	243	236
		4	318	311	304	297	290
		5	301	294	287	280	273
		6	249	242	235	228	221
		1-5	1082	1075	1068	1061	1054
Western Redcedar ⁽⁴⁾	RC	6	1110	1103	1096	1089	1082
Ponderosa Pine ⁽⁵⁾	PP	1-6	191	184	177	170	163
Red Alder	RA	1-5	483	476	469	462	455
Black Cottonwood	BC	1-5	100	93	86	79	72
Other Hardwood	OH	1-5	284	277	270	263	256
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	706	699	692	685	678
Western Redcedar Poles	RCL	1-5	1514	1507	1500	1493	1486
		6	1377	1370	1363	1356	1349
Chipwood ⁽⁶⁾	CHW	1-5	11	10	9	8	7
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	29	28	27	26	25
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-6	289	282	275	268	261
Posts ⁽⁸⁾	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-6	0.50	0.50	0.50	0.50	0.50
Douglas-fir ⁽²⁾	DF	1	\$448	\$441	\$434	\$427	\$420
		2	481	474	467	460	453
		3	478	471	464	457	450
		4	533	526	519	512	505
		5	473	466	459	452	445
		6	283	276	269	262	255

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Western Hemlock and Other Conifer ⁽³⁾	WH	1	296	289	282	275	268
		2	374	367	360	353	346
		3	362	355	348	341	334
		4	358	351	344	337	330
		5	331	324	317	310	303
		6	256	249	242	235	228
Western Redcedar ⁽⁴⁾	RC	1-5	1161	1154	1147	1140	1133
		6	1229	1222	1215	1208	1201
Ponderosa Pine ⁽⁵⁾	PP	1-6	196	189	182	175	168
Red Alder	RA	1-5	547	540	533	526	519
Black Cottonwood	BC	1-5	117	110	103	96	89
Other Hardwood	OH	1-5	326	319	312	305	298
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	741	734	727	720	713
Western Redcedar Poles	RCL	1-5	1499	1492	1485	1478	1471
		6	1449	1442	1435	1428	1421
Chipwood ⁽⁶⁾	CHW	1-5	9	8	7	6	5
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	29	28	27	26	25
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-6	299	292	285	278	271
Posts ⁽⁸⁾	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-6	0.50	0.50	0.50	0.50	0.50

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

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

- (a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.
- (b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.
- (c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment

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

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

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

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

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

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

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

The following harvest adjustment tables apply from ~~((July))~~ January 1 through ~~((December 31, 2017))~~ June 30, 2018:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5
~~((July))~~ January 1 through ~~((December 31, 2017))~~ June 30, 2018

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Area 6
(July) January 1 through (December 31, 2017) June 30, 2018**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	

III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage

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

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

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

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

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

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

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

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

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

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

WSR 18-02-060

PERMANENT RULES

OFFICE OF STATE AUDITOR

[Filed December 29, 2017, 10:19 a.m., effective January 29, 2018]

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

Purpose: The 2017 legislature amended RCW 42.56.120 (chapter 304, Laws of 2017) requiring a rule to be adopted if the agency is not calculating actual costs to provide records. Under the proposal, the state auditor's office will use the statutory default fee schedule found in RCW 42.56.120 (2)(b) and (c) as set out in WAC 48-13-070. Proposed WAC 48-13-040 amends the WAC by adding a subsection, titled Clarifications, to be in conformance [with] the 2017 amendments to RCW 42.56.120(4). In addition, WAC 48-13-010 Authority and purpose, 48-13-020 Agency description—Contact information—Public records officer, 48-13-030 Availability of public records, and 48-13-060 Exemptions, had minor house-keeping updates.

Citation of Rules Affected by this Order: Amending chapter 48-13 WAC, Access to public records, include WAC 48-13-010 Authority and purpose, 48-13-020 Agency description—Contact information—Public records officer,

48-13-030 Availability of public records, 48-13-040 Processing of public records requests—General, 48-13-060 Exemptions, and 48-13-070 Costs of providing copies of public records.

Statutory Authority for Adoption: RCW 42.56.100 and 42.56.070, as amended by section 1, chapter 304, Laws of 2017.

Adopted under notice filed as WSR 17-23-117 on December 6 [November 17], 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: December 29, 2017.

Al Rose
Director of Legal Affairs

AMENDATORY SECTION (Amending WSR 10-22-022, filed 10/22/10, effective 11/22/10)

WAC 48-13-010 Authority and purpose. (1) ~~((RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.))~~ The state auditor's office has the constitutional responsibility for auditing state government and all municipal corporations in Washington state. The administrative office of the state auditor's office and its staff are located at 302 Sid Snyder Ave. S.E., Room 200, Olympia, WA.

(2) The purpose of these rules is to establish the procedures the state auditor's office will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the state auditor's office and establish processes for both requestors and state auditor's office staff that are designed to best assist members of the public in obtaining such access.

~~((3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out~~

~~its responsibilities under the act, the state auditor's office will be guided by the provisions of the act describing its purposes and interpretation.))~~

AMENDATORY SECTION (Amending WSR 10-22-022, filed 10/22/10, effective 11/22/10)

WAC 48-13-020 ((Agency description—))Contact information—Public records officer. ~~((1) The state auditor's office has the constitutional responsibility for auditing state government and all municipal corporations in Washington state. The administrative office of the state auditor's office and its staff are located at: 302 Sid Snyder Ave. S.E., Room 200, Olympia, WA.~~

~~(2))~~ The public records officer for the state auditor's office shall be responsible for responses to requests for public records. Any person wishing to request access to public records of the state auditor's office, or seeking assistance in making such a request should contact the public records officer of the state auditor's office:

Public Records Officer
State Auditor's Office
P.O. Box 40031
Olympia, WA 98504
fax: 360-586-3105
email: publicrecords@sao.wa.gov

Information and public records are also available at the state auditor's office web site at <http://www.sao.wa.gov>. Requestors are encouraged to view the information and ~~((documents))~~ records available on the web site prior to contacting the records officer.

~~((3) The public records officer will oversee compliance with the act but another state auditor's office staff member may process the request. The public records officer or designee will provide fullest assistance to requestors, pursuant to this chapter, and prevent fulfilling public records requests from causing excessive interference with essential functions of the state auditor's office.))~~

AMENDATORY SECTION (Amending WSR 10-22-022, filed 10/22/10, effective 11/22/10)

WAC 48-13-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying by appointment during normal business hours of the state auditor's office, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding legal holidays. Original records must be inspected at the offices of the state auditor's office. A requestor shall not take state auditor's office records from state auditor's offices without the permission of the public records officer or designee.

(2) **Records index and records available online.** An index of public records is available for use by members of the public. The index may be accessed online at <http://www.sao.wa.gov>. A variety of records is also available on the state auditor's office web site. ~~((Requestors are encouraged to view the documents available on the web site prior to submitting a records request.))~~

(3) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records of the state auditor's office should make the request in writing by letter, fax, or email addressed to the public records officer or using the office's web site form located at: <http://www.sao.wa.gov>. Records requests should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to retain photocopies or electronic versions of nonelectronic records instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records. A deposit may be required prior to the office's collection of the records requested. Pursuant to WAC 48-13-070, ~~photocopies and scanned copies will be provided at ten cents per page.~~

~~(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.~~

AMENDATORY SECTION (Amending WSR 10-22-022, filed 10/22/10, effective 11/22/10)

WAC 48-13-040 Processing of public records requests—General. (1) **Order of response.** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying; or
- (b) If copies or scanned ~~((documents))~~ records are requested and terms of payment are met, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request.

(3) Clarifications.

(a) If a requestor fails to respond to a request to clarify the request and the entire request is unclear, the request may be closed without further action.

(b) If portions of the request are clear, those portions of the request will be processed.

(4) **Failure to respond.** If the state auditor's office does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider con-

tacting the public records officer to determine the reason for the failure to respond.

~~((4))~~ **(5) Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

~~((5))~~ **(6) Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the state auditor's office believes that a record is exempt from disclosure and should be withheld in whole or in part, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld or redacted. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~((6))~~ **(7) Inspection of records.**

(a) Consistent with other demands, the state auditor's office shall promptly provide space to inspect public records. No member of the public may remove a ~~((document))~~ record from the viewing area or disassemble or alter any ~~((document))~~ record. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the state auditor's office notification to him or her that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the state auditor's office may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

~~((7))~~ **(8) Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

~~((8))~~ **(9) Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

~~((9))~~ **(10) Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the state auditor's office has completed a dil-

igent search for the requested records and made any located nonexempt records available for inspection.

~~((10))~~ **(11) Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the state auditor's office has closed the request.

~~((11))~~ **(12) Later discovered ((documents)) records.** If, after the state auditor's office has informed the requestor that it has provided all available records, the state auditor's office becomes aware of additional responsive ~~((documents))~~ records existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

~~((12))~~ **(13) Detailed policy can be found on office web site at <http://www.sao.wa.gov>.**

AMENDATORY SECTION (Amending WSR 10-22-022, filed 10/22/10, effective 11/22/10)

WAC 48-13-060 Exemptions. (1) The Public Records Act provides that a number of types of ~~((documents))~~ records are exempt from public inspection and copying. In addition, ~~((documents))~~ records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some ~~((documents))~~ records held by state auditor's office for inspection and copying:

RCW 42.40.030, state employee whistleblower protection.

RCW 42.41.030, local government whistleblower protection.

RCW 43.09.186, toll-free efficiency hotline.

(2) The state auditor's office is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 10-22-022, filed 10/22/10, effective 11/22/10)

WAC 48-13-070 Costs of providing copies of public records. ~~((1) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for ten cents per page when the page count exceeds one hundred pages. Copies in color or larger-sized documents cost will be based on the actual cost to reproduce them at the time of the request.~~

~~Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The state auditor's office will not charge sales tax when it makes copies of public records.~~

~~(2) Costs for electronic records. The cost of electronic copies of records shall be free for information on a CD-ROM when the information already exists in electronic format and~~

~~it only has to be copied to a CD. The cost of scanning existing office paper or other nonelectronic records is ten cents per page when the page count exceeds one hundred pages. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee.~~

~~(3) Costs of mailing. The state auditor's office may also charge actual costs of mailing, including the cost of the shipping container for requests exceeding one hundred pages.~~

~~(4) Payment. Payment may be made by cash, check, or money order to the state auditor's office.~~

(1) Copying fees - Payments. The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The office will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's web site at www.sao.wa.gov.

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions.

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are one hundred or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the state auditor's office. The office prefers not to receive cash. For cash payments, it is within the public records offi-

cer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

WSR 18-02-071
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 2, 2018, 10:53 a.m., effective February 5, 2018]

Effective Date of Rule: February 5, 2018.

Purpose: This rule making is federally initiated. The department responded to a Federal Register notice where the Occupational Safety and Health Administration (OSHA) published a final rule for Confined Space in the Construction Industry (29 C.F.R. 1926 Subpart AA). This was published in the Federal Register on May 4, 2015, and became effective August 4, 2015. The department has a confined space rule that covers both general industry and construction in one rule (chapter 296-809 WAC). OSHA has two confined space rules, one for general industry (29 C.F.R. 1910.146 Subpart J) and the more recent rule for the construction industry. The division of occupational safety and health (DOSH) amended their confined space rule to incorporate OSHA's new confined space rule for construction to be at-least-as-effective-as OSHA. These changes also apply to general industry. The following changes are adopted as proposed:

AMENDED SECTIONS:

WAC 296-809-099 Definitions.

- Added definitions for the following: Alternate entry; atmospheric hazard; atmospheric testing; barrier; calibration; competent person; control; controlling contractor (employer); early-warning system; energy-isolating device; entry employer; entry rescue; hazard; hazard elimination; host employer; hot work; limited or restricted means of entry or exit; lockout; lockout device; lower flammable limit (LFL) or lower explosive limit (LEL); mobile worker; monitor or monitoring; nonentry rescue; physical hazard; potential hazards; program administrator; qualified person; representative permit space; rescue; serious physical damage; tagout; and ventilate or ventilation.
- Modified definitions for the following: Attendant; confined space; double block and bleed; engulfment; enter (entry); entry supervisor; hazardous atmosphere; immediately dangerous to life or health (IDLH); inerting; isolation; nonpermit confined space; permit-required confined space or permit space; prohibited condition; retrieval system; and testing (monitoring).

WAC 296-809-100 Scope.

- Made changes to the language in Table 1 so it reflects the changes made in the rule.
- Removed the 700 column from Table 1.
- Made some modifications to the note following Table 1.

WAC 296-809-200 Identifying and controlling permit-required confined spaces.

- Deleted the word "Summary." No longer relevant.
- Changed the title to "identify and control entry into permit-required confined spaces."

WAC 296-809-20002 Identify permit-required confined spaces.

- Removed the "Important" note about nonpermit confined spaces.
- Removed requirements regarding nonpermit confined spaces.
- Added language clarifying that the employer must identify permit-required confined spaces in their workplace using a competent person who has the knowledge, skills and abilities to do so with the authority to take prompt corrective action.
- Added an "Important" note that outlines the two-step process used when identifying permit-required confined spaces.

WAC 296-809-20004 Inform employees and control entry to permit-required confined spaces.

- Moved notes to the end of this section for better flow and reference them with subscript numbers within the text.
- Added language to the note that adds that equally effective means can be used to warn employees about the location, etc., of permit spaces in addition to signs.

WAC 296-809-20006 Follow these requirements when you contract with another employer to enter your confined space.

- Moved the note to end of this section.
- Changed "contractor" to "employer" in the note.

WAC 296-809-300 Permit-required confined space program.

- Deleted the word "Summary." No longer relevant.
- Added clarifying language to table heading.

WAC 296-809-30002 Develop a written permit-required confined space program.

- Added "and entry procedures" to the end of the Important note.
- Reorganized requirements to provide clarity.
- Added "confined spaces" after enter in subsection (1).
- Moved subsection (1)(b) to (1)(j) regarding alternative methods for entry and add what the procedures must address.
- Eliminated subsection (1)(c) about reclassifying spaces to nonpermit. No longer relevant.
- Added subsections (i) through (x) to subsection (1)(j) to include methods and procedures for documenting alternate methods for entry, eliminating hazards, evacuating the space, training employees, ensuring employees follow the procedures and documentation required.
- Added language that the employer must update the written program when they have identified deficiencies.
- Added "program administrator" whose function is to oversee permit-required confined space program development, coordinate implementation, and conduct required evaluations of program effectiveness.

- Added a note at end of section to provide examples of safe work procedures.
- Removed the link at the end of the section.

WAC 296-809-30004 Meet these additional requirements if your employees enter another employer's confined space.

- Added a note clarifying that the employer must inform the host employer about additional permit-required confined spaces identified.

WAC 296-809-400 Employee training.

- Deleted the word "Summary." No longer relevant.
- Added clarifying language to table heading.

WAC 296-809-40002 Provide employee training.

- Added language to specify that the employer provide training "at no cost."
- Added that training must be in a "language and vocabulary" that employees can understand.
- Added language that you must retrain employees under certain circumstances.
- Moved notes to the end of this section for better flow and reference them with subscript numbers within the text.
- Added a note listing some examples of training topics.

WAC 296-809-40004 Certify employee proficiency.

- Added that the employer must "determine" as well as certify employee proficiency.

WAC 296-809-500 Permit entry procedures.

- Deleted the word "Summary." No longer relevant.

WAC 296-809-50002 Implement procedures for entry permits.

- Changed the title of WAC 296-809-50002 to correctly state the content of the section.
- Specified the reason for making the completed permit available to entrants or their authorized representative at the time of entry.

WAC 296-809-50004 Use an entry permit that contains all required information.

- Modified language to require a signature or initials of the supervisor instead of requiring just the space for a signature.
- Added that testing equipment be capable of detecting if the ventilation system stops working.

WAC 296-809-50006 Keep and review your entry permits.

- Reorganized and reword requirements for clarity.
- Specified that the employer must keep "cancelled" entry permits for at least one year.
- Moved notes to the end of this section for better flow and reference them with subscript numbers within the text.

WAC 296-809-50008 Prevent unauthorized entry.

- Added language that employers must protect entrants from hazards when removing entrance covers.
- Deleted note regarding entrance covers.

WAC 296-809-50010 Provide, maintain, and use proper equipment.

- Added a note regarding rescue and retrieval equipment.

WAC 296-809-50012 Evaluate and control hazards for safe entry.

- Removed "conditions" and replace with "the atmosphere" which must be continuously monitored where entrants are working.
- Made some minor wording changes to add clarity.
- Removed "Important" statement.

WAC 296-809-50014 Make sure you have adequate rescue and emergency services available.

- Added that the employer must select rescue teams who can agree to notify the employer in the event that the rescue service becomes unavailable.
- Added additional note to clarify what is not considered to be adequate rescue and emergency services.
- Moved notes to the end of this section for better flow and reference them with subscript numbers within the text.

WAC 296-809-50018 Make sure entry supervisors perform their responsibilities and duties.

- Added language that the means to contact the rescue service is operable and the employer will be notified if the rescue service becomes unavailable.
- Added language that if the rescue service becomes unavailable, the entry and permit must be cancelled.

WAC 296-809-50020 Provide an attendant outside the permit-required confined space.

- Added clarifying language that the attendant "must remain" outside a permit-required confined space during entry operations.
- Changed "your" to "the."

WAC 296-809-50022 Make sure entrants know the hazardous conditions and their duties.

- Added the word "and" to connect two items on a list.

WAC 296-809-600 Alternate entry procedures.

- Changed the title of this section to "Alternative methods."
- Deleted the word "Summary." No longer relevant.
- Reworded the responsibility statement for clarity.
- Changed the title of WAC 296-809-60002 and 296-809-60004 in the table of contents.

WAC 296-809-60002 Make sure the following conditions are met if using alternate entry procedures.

- Changed the title of this section to "Make sure the following conditions are met if using alternative methods."
- Expanded alternate entry requirements to include entries into spaces where all the hazards have been eliminated. This is in addition to current alternate entry procedures where the employer has eliminated all of the physical hazards and continuous forced air ventilation controls the actual or potential hazardous atmosphere.
- Clarified that alternate entry requires the elimination or isolation of physical hazards using engineering controls and the use of continuous forced air ventilation to control hazardous atmosphere along with the documentation for the entrants, including monitoring data.
- Added, "In the event the ventilation system stops working, entrants can exit the space safely."

- Clarified documentation requirements (monitoring and inspection data) that needs to be available to each affected employee and their authorized representative.
- Added notes about energy control procedures; and when not to use alternate entry.
- Added notes to the end of this section for better flow and reference them with subscript numbers within the text.

WAC 296-809-60004 Follow these alternate entry procedures for permit-required confined spaces.

- Changed the title of this section to "Implement alternative methods for each permit-required confined that meet the criteria."
- Clarified use and implementation of hazard elimination procedures from the employer's written program.
- Clarified elimination of unsafe conditions.
- Clarified atmospheric testing requirements.
- Clarified the use of ventilation.
- Clarified evacuation requirements.

REPEALED SECTIONS:

WAC 296-809-700 Nonpermit confined spaces requirements, these requirements were moved to **WAC 296-809-600 Alternate entry procedures**.

WAC 296-809-70002 Follow these requirements when classifying a confined space as a nonpermit confined space, these requirements were moved to subsection (1)(a) of **WAC 296-809-60002 Make sure the following conditions are met if using alternate entry procedures**.

WAC 296-809-70004 Reevaluate nonpermit confined space if hazards develop, these requirements were moved to subsection (2) of **WAC 296-809-60004 Follow these alternate entry procedures for permit-required confined spaces**.

Citation of Rules Affected by this Order: Repealing 3 (see purpose statement above); and amending 26 (see purpose statement above).

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

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 17-19-103 on September 19, 2017.

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-809-099 Definitions.

- Replaced reference to Appendix G—Sewer System Information to the correct Appendix J—Alternative Methods Documentation in definition of alternative methods. Also clarified that Appendix J could be found by going to the labor and industries web site by using the provided link to the confined space rule.
- Clarified that Appendix A—Frequently Asked Questions could be found by going to the labor and industries web site by using the provided link to the confined space rule in the definition of confined space.
- Replaced the word OSHA with DOSH in the note for the definition of entry employer.
- Added a footnote number ¹ in the text that was inadvertently left out in the definition of Hazardous Atmosphere.

- Replaced (5) with the correct symbol (%) in the definition of hazardous atmosphere.
- Clarified that Appendix B—Examples of Permit-Required confined Space Hazards could be found by going to the labor and industries web site by using the provided link to the confined space rule in the definition of permit-required confined space.

WAC 296-809-100 Scope.

- Clarified that Appendix C—Rules in Other Chapters that Cover Confined Spaces could be found by going to the labor and industries web site by using the provided link to the confined space rule.

WAC 296-809-20002 Identify permit-required confined spaces.

- Clarified that Appendix A—Frequently Asked Questions and Appendix B—Examples of Permit-Required Confined Space Hazards could be found by going to the labor and industries web site by using the provided link to the confined space rule.

WAC 296-809-20004 Inform employees and control entry to permit-required confined spaces.

- Added and corrected footnotes.

WAC 296-809-30002 Develop a written permit-required confined space program.

- Replaced incorrect reference to Appendix I—Atmospheric Testing Procedures to the correct Appendix J—Alternative Methods Documentation. Also clarified that Appendix J—Alternative Methods Documentation could be found by going to the labor and industries web site by using the provided link to the confined space rule.

WAC 296-809-50014 Make sure you have adequate rescue and emergency services available.

- Clarified that Appendix H—Evaluating Rescue Teams or Services could be found by going to the labor and industries web site by using the provided link to the confined space rule.

WAC 296-809-50018 Make sure the entrants know the hazardous conditions and their duties.

- Added the word "ensure" to clarify the entry supervisors' role.

WAC 296-809-60002 Make sure the following conditions are met if using alternative methods.

- Added footnote number ² in the text of the rule to reference the correct note.
- Added footnote number ³ in the text of the rule to reference the correct note.
- Added a sentence #2 in the note to provide additional clarification.
- Changed #2 in the note to #3 to accommodate the new sentence.
- Added a reference to Appendix J—Alternative Methods Documentation Form. Also clarified that Appendix J—Alternative Methods Documentation could be found by going to the labor and industries web site by using the provided link to the confined space rule.

A final cost-benefit analysis is available by contacting Gail Hughes, P.O. Box 44620, Olympia, WA 98504, phone 360-902-6772, fax 360-902-5519, email Gail.Hughes@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 26, Repealed 3; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 2, 2018.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-099 Definitions. Acceptable entry conditions. The conditions that must exist in a permit-required confined space to allow safe entry and work.

Alternative methods. Permit-required confined space using alternative methods. An alternative process for entering a permit space under very specific conditions outlined in WAC 296-809-60002 and 296-809-60004. The employer must complete documentation as required to communicate to the workers the space conditions. For an example, see Appendix J Alternative Method Documentation by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>.

Atmospheric hazard. See definition of hazardous atmosphere.

Atmospheric testing. See definition of monitoring or testing.

Attendant. An individual stationed outside one or more permit-required confined spaces to monitor the entrants. Attendants must perform the duties required in WAC 296-809-50020.

Barrier. A physical obstruction that blocks or limits access.

Blanking or blinding. The absolute closure of a pipe, line, or duct by fastening a solid plate (such as a spectacle blind or a skillet blind) that completely covers the bore. It is capable of withstanding the maximum pressure of the pipe, line, or duct with no leakage beyond the plate.

Calibration. Checking a direct reading instrument against an accurate standard such as a calibration gas to determine deviation and correct for analytical errors.

Competent person. A person capable of identifying existing and predictable hazards in the surroundings or working conditions including those that are unsanitary, hazardous,

or dangerous to employees, and has the authorization to take prompt corrective measures to eliminate them. They must be knowledgeable in this chapter.

Confined space. A space that is **all** of the following:

(a) Large enough and arranged so an employee could fully enter the space and work.

(b) Has limited or restricted entry or exit. Examples of spaces with limited or restricted entry are tanks, vessels, silos, storage bins, hoppers, vaults, excavations, and pits.

(c) Not primarily designed for continuous human occupancy.

Note: See Appendix A Frequently Asked Questions and Examples of Confined Spaces by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>.

Control. The action taken to reduce the level of any hazard inside a confined space using engineering methods (for example, ventilation), and then using these methods effectively to maintain the reduced hazard level. Control also refers to the engineering methods used for this purpose. Personal protective equipment is not a control.

Controlling contractor (employer). The employer that has overall responsibility for construction at the worksite. If the controlling contractor (employer) owns or manages the property, then it is both a controlling employer and a host employer.

Double block and bleed. The closure of a line, duct, or pipe by closing and locking or tagging two in-line valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves. See also chapter 296-803 WAC, Lockout/tagout (control of hazardous energy) <http://www.lni.wa.gov/safety/rules/chapter/803/>.

Early-warning system. The method used to alert authorized entrants and attendants that an engulfment hazard may be developing. Examples of early-warning systems include: Alarms activated by remote sensors; and lookouts with equipment for immediately communicating with the authorized entrants and attendants.

Emergency. Any occurrence (including any failure of power, hazard control or monitoring equipment) or event internal or external to the permit-required confined space that could endanger authorized entrants.

Energy-isolating device. A mechanical device that physically prevents transmitting or releasing energy. This includes, but is not limited to:

- Manually operated electrical circuit breakers.
- Disconnect switches.
- Manually operated switches that disconnect the conductors of a circuit from all ungrounded supply conductors if no pole of the switch can be operated independently.
- Line valves.
- Blocks.
- Similar devices.

Note: Push buttons, selector switches and other control circuit-type devices are not energy isolating devices.

Engulfment. The surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance that can be inhaled to cause death by filling or plugging the respiratory system or that can exert enough force on

the body to cause death by strangulation, constriction, or crushing.

Enter (entry). The action ~~((by which a person))~~ where any part of a person's body breaks the plane (passes through an opening) into a ~~((permit required))~~ confined space ~~((and includes work activities in that space))~~. Entry ~~((is considered to have occurred))~~ occurs as soon as any part of the entrant's body breaks the plane of ~~((an))~~ the opening into the space whether or not such action is intentional or any work activities are actually performed in the space.

Note: ~~((H))~~ When the opening is large enough for the worker to fully enter the space, a permit is required even for partial body entry. Permits are not required for partial body entry, where the opening is not large enough for full entry, although other rules such as chapter 296-803 WAC, ~~((Lockout-tagout))~~ Lockout/tagout (control of hazardous energy), and chapter 296-841 WAC, Airborne contaminants, may apply.

Entrant. An employee who is authorized by the employer to enter a permit-required confined space.

Entry employer. Any employer who has an employee enter a permit space.

Note: An employer cannot avoid the duties of the standard merely by refusing to decide whether its employees will enter a permit space. DOSH considers the failure to decide as an implicit decision to allow employees to enter those spaces, if they are working in the proximity of the space without the required worker protections.

Entry permit (permit). The written or printed document that is provided by you to allow and control entry into a permit-required confined space and that contains the information required in WAC 296-809-500(7) Permit entry procedures.

Entry rescue. Occurs when a rescue service enters a permit space to rescue one or more employees.

Entry supervisor. The qualified and trained person (such as the employer, crew leader, or crew chief) responsible for identifying permit-required confined spaces and performing responsibilities and job duties as outlined by WAC 296-809-50018. For example:

- (a) Determining if acceptable entry conditions are present at a permit-required confined space where entry is planned;
- (b) Authorizing entry and overseeing entry operations; and
- (c) Terminating entry as required by this standard.

Note: An entry supervisor also may serve as an attendant or as an authorized entrant, as long as that person is trained and equipped as required by this standard for each role he or she fills. The duties of entry supervisor may be passed from one individual to another during the course of an entry operation.

Hazard. A physical hazard or hazardous atmosphere. See definitions below.

Hazardous atmosphere. An atmosphere that may expose employees to the risk of death, incapacitation, ~~((impairment of))~~ impair their ability to self-rescue ~~((that is,))~~ escape unaided from a permit-required confined space, injury, or acute illness caused by one or more of the following:

(a) Flammable gas, vapor, or mist in excess of ten percent of its lower flammable limit (LFL) or lower explosive limit (LEL).

(b) Airborne combustible dust at a concentration that meets or exceeds its LFL. The concentration may be approximated as a condition in which the dust obscures vision at a distance of 5 feet (1.52 m) or less.

~~((Note: This concentration may be approximated as a condition in which the dust obscures vision at a distance of five feet (1.52 m) or less.))~~

(c) Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent¹.

(d) Atmospheric concentration of any substance which may exceed a permissible exposure limit ~~((For additional information about atmospheric concentration, see chapter 296-62 WAC, parts F, G, and I, General occupational health standards and chapter 296-841 WAC, Airborne contaminants))~~ (PEL)².

~~((Note: An airborne concentration of a substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this definition.))~~

(e) Any other atmospheric condition that is immediately dangerous to life or health³.

~~((Note: You can find guidance on establishing acceptable atmospheric conditions for air contaminants, which have no WISHA-determined doses or permissible exposure limits using other sources of information, such as:~~

1. Safety data sheets required by WAC 296-901-14014, Safety data sheets;
2. Published information;
3. Internal documents.))

Notes: ¹ 1 percent (%) = 10,000 parts per million (ppm).

² For additional information about atmospheric concentration, see chapter 296-62 WAC, General occupational health standards, Parts F, G, and I, and chapter 296-841 WAC, Airborne contaminants.

³ For immediately dangerous to life or health values see <http://www.cdc.gov/niosh/idlh/idlhintr.html>.

An airborne concentration of a substance that is not capable of causing death, incapacitation, impairment to self-rescue, injury or acute illness due to its health effects is not covered by this definition.

For air contaminants, that have no WISHA-determined doses or permissible exposure limits (PELs) use other sources of information that can provide guidance in establishing acceptable atmospheric conditions, such as: Safety data sheets required by WAC 296-901-14014, published information and internal documents.

Hazard elimination. The temporary or permanent action taken to remove a hazard from the work environment. For confined spaces, this definition includes isolation. It does not include the use of forced air ventilation. For a hazard to be considered eliminated, the conditions that create or cause the hazard must no longer exist within the confined space.

Host employer. The employer that owns or manages the property where the work is taking place. In no case will there be more than one host employer.

Note: If the owner of the property on which the construction activity occurs has contracted in writing with an entity for the general management of that property and has in writing transferred to that entity the information specified in WAC 296-809-20006, DOSH will treat the contracted management entity as the host employer for as long as that entity manages the property. Otherwise, DOSH will treat the owner of the property as the host employer.

Hot work. Operations capable of providing a source of ignition (for example, riveting, welding, cutting, burning, and heating).

Hot work permit. A written authorization to perform hot work operations, for example, riveting, welding, cutting, burning, and heating, that can provide a source of ignition.

Immediately dangerous to life or health (IDLH). Any of the following conditions:

- (a) An immediate or delayed threat to life.
- (b) Anything that would cause irreversible adverse health effects.
- (c) Anything that would interfere with an individual's ability to escape unaided from a permit-required confined space.

Notes: Some materials - hydrogen fluoride gas and cadmium vapor, for example - may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse twelve to seventy-two hours after exposure. The victim "feels normal" after recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be "immediately" dangerous to life or health (IDLH).

For immediately dangerous to life or health values see <http://www.cdc.gov/niosh/idlh/idlhintr.html>.

Inerting. The displacement of the atmosphere in a permit-required confined space by a noncombustible gas (such as nitrogen or argon) to such an extent that the resulting atmosphere is noncombustible. Inerting produces an IDLH oxygen-deficient atmosphere.

((Note: This procedure produces an IDLH oxygen-deficient atmosphere.))

Isolation. The process ((by which)) of removing a permit-required confined space ((is removed)) from service and completely ((protected)) protecting the employees against the release of energy and material into the space by ((such means as)):

- Blanking or blinding;
- Misaligning or removing sections of lines, pipes, or ducts; ((a))
- Double block and bleed system; ((lockout or tagout of all sources of energy; or))
- Machine guarding;
- Blocking or disconnecting all mechanical linkages;
- Placement of barriers to eliminate the potential for employee contact with a physical hazard; or
- Lockout of all sources of energy.

Note: When using lockout, you must follow all the requirements of chapter 296-803 WAC, Lockout/tagout (control of hazardous energy).

Limited or restricted means of entry or exit. A condition that has a potential to impede an employee's movement into or out of a confined space. A space has limited or

restricted means of entry or exit, if an entrant's ability to escape in an emergency would be hindered. Examples include, but are not limited to, trip hazards, poor illumination, slippery floors, inclining surfaces and ladders.

Line breaking. The intentional opening of a pipe, line, or duct that is or has been carrying flammable, corrosive, or toxic material, an inert gas, or any fluid at a volume, pressure, or temperature capable of causing injury.

Lockout. Placing a lockout device on an energy-isolating device using an established procedure to make sure the machine or equipment cannot be operated until the lockout device is removed. For more information, see chapter 296-803 WAC, Lockout/tagout (control of hazardous energy).

Lockout device. A device that uses a positive means, such as a key or combination lock, to hold an energy-isolating device in the "safe" or "off" position. This includes blank flanges and bolted slip blinds.

Lower flammable limit (LFL) or lower explosive limit (LEL). The minimum concentration of a substance in air needed for an ignition source to cause a flame or explosion.

Mobile worker. An employee who performs work in multiple locations such as: Customer sites, company offices, private homes, vendor offices, or construction sites.

Monitor or monitoring (see also testing). The process used to identify and evaluate a potential hazardous atmosphere after an authorized entrant enters the space. This process checks for atmospheric changes. It is performed in a periodic or continuous manner after the completion of the initial testing or evaluation of that space.

Nonentry rescue. Retrieval of an entrant from a permit-required space without entering the permit space.

Nonpermit confined space. ((A confined space that does not contain actual hazards or potential hazards capable of causing death or serious physical harm.)) You will find the requirements for a nonpermit confined space in WAC 296-809-600.

Oxygen deficient atmosphere. An atmosphere containing less than 19.5 percent oxygen by volume.

Oxygen enriched atmosphere. An atmosphere containing more than 23.5 percent oxygen by volume.

Permit-required confined space or permit space. A confined space that has one or more of the following characteristics capable of causing death or serious physical harm:

- (a) Contains or has a potential to contain a hazardous atmosphere;
- (b) Contains a material with the potential for engulfing someone who enters;
- (c) Has an internal configuration that could allow someone entering to be trapped or asphyxiated by inwardly converging walls or by a floor, which slopes downward and tapers to a smaller cross section;
- (d) Contains any physical hazard. This includes any recognized health or safety hazards including engulfment in solid or liquid material, electrical shock, or moving parts;
- (e) Contains any other recognized serious safety or health hazard that could either:
 - (i) Impair the ability to self-rescue; or
 - (ii) Result in a situation that presents an immediate danger to life or health.

See Appendix B Examples of Permit-Required Confined Space Hazards by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>.

Permit-required confined space program (also known as a confined space program). An overall program for:

- (a) Controlling and appropriately protecting employees from permit-required confined space hazards; and
- (b) Regulating employee entry into permit-required confined spaces.

Physical hazard. An existing or potential hazard that can cause death or serious physical damage. Examples include, but are not limited to: Explosives (as defined by WAC 296-52-60130); mechanical, electrical, hydraulic and pneumatic energy; radiation; temperature extremes; engulfment; noise; and inwardly converging surfaces. Physical hazards also include chemicals that can cause death or serious physical damage through skin or eye contact (rather than through inhalation).

Potential hazards. All reasonable anticipated conditions within a space and outside the space that can adversely affect the conditions within the space.

Program administrator. The person who has overall responsibility for your program and has sufficient training or experience with permit-required confined space entry to oversee program development, coordinate implementation, and conduct required evaluations of program effectiveness outlined in WAC 296-809-50006.

Prohibited condition. Any condition in a permit-required confined space ((that is)) not allowed by the permit during the authorized entry period. For example: A hazardous atmosphere is a prohibited condition unless the employer can demonstrate that personal protective equipment (PPE) will provide effective protection for each employee in the permit space and provides the appropriate PPE to each employee.

Qualified person. A person who has successfully demonstrated the ability to solve problems relating to the subject matter, work, or project, either by:

- Possession of recognized degree, certificate, or professional standing; or
- Extensive knowledge, training and experience.

Representative permit space. A mock-up of a confined space that has entrance openings that are similar to, and is of similar size, configuration, and accessibility to, the permit space that authorized entrants enter.

Rescue. Retrieving and providing medical assistance to one or more employees in a permit space.

Rescue service. The personnel designated to rescue employees from permit-required confined spaces.

Retrieval system. The equipment used for nonentry rescue of persons from permit-required confined spaces((, such

as)) including; a retrieval line, chest or full-body harness ((or)), wristlets or anklets if appropriate, and a lifting device or anchor.

Serious physical damage. An impairment or illness in which a body part is made functionally useless or is substantially reduced in efficiency. Such impairment or illness may be permanent or temporary and includes, but is not limited to, loss of consciousness, disorientation, or other immediate and substantial reduction in mental efficiency. Injuries involving such impairment would usually require treatment by a physician or other licensed health care professional.

Tagout.

(a) Placement of a tagout device on a circuit or equipment that has been deenergized, in accordance with an established procedure, to indicate that the circuit or equipment being controlled may not be operated until the tagout device is removed; and

(b) The employer ensures that:

- (i) Tagout provides equivalent protection to lockout; or
- (ii) Lockout is infeasible and the employer has relieved, disconnected, restrained and otherwise rendered safe stored (residual) energy.

Testing (see also monitoring). The process of identifying and evaluating the hazards that entrants may be exposed to in a permit-required confined space. Testing includes specifying the initial atmospheric tests that are to be performed in the permit-required confined space.

Note: Testing allows employers to devise and implement adequate controls to protect entrants during entry, and to determine if acceptable entry conditions are present.

Ventilate or ventilation. The process of controlling a hazardous atmosphere using continuous forced-air mechanical systems. Ventilation is a method of hazard control, not hazard elimination.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-100 Scope. This chapter applies to all confined spaces and provides requirements to protect employees from the hazards of entering and working in confined spaces. This chapter applies in any of the following circumstances:

- (1) You have confined spaces in your workplace.
- (2) Your employees will enter another employer's confined spaces.
- (3) A contractor will enter your confined spaces.
- (4) You provide confined space rescue services.

You can use Table 1 to help you decide which requirements to follow for confined spaces.

**Table 1
Requirements for Confined Spaces**

For confined spaces that are	The requirements in the following sections apply					
	200	300	400	500	600	((700))
Permit-required confined spaces,	X	X	X	X	X	((X))

For confined spaces that are	The requirements in the following sections apply					
	200	300	400	500	600	((700))
<u>Permit-required confined spaces entered by a contractor (or other outside employer).</u>	X	X	X	X	X	((X))
((Nonpermit confined spaces)) <u>Alternative methods.</u>	X	<u>X</u>	<u>X</u>		<u>X</u>	((X))
Never entered.	X					
If you only:						
((Use alternate entry procedures	X	X	X		X	
Have a contractor <u>(or outside employer) enter your space, and you never enter yourself.</u>	X					
Are a rescue service provider.		X	X	X		

~~((Rules in other chapters that cover confined spaces may also apply to your work. You can find a list of these rules in the resources section of this chapter.))~~

Note: ((+)) Requirements in other chapters may apply to your work. You can find a list of these rules in Appendix C Rules in Other Chapters that Cover Confined Spaces by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>. You will find some safety and health requirements ((are)) addressed on a broad level in this chapter, while being addressed for a specific application in another rule. When this happens, both requirements apply and should not conflict. When a conflict does occur, you need to follow the more specific requirement.

((2. If you are uncertain which requirements to follow, contact your local labor and industries (L&I) office.

3. For a complete list of local L&I offices, see the resources section of the safety and health core rules, chapter 296-800-WAC.))

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-200 ((Identifying and controlling))
Identify and control entry into permit-required confined spaces.

~~((Summary))~~

Your responsibility:

To identify your permit-required confined spaces and control ~~((employee))~~ entry.

You must meet the requirements ...	in this section:
Identify permit-required confined spaces	WAC 296-809-20002
Inform employees and control entry to permit-required confined spaces	WAC 296-809-20004
Follow these requirements when you contract with another employer to enter your confined space	WAC 296-809-20006

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-20002 Identify permit-required confined spaces. ((Important:

1. If your workplace contains only nonpermit confined spaces and your employees do not enter another employer's confined space, you may follow only the requirements in:

- a. WAC 296-809-200, Identifying and controlling permit-required confined spaces; and
- b. WAC 296-809-700, Nonpermit confined space requirements.

2. See the resources section for other chapters covering confined spaces that may apply to your work.

~~(1) You must identify all permit-required confined spaces in your workplace.~~

~~(2) You must assume any confined space is a permit-required confined space, unless you determine the space to be a nonpermit confined space.~~

~~(a) If you enter the space to determine the hazards, follow the requirements in WAC 296-809-500, Permit entry procedures.~~

~~(b) If you evaluate the confined space and there are no potential or actual hazards, you can consider it to be a nonpermit confined space. Document your determination that the space is nonpermit, as required by WAC 296-809-700.)) You must identify all permit-required confined spaces in your workplace. Use a person with the knowledge, skills, and abilities, capable of identifying actual and potential hazards related to permit-required confined spaces and with the authority to take prompt corrective action, such as an entry supervisor or competent person.~~

Important: Identification of Permit-Required Confined Space(s) involves a two-step process.

Step 1: Identify confined spaces.

Confined space. A space that is all of the following:

- Large enough and arranged so an employee could fully enter the space and work.
- Has limited or restricted entry or exit. Examples of spaces with limited or restricted entry are tanks, vessels, silos, storage bins, hoppers, vaults, excavations, and pits.
- Not primarily designed for continuous human occupancy.

See Appendix A Frequently Asked Questions and Examples of Confined Spaces by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>.

Step 2: Evaluate the actual and potential hazards of each confined space to identify the permit-required confined space(s).

Permit-required confined space or permit space. A confined space that has one or more of the following characteristics capable of causing death or serious physical harm.

- Contains or has a potential to contain a hazardous atmosphere.
- Contains a material with the potential for engulfing someone who enters.
- Has an internal configuration that could allow someone entering to be trapped or asphyxiated by inwardly converging walls or by a floor, which slopes downward and tapers to a smaller cross section.
- Contains any physical hazard. This includes any recognized health or safety hazards including engulfment in solid or liquid material, electrical shock, or moving parts.
- Contains any other recognized serious safety or health hazard that could either:
 - (a) Impair the ability to self-rescue; or
 - (b) Result in a situation that presents an immediate danger to life or health.

See Appendix B Examples of Permit-Required Confined Space Hazards by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-20004 Inform employees and control entry to permit-required confined spaces. (1) You must provide information about confined spaces as follows:

- (a) Make available to affected employees and their authorized representatives all information and documents required by this chapter.
- (b) Inform affected employees about the existence, location, and danger of any permit-required confined spaces in your workplace by:
 - (i) Posting danger signs;¹ or
 - (ii) Using any other equally effective means to inform employees.²

~~((Note: A sign reading "Danger-Permit Required Confined Space, DO NOT ENTER" or using pictures or other similar wording employees can understand would satisfy the requirement for a sign.))~~

(2) You must take effective measures to prevent unauthorized employees from entering permit-required confined spaces.³

Notes: ¹ A sign reading "Danger—Permit Required Confined Space, DO NOT ENTER" or using pictures or other similar wording employees can understand would satisfy the requirement for a sign.

² Equally effective means must warn employees about the existence, location and danger of permit-required confined spaces for all affected employees.

³ Examples of measures to prevent employee entry include: Padlocks, bolted covers, use of special tools to remove covers along with, ~~((and providing))~~ employee training, and permanently closing the space, such as welding it closed.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-20006 Follow these requirements when you contract with another employer to enter your confined space. ~~((Important:~~

~~The contractor is responsible for following all confined space requirements in this chapter and in other rules that apply. For a list of other rules that may apply, see the resources section of this chapter.))~~ You must do **all** of the following if you arrange to have another employer (contractor) perform work that involves entry into your permit-required confined space:

- (1) Inform the contractor:
 - (a) That the workplace contains permit-required confined spaces and entry is allowed only if the applicable requirements of this chapter are met.
 - (b) Of the identified hazards and your experience with each permit-required confined space.
 - (c) Of any precautions or procedures you require for the protection of employees in or near spaces where the contractor will be working.
- (2) Coordinate entry operations with the contractor, when either employees or employers from the different companies will be working in or near permit-required confined spaces.
- (3) Discuss entry operations with the contractor when they are complete. Include the following in your discussion:
 - (a) The program followed during confined space entry; and
 - (b) Any hazards confronted or created.

Note: All employers are responsible for following all confined space requirements in this chapter and in other chapters that apply.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-300 Permit-required confined space program.

~~((Summary))~~

Your responsibility:

To develop your permit-required confined space program and practices.

Important:

This section applies if employees will enter a permit-required confined space.

<u>Before your employees enter you must meet ((the)) these requirements</u> ...	in this section:
Develop a written permit-required confined space program	WAC 296-809-30002

<u>Before your employees enter you must meet ((the)) these requirements</u> ...	in this section:
Meet these additional requirements if your employees enter another employer's confined space	WAC 296-809-30004

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-30002 Develop a written permit-required confined space program.

Important:

Identify and evaluate the hazards of permit-required confined spaces and the work performed, to assist you in developing your entry program and entry procedures.

(1) You must develop a written program, before employees enter confined spaces, that describes the means, procedures, and practices you use for the safe entry of permit-required confined spaces as required by this chapter. Include the following (~~when applicable to your confined space entry program~~):

- (a) Documentation of permit entry procedures.¹
- ~~((b))~~ ~~Documentation used for alternate entry procedures.~~
- ~~((c))~~ ~~How to reclassify permit required confined spaces to nonpermit spaces.~~
- ~~((d))~~ ~~Designation of employee roles, such as entrants, attendants~~) Designation of employees that have active roles, including: attendants, competent persons, entrants, entry supervisors, rescuers, program administrator, or those who test or monitor the atmosphere in a permit-required space.
- ~~((e))~~ ~~Identification of designated employee~~) (c) Identification of each designated employee's duties.
- ~~((f))~~ ~~(d)~~ Training employees on their designated roles.
- ~~((g))~~ ~~(e)~~ How to identify and evaluate hazards.
- ~~((h))~~ ~~(f)~~ Use and maintenance of equipment.
- ~~((i))~~ ~~(g)~~ How to prevent unauthorized entry.
- ~~((j))~~ ~~(h)~~ How to coordinate entry with another employer.
- ~~((k))~~ ~~(i)~~ How to rescue entrants.

~~((Note: For alternate entry, your written program only needs to meet the requirements of WAC 296-809-400, Employee training, and WAC 296-809-600, Alternate entry procedures, of this chapter.))~~

(j) If you intend to enter using alternative methods for entry, the procedures must address all measures used before entry to isolate and eliminate hazards from the space and control potential atmospheric hazards.

(i) Identify the entry supervisor who authorizes the use of the alternative methods and has the responsibility for ensuring safe entry conditions.

- (ii) The hazards of the space.
- (iii) The methods used to eliminate hazards including verification.
- (iv) The methods used to ensure that the hazards are eliminated.

(v) The methods used to test and monitor the atmosphere within the space, where applicable, for all atmospheric hazards.

(vi) The methods used to determine if unsafe conditions arise before or during entry.

(vii) The criteria and conditions for evacuating the space during entry (like monitoring and test data).

(viii) Methods for training employees in these procedures.

(ix) The methods used to ensure employees follow these procedures.

(x) Documentation required. For examples of documentation, see Appendix J Alternative Method Documentation by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>.

(2) You must consult with affected employees and their authorized representatives when developing and implementing all aspects of your ~~((permit required confined space))~~ program.

(3) You must make the written program available to employees and their authorized representatives.

(4) You must update your written program as necessary when you have identified deficiencies. Revise your program and entry procedures before allowing subsequent entries.

(5) You must designate a confined space program administrator who has overall responsibility for your program and has sufficient training or experience with permit-required confined space entry to oversee program development, coordinate implementation, and conduct required evaluations of program effectiveness outlined in WAC 296-809-50006.

~~((Link: You can find a sample permit required confined space entry program in the user guide located in the resources section of this chapter or by visiting the labor and industries web site at <http://www.lni.wa.gov/FormPub> or <http://www.lni.wa.gov/safety/rules/helpfultools/default.asp>.)~~

Note: ¹ Examples of safe work procedures include, but are not limited to: Communication, hazard identification, monitoring and testing, energy control (lockout), ventilation (purging, flushing, use of local exhaust), inerting, engulfment control, equipment use, equipment maintenance, coordination with another employer, emergency evacuation, rescue, and hazard elimination procedures.

If you have multiple spaces assigned to one attendant, include the procedures necessary to enable the attendant to fulfill their required responsibilities and respond to an emergency. See WAC 296-809-50010, Table 2.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-30004 Meet these additional requirements if your employees enter another employer's confined space.

(1) You must obtain any available information about permit-required confined space hazards and entry operations from the host employer.

(2) You must coordinate entry operations with any other employers whose employees will be working in or near the permit-required confined space.

(3) You must inform the host employer, either through a debriefing or during entry operations, about:

- (a) The entry program you will follow; and
- (b) Any hazards you confronted or created in the space during entry operations.

Note: This would include any additional permit-required confined spaces identified by you.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-400 Employee training.

((Summary))

Your responsibility:

To make sure employees are trained to perform their designated roles safely.

You must meet ((the)) these requirements prior to entry into permit-required confined spaces ...	in this section:
Provide employee training	WAC 296-809-40002
Certify employee proficiency	WAC 296-809-40004

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-40002 Provide employee training. (1)

You must provide training at no cost to each employee involved in permit-required confined space activities. The training must be in a language and vocabulary they understand, so they acquire the understanding, knowledge and skills necessary to safely¹ perform assigned duties.

(a) Establish employee proficiency in their confined space duties².

(b) Introduce new or revised procedures as necessary.

((Note: Employers can determine employee proficiency by:
 1. Observing employee performance during training exercises that simulate actual confined space conditions;
 2. A comprehensive written examination; or
 3. Any other method that is effective for the employer.))

(2) You must provide training **((at the following times:))** to each affected employee:

(a) Before an employee is first assigned to duties covered by this chapter.

(b) Before there is a change in an employee's assigned duties.

(c) When there is a permit-required confined space hazard for which the employee has not already been trained.

(d) Retrain your employees if ((you have reason to believe that)) there are either:

(i) Deviations from your procedures for permit-required confined space entry; or

(ii) Employee knowledge or use of your procedures is inadequate.

Notes: ¹ Training topics include, but are not limited to:

- Roles and responsibilities;
- Hazards of the permit space;

• Procedures from your program created to protect employees, such as methods used to isolate and control hazards, equipment use, equipment maintenance and evacuation;

• For individuals **not** authorized to perform rescue, the dangers of attempting unauthorized rescue.

² Employers can determine employee proficiency by:

• Systematically observing employee performance using safe work procedures and equipment to perform specific job tasks during training exercises that simulate actual confined space conditions;

• A comprehensive written exam; or

• Any other method that is effective for the employer.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-40004 Certify employee proficiency.

(1) You must determine and certify employee proficiency in their assigned duties.

(2) You must make sure the certification:

(a) Contains each employee's name, the trainer's written or electronic signature or initials, and the dates of training.

(b) Is available for inspection by employees and their authorized representatives.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-500 Permit entry procedures.

((Summary))

Your responsibility:

To establish procedures for the safe permit-required entry of confined spaces.

You must meet the requirements ...	in this section:
Implement procedures for <u>safe entry ((permits)) into permit-required confined spaces</u>	WAC 296-809-50002
Use an entry permit that contains all required information	WAC 296-809-50004
Keep and review your entry permits	WAC 296-809-50006
Prevent unauthorized entry	WAC 296-809-50008
Provide, maintain and use proper equipment	WAC 296-809-50010
Evaluate and control hazards for safe entry	WAC 296-809-50012
Make sure you have adequate rescue and emergency services available	WAC 296-809-50014
Use nonentry rescue systems or methods whenever possible	WAC 296-809-50016

You must meet the requirements ...	in this section:
Make sure entry supervisors perform their responsibilities and duties	WAC 296-809-50018
Provide an attendant outside the permit-required confined space	WAC 296-809-50020
Make sure entrants know the hazardous conditions and their duties	WAC 296-809-50022
Implement procedures for ending entry	WAC 296-809-50024

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50002 Implement procedures for safe entry ((permits)) into permit-required confined spaces.

(1) You must identify and evaluate, before employees enter, potential hazards from:

- (a) The permit-required confined space; and
- (b) The work to be performed.

(2) You must complete an entry permit before entry is authorized, documenting that you have completed the means, procedures and practices necessary for safe entry and work.

(3) You must make sure that entrants or their representatives have an opportunity to observe any monitoring or testing, or any actions to eliminate or control hazards, performed to complete the permit.

(4) You must identify the entry supervisor and make sure the entry supervisor signs the entry permit, authorizing entry, before the space is entered.

(5) You must make the completed permit available to entrants or their authorized representatives at the time of entry so they can confirm the implementation of the preentry preparations. Do this by either posting the completed permit at the entry location, or by any other equally effective means.

(6) You must make sure the duration of the permit does not exceed the time required to complete the assigned task or job identified on the permit.

(7) You must note any problems encountered during an entry operation on the permit. Use the information to make appropriate revisions to your program, entry operations, means, systems, procedures and practices.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50004 Use an entry permit that contains all required information. You must make sure your entry permit identifies **all** of the following that apply to your entry operation:

- (1) The space to be entered.
- (2) Purpose of the entry.
- (3) Date and the authorized duration of the entry permit.
- (4) Hazards of the space to be entered.
- (5) Acceptable entry conditions.

(6) Results of initial and periodic tests performed to evaluate and identify the hazards and conditions of the space, accompanied by the names or initials of the testers and by an indication of when the tests were performed.

(7) Appropriate measures used before entry to isolate the space, and eliminate or control hazards. Examples of appropriate measures include the lockout or tagging of equipment and procedures for purging, inerting, ventilating, and flushing permit-required confined spaces.

(8) Names of entrants and current attendants. Other means include the use of rosters or tracking systems as long as the attendant can determine quickly and accurately, for the duration of the permit, which entrants are inside the space.

(9) The current entry supervisor.

(10) ~~((A space for))~~ The signature or initials of the original supervisor authorizing entry.

(11) Communication procedures for entrants and attendants to maintain contact during the entry.

(12) Equipment provided for safe entry, such as:

(a) Personal protective equipment (PPE).

(b) Testing equipment, including equipment capable of detecting an increase in atmospheric hazard levels in the event the ventilation system stops working.

(c) Communications equipment.

(d) Alarm systems.

(e) Rescue equipment.

(13) Rescue and emergency services available, and how to contact them. Include equipment to use, and names and contact information.

(14) Other information needed for safety in the particular confined space.

(15) Additional permits issued for work in the space, such as for hot work.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50006 Keep and review your entry permits. (1) You must ~~((keep entry permits for at least one year.))~~ review your program and entry operations when measures taken under your permit-required confined space entry program may not protect employees. Review your program as necessary to correct deficiencies before allowing subsequent entries.¹

(2) You must keep the canceled entry permits ~~((or other atmospheric monitoring records that show the actual atmosphere an employee entered or worked in, as employee exposure records))~~ for at least one year to facilitate the review of the permit-required confined space program. Use the canceled entry permits within one year following each entry to review and evaluate both your program and the protection provided to employees entering permit-required confined spaces.² Update your written permit-required confined space entry programs as necessary to correct deficiencies before allowing subsequent entries.

(3) You must ~~((review your permit-required confined space entry program by conducting a review when you have any reason to believe your entry program may not protect employees, and revise your program before allowing subsequent entries.~~

Note: Examples of circumstances requiring the review of your program include the following:

1. There is unauthorized entry of a permit space.
2. A permit space hazard not covered by the permit is found.
3. A condition prohibited by the permit occurs.
4. An injury or near-miss occurs during entry.
5. There is a change in the use or configuration of a permit space.
6. An employee complains about the effectiveness of the program.

(4) You must review canceled entry permits within one year following each entry to evaluate:

(a) Your permit required confined space program.

(b) The protection provided to employees entering permit required confined spaces.

(5) You must update your written permit required confined space entry program as necessary.

Note: Employers may perform a single annual review covering all entries performed during a twelve-month period. If no entry is performed during a twelve-month period, no review is necessary.

References: Keep employee exposure records according to chapter 296-62 WAC, Part B, Access to records.)

keep entry permits or other atmospheric monitoring records that show the actual atmosphere an employee entered or worked in, as employee exposure records.³

Notes: ¹ Examples of circumstances requiring the review of your program include the following:

- There is unauthorized entry of a permit space.
- A permit space hazard not covered by the permit is found.
- A condition prohibited by the permit occurs.
- An injury or near-miss occurs during entry.
- There is a change in the use or configuration of a permit space.
- An employee complains about the effectiveness of the program.

² Employers may perform a single annual review covering all entries performed during a twelve-month period. If no entry is performed during a twelve-month period, no review is necessary.

³ Keep employee exposure records according to chapter 296-802 WAC, Employee medical and exposure records.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50008 Prevent unauthorized entry.

(1) You must implement measures necessary to prevent unauthorized entry into permit-required confined spaces, when conducting authorized entry.

(2) You must protect entrants and those outside the confined space from hazards when removing entrance covers.

Note: ((1. When removing entrance covers to open the confined space, protect entrants and those outside the confined space from hazards.

2.)) Examples of measures to prevent unauthorized entry are signs, physical barricades, warning tape, and an attendant.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50010 Provide, maintain, and use proper equipment. (1) You must provide the equipment in Table 2, when needed and at no cost to employees.

(2) You must make sure that employees use provided equipment properly.

(3) You must maintain the provided equipment.

**Table 2
Equipment Provided to Employees at No Cost**

Type of equipment	Used for
Testing and monitoring equipment	Evaluating permit-required confined space conditions
Ventilating equipment	Obtaining and maintaining acceptable entry conditions
Communication equipment	Effective communication between the attendant and the entrants and to initiate rescue when required
Personal protective equipment (PPE)	Protecting employees from hazards of the space or the work performed
Lighting equipment	Employees to see well enough to work safely and to exit the space quickly in an emergency
Barriers or shields, such as pedestrian, vehicle or other barriers	Protecting employees from hazards outside of the space
Ladders	Safe entry and exit by entrants
Rescue and emergency equipment, except for equipment provided by the rescue service provider	Safe and effective rescue
Any other equipment	Safe entry into and rescue from permit-required confined spaces

Note: Equipment that is unsuitable for retrieval must not be used including, but not limited to, retrieval lines that have reasonable probability of becoming entangled with the retrieval lines used by other authorized entrants, or retrieval lines that will not work due to the internal configuration of the permit space.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50012 Evaluate and control hazards for safe entry. (1) You must evaluate and control hazards for safe entry into permit-required confined spaces by doing all the following:

- (a) Test for atmospheric hazards, in this order:
 - (i) Oxygen.

- (ii) Combustible gases and vapors.
- (iii) Toxic gases and vapors.
- (b) Provide each entrant or their authorized representative an opportunity to observe any of the following:
 - (i) Preentry testing.
 - (ii) Subsequent testing.
 - (iii) Monitoring of permit-required spaces.
- (c) Reevaluate the permit-required space in the presence of any entrant, or their authorized representative, who requests this to be done because they have reason to believe that the evaluation of that space may not have been adequate.
- (d) Upon request, immediately provide each entrant or their authorized representative, with the results of any testing required by this rule.
- (e) Continuously monitor ~~((conditions))~~ the atmosphere in areas where entrants are working, when isolation of the space is not feasible.

~~((2))~~ Examples ~~((would be a))~~ include large spaces or a space that is part of a continuous system, such as a sewer.

~~((3))~~ (2) You must evaluate space conditions during entry as follows:

Table 3
Evaluating Space Conditions

You must:	In order to
Test conditions before entry	Determine that acceptable entry conditions exist before entry is authorized by the entry supervisor
Test or evaluate space conditions during entry	Determine that acceptable entry conditions are being maintained during entry operations
Evaluate entry operations	Make sure entrants of more than ((+)) <u>one</u> employer working at the same time in or around a permit-required confined space, do not endanger each other

~~((Important: This section applies to both: 1. Employers whose employees use permit entry procedures; and 2. Employers who provide rescue services.))~~

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50014 Make sure you have adequate rescue and emergency services available. (1) You must make sure you have adequate rescue and emergency services available during your permit-required confined space entry operations.¹

- (a) Evaluate and select rescue teams or services who can:
 - (i) Respond to a rescue call in a timely manner.² Timeliness is based on the identified hazards. Rescuers must have the capability to reach potential victims within an appropriate time frame based on the identified permit space hazards.
 - (ii) Proficiently rescue employees from a permit-required confined space in your workplace. Rescuers must have the appropriate equipment for the type of rescue.

(ii) Agree to notify you immediately in the event that the rescue service becomes unavailable.

- (b) Make sure that at least one member of the rescue team or service holds a current certification in first aid and cardiopulmonary resuscitation (CPR).
- (c) Inform each rescue team or service about the hazards they may confront when called to perform rescue.
- (d) Provide the rescue team or service with access to all permit spaces from which rescue may be necessary. This will allow them to develop appropriate rescue plans and to practice rescue operations.

~~((Note: What will be considered timely will vary according to the specific hazards involved in each entry. For example, chapter 296-842 WAC, Respirators, requires that employers provide a standby person or persons capable of immediate action to rescue employee(s) for work areas considered to contain an IDLH atmosphere.))~~

(2) You must provide employees assigned to provide permit-required confined space rescue and emergency services, at no cost to the employee, with:

- (a) Personal protective equipment (PPE) needed for safe entry.
 - (b) Other equipment required to conduct rescues safely.
 - (c) Training so they are:
 - (i) Proficient in the use of the PPE and other equipment.
 - (ii) Proficient as an entrant of permit-required confined spaces.
 - (iii) Able to safely perform assigned rescue and emergency duties.
 - (iv) Knowledgeable in basic first aid and cardiopulmonary resuscitation (CPR).
 - (d) Practice sessions for permit-required confined space rescues **at least** once every twelve months where dummies, manikins, or actual persons are removed from either:
 - (i) The actual permit spaces; or
 - (ii) Representative permit spaces that simulate the opening size, configuration, and accessibility, of permit spaces where rescue will be performed.
 - (3) You must establish procedures for:
 - (a) Contacting rescue and emergency services.
 - (b) Rescuing entrants from permit-required confined spaces.
 - (c) Providing necessary emergency services to rescued entrants.
 - (d) Preventing unauthorized persons from attempting a rescue.

Notes: ¹ The following is not considered to be adequate rescue and emergency services:

• Planning to rely on a rescue service and posting a contact number (like "911") without contacting them and completing an evaluation in advance to ensure they meet the criteria of this standard.

² Timely rescue will vary according to the specific hazards involved in each entry. For example, chapter 296-842 WAC, Respirators, requires that employers provide a standby person or persons capable of immediate action to rescue employee(s) for work areas considered to contain an IDLH atmosphere.

Note: See Appendix H - Evaluating Rescue Teams or Services by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50018 Make sure entry supervisors perform their responsibilities and duties. You must make sure that an entry supervisor:

- (1) Authorizes the entry into a permit-required confined space by signing the entry permit.
- (2) Oversees entry operations.
- (3) Knows about the hazards that may be faced during entry, including the mode, signs or symptoms, and consequences of the exposure.
- (4) Verifies and checks **all** of the following:
 - (a) The appropriate entries have been made on the permit.
 - (b) All tests specified by the permit have been conducted.
 - (c) All procedures and equipment specified by the permit are in place before approving the permit and allowing entry to the space.
 - (5) Terminates the entry and cancels the permit when:
 - (a) The assigned task or job has been completed.
 - (b) A condition in the space that is not covered by the entry permit is discovered.
 - (6) Verifies ~~((that))~~ rescue services are available and ~~((that there is a way))~~ the means to contact them is operable; and ensures the employer will be notified as soon as the service becomes unavailable.
 - (7) Removes unauthorized individuals who enter or attempt to enter the permit-required confined space during entry operations.
 - (8) Determines that entry operations remain consistent with the terms of the entry permit and acceptable entry conditions are maintained:
 - (a) Whenever responsibility for a permit-required space entry operation is transferred; and
 - (b) At regular intervals dictated by the hazards and operations performed within the space. If the rescue service becomes unavailable during the course of the permit-required confined space entry, you must immediately cancel the entry and permit.

Notes:

((1-)) • Make sure entry supervisors have the required knowledge and proficiency to perform the job duties and responsibilities required by this chapter.

((2-)) • The entry supervisor may also perform other duties under this chapter, such as attendant or entrant, if they are trained and proficient in those duties.

((3-)) • The responsibility of the entry supervisor may be passed from one supervisor to another during an entry operation.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50020 Provide an attendant outside the permit-required confined space.

Important:

1. The number of attendants assigned should be tailored to the requirements of the space and the work performed.
2. You need to assess if it is appropriate or possible to have multiple permit spaces monitored by a single attendant, or have an attendant stationed at a location outside each

space. Video cameras and radios are examples of tools that may assist an attendant monitoring more than one space.

3. Attendants may be stationed at any location outside the permit-required confined space if the duties described in this section can be effectively performed for each space that is monitored.

(1) You must provide at least one attendant who must remain outside the permit-required confined space during entry operations.

(2) You must make sure each permit-required confined space attendant:

(a) Understands the hazards that may be faced during entry, including the mode, signs or symptoms, and results of exposure to the hazards.

(b) Is aware of the behavioral effects of exposure to the hazard.

(c) Continuously maintains an accurate count of entrants in the space.

(d) Maintains an accurate record of who is in the permit-required confined space.

(e) Communicates with entrants as necessary to monitor their status or alert them of the need to evacuate the space.

(f) Monitors activities inside and outside the space to determine if it is safe for entrants to remain in the space.

(g) Orders entrants to evacuate the space immediately if **any** of the following conditions occur:

(i) A prohibited condition.

(ii) The behavioral effects of hazardous exposure in an entrant.

(iii) A situation outside the space that could endanger entrants.

(iv) The attendant cannot effectively and safely perform all the duties required in this chapter.

(h) Takes the following actions when unauthorized persons approach or enter a space:

(i) Warn unauthorized persons to stay away from the space.

(ii) Tells the unauthorized persons to exit immediately if they have entered the space.

(iii) Informs entrants and the entry supervisor if unauthorized persons have entered the space.

(i) Performs nonentry rescues as specified by ~~((your))~~ the rescue procedure.

(j) Has the means to respond to an emergency affecting one or more of the permit spaces being monitored without preventing performance of the attendant's duties to the other spaces being monitored.

(k) Carries out no duties that might interfere with their primary duty to monitor and protect the entrants.

(l) Calls for rescue and other emergency services as soon as entrants may need assistance to escape from the space.

(m) Monitors entry operations until relieved by another attendant or all entrants are out of the space.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-50022 Make sure entrants know the hazardous conditions and their duties. You must make sure that all entrants:

(1) Know the hazards they may face during entry, including the mode, signs or symptoms, and results of exposure to the hazards.

(2) Use equipment properly.

(3) Communicate with the attendant as necessary so the attendant can:

- (a) Monitor entrant status(-); and
- (b) Alert entrants of the need to evacuate.

(4) Alert the attendant whenever either of these situations exist:

(a) A warning sign or symptom of exposure to a dangerous situation such as, behavioral changes, euphoria, giddiness potentially from lack of oxygen or exposure to solvents.

(b) A prohibited condition.

(5) Exit from the permit-required confined space as quickly as possible when one of the following occurs:

(a) The attendant or entry supervisor gives an order to evacuate.

(b) The entrant recognizes any warning sign or symptom of exposure to a dangerous situation.

(c) The entrant detects a prohibited condition.

(d) An evacuation alarm is activated.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-600 ((Alternate entry procedures.)) Alternative methods.

((Summary))

Your responsibility:

To ~~((choose alternate entry procedures for spaces where the only hazard is a hazardous atmosphere))~~ **know when you can use alternative methods and documentation.**

Important:

In addition to this section, you also need to meet the requirements in the following sections of this chapter:

1. WAC 296-809-200~~((, Identifying and controlling))~~ Identify and control permit-required confined spaces.
2. WAC 296-809-300~~((s))~~ Permit-required confined space program.
3. WAC 296-809-400~~((s))~~ Employee training.

You must meet the requirements ...	in this section:
Make sure the following conditions are met if using ((alternate entry procedures)) <u>alternative methods</u>	WAC 296-809-60002
((Follow these alternate entry procedures)) <u>Implement alternative methods for each permit-required confined space(s) that meet the criteria</u>	WAC 296-809-60004

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-60002 Make sure the following conditions are met if using ~~((alternate entry procedures))~~ alternative methods. (1) You ~~((must make sure, when))~~ may enter permit-required confined spaces without a permit using ~~((alternate entry procedures, instead of permit entry procedures, that))~~ alternative methods when you have monitoring and inspection data that supports the following:

(a) ~~((That the only hazard of the permit-required confined space is an actual or potentially hazardous atmosphere.))~~ You have eliminated all the hazards¹; or

(b) ~~((That))~~ You have eliminated all of the physical hazards^{1,2}, and continuous forced air ventilation controls the actual or potential hazardous atmosphere. You must also have monitoring data that demonstrates the use of continuous forced air ventilation ~~((alone is all that is needed to))~~ will maintain the permit-required confined space for safe entry. In the event the ventilation system stops working, entrants can exit the space safely.

(2) You must ~~((make sure an entry to obtain monitoring and inspection data or to eliminate hazards is performed according to WAC 296-809-500, Permit entry procedures.~~

~~((3))~~ have written documentation for the entrants before each entry that includes the following information:

- (a) The location of the space;
- (b) Date of the entry;
- (c) Duration of the entry;
- (d) The hazards of the space and the work;
- (e) The specific measures used to eliminate the hazards¹;
- (f) The ventilation system used to control atmospheric hazards, when applicable, direct reading instruments used to test the atmosphere, and results of the atmospheric testing that demonstrate the absence of a hazardous atmosphere^{1,2}
- (g) All conditions that required evacuation of the space³; and
- (h) The name, title, and signature of the entry supervisor ensuring safe entry procedures.

(3) You must make sure all documentation produced is available to each affected employee and their authorized representative.

(4) You must make sure all ~~((documentation produced is))~~ monitoring and inspection data is documented and available to each affected employee and their authorized representative.

(5) If you must enter prior to the completion of the hazard elimination, you must perform the entry according to WAC 296-809-500 Permit entry procedures. For example - To collect monitoring inspection data or to apply hazard elimination measures.

Notes: ¹ For the purposes of this section, energy control procedures must isolate the space and result in the elimination of the hazards including applicable stored energy. Evaluate your energy control procedures (lockout) to ensure they fully eliminate the hazards when used. See chapter 296-803 WAC, Lockout/tagout (control of hazardous energy). Tagout is an example of a method not considered to eliminate hazards.

² Controlling atmospheric hazards through forced air ventilation does not eliminate the hazards.

³ Do not use alternative methods to enter a continuous system unless you can do the following:

- Completely isolate the area entered from the rest of the space;
- Demonstrate that the conditions that caused the hazard or potential hazard no longer exist within the system for the duration of the entry including engulfment; and
- You have sufficient quantities of continuous ventilation to control the atmospheric hazard.

See Appendix J for Alternative Methods Documentation by visiting the labor and industries web site at <http://www.lni.wa.gov/safety/rules/chapter/809/>.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-809-60004 (~~Follow these alternate entry procedures~~) **Implement alternative methods for each permit-required confined space(s) that meet the criteria.** ((You must use the following alternate entry procedures:))

(1) You must implement your procedures for hazard elimination and alternative methods from your written program.

(2) Before entry, eliminate any unsafe conditions ((before)) including removing an entrance cover.

((a)) When entrance covers are removed, promptly guard the opening with a railing, temporary cover, or other temporary barrier to prevent any accidental falls through the opening and protect entrants from objects falling into the space.

((b)) ~~Certify that preentry measures have been taken (such as safe removal of the cover and having protection needed to gather preentry data), with the date, location of the space, and signature of the person certifying.~~

(c) Make the preentry certification available before entry to each entrant.

((2)) (3) For spaces with potential atmospheric hazards you must do all of the following:

(a) Test before an employee enters the confined space(~~test the internal atmosphere with~~). Use a calibrated, direct-reading instrument to test the internal atmosphere for all of the following, in this order:

- ((a)) (i) Oxygen content.
- ((b)) (ii) Flammable gases and vapors.
- ((c)) (iii) Potential toxic air contaminants.

((3)) (b) Make sure the atmosphere within the space is not hazardous when entrants are present. Continuously test the atmosphere within the space to ensure hazards do not accumulate.

(c) Use continuous forced air ventilation, as follows:

(i) Wait until the forced air ventilation has removed any hazardous atmosphere before allowing entrants into the space.

(ii) Direct forced air ventilation toward the immediate areas where employees are, or will be working. Continue ventilation until all employees have left the space.

(iii) Provide the air supply from a clean source and make sure it does not increase hazards in the space.

(4) Provide entrants, or their authorized representatives, with an opportunity to observe the preentry and periodic testing.

~~((4) Make sure the atmosphere within the space is not hazardous when entrants are present.~~

(5) ~~Use continuous forced air ventilation, as follows:~~

(a) ~~Wait until the forced air ventilation has removed any hazardous atmosphere before allowing entrants into the space.~~

(b) ~~Direct forced air ventilation toward the immediate areas where employees are, or will be, and continue ventilation until all employees have left the space.~~

(c) ~~Provide the air supply from a clean source and make sure it does not increase hazards in the space.~~

(6) ~~Test the atmosphere within the space as needed to make sure hazards do not accumulate.~~

(7) If a hazardous atmosphere is detected during entry, do all of the following:

(a) Evacuate employees from the space immediately.

(b) Evaluate the space to determine how the hazardous atmosphere developed.

(c) Implement measures to protect employees from the hazardous atmosphere before continuing the entry operation.

(d) ~~Verify the space is safe for entry before continuing the entry operation.~~ (5) Evacuate employees from the space immediately when any of the following occurs:

(a) Detection of a hazardous atmosphere by air-monitoring instrumentation;

(b) Failure of a direct-reading instrument;

(c) Any failure of the ventilation; or

(d) Introduction of a hazard; a hazard develops; or conditions change within a space.

(6) When a space is evacuated, it cannot be reentered as alternative methods unless you do all of the following:

(a) Correct conditions that necessitated evacuation.

(b) Treat any reentry as a new entry.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-809-700	Nonpermit confined spaces requirements.
WAC 296-809-70002	Follow these requirements when classifying a confined space as a nonpermit confined space.
WAC 296-809-70004	Reevaluate nonpermit confined spaces if hazards develop.

WSR 18-02-082

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 2, 2018, 1:49 p.m., effective February 2, 2018]

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

Purpose: These rule amendments align the rules for the learning assistance program, chapter 392-162 WAC and WAC 392-122-505, with recent statutory changes made in EHB 2242 (2017). The changes implement the new high poverty-based school allocation and language changes made in the statute.

Citation of Rules Affected by this Order: Amending WAC 392-162-005, 392-162-010, 392-162-020, 392-162-033, 392-162-036, 392-162-041, 392-162-054, 392-162-112, and 392-122-605.

Statutory Authority for Adoption: RCW 28A.165.075, 28A.150.290.

Adopted under notice filed as WSR 17-21-122 on October 18, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 9, Repealed 0.

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

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

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

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

Date Adopted: January 2, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due. The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or school operated pursuant to a state-tribe education compact if the school district, charter school, or compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

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

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in

grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system.

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

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

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of ((a)) the learning assistance program ((designed to provide learning assistance to public school students enrolled in grades kindergarten through twelve who score below standard in English language arts or mathematics for his or her grade level)).

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-010 Purpose. ((The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to assist underachieving students enrolled in grades kindergarten through twelve who score below standard in English language arts and mathematics for his or her grade level.)) The learning assistance program requirements in this chapter are designed to:

(1) Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;

(2) Promote the use of data when developing programs to assist ((underachieving)) students who are not meeting academic standards and reduce disruptive behaviors in the classroom;

(3) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist ((underachieving)) students who are not meeting academic standards and reduce disruptive behaviors in the classroom; and

(4) Guide school districts in providing extended learning opportunities to assist ((underachieving)) K-12 students who are not meeting academic standards in English language arts

or mathematics, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-020 Definition—Learning assistance program (LAP). (1) As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students enrolled in grades kindergarten through twelve who do not meet state English language arts or mathematics standards by providing supplemental instruction and services to those students.

(2) School districts implementing a learning assistance program must first focus on addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills.

(a) A district may meet this requirement during the regular school year by ensuring that of the total number of students in grades kindergarten through four served by the learning assistance program, approximately fifty percent are students ~~((enrolled in grades kindergarten through four))~~ receiving English language arts services. Students served under readiness to learn programs provided under WAC 392-162-041 (1)(g) are excluded from this calculation.

(b) A district may serve a threshold lower than fifty percent if it demonstrates a lesser need through one of the following data sources:

(i) The district's prior year statewide assessment scores for third and fourth grade reading;

(ii) The district's prior year's reported number of kindergarten through grade four students reading on grade level under RCW 28A.320.203;

(iii) Districts serving a lower threshold under (b)(i) or (ii) of this subsection must be approved to do so at the start of the school year by the office of the superintendent of public instruction.

The learning assistance program may then be used to support ~~((underachieving))~~ students who are not meeting academic standards in grades kindergarten through twelve by providing supplemental English language arts or mathematics instruction, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, by addressing the needs of eleventh and twelfth grade students to assist them in meeting state and district graduation requirements, and to reduce disruptive behaviors in the classroom.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

WAC 392-162-033 Definition—~~((Underachieving))~~ Students who are not meeting academic standards. As used in this chapter, the term "~~((underachieving))~~ students who are not meeting academic standards" means students with the greatest academic ~~((deficits))~~ needs in basic skills as

identified by statewide, school, or district assessments or other performance tools.

AMENDATORY SECTION (Amending WSR 09-24-075, filed 11/30/09, effective 12/31/09)

WAC 392-162-036 Definition—Extended learning opportunities. As used in this chapter the term "extended learning opportunities" means a program of learning assistance in addition to the required basic education instruction designed to improve the educational performance of ~~((underachieving))~~ students who are not meeting academic standards selected under WAC 392-162-080. The minimum allocation for the learning assistance program shall provide an extended school day and extended school year for each level of school and a per student allocation for maintenance, supplies, and operating costs.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-041 Best practices. (1) Best practices are to be used to provide learning assistance program services to identified learning assistance students. The district must select and implement the best practices that are designed to increase student achievement and are aligned with research. To the extent they are included as a best practice or strategy in one of the state menus on or an alternative allowed under subsection (2)(b) of this section, the following are services and activities that may be supported by the learning assistance program:

(a) Extended learning opportunities occurring:

(i) Before or after the regular school day;

(ii) On Saturday; and

(iii) Beyond the regular school year.

(b) Extended learning opportunities provided under RCW 28A.320.190. Eligibility is for:

(i) Eleventh and twelfth grade students not on track to meet local or state graduation requirements; and

(ii) Students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade.

(c) Professional development for certificated and classified staff that focuses on:

(i) The needs of a diverse student population;

(ii) Specific literacy and mathematics content and instructional strategies; and

(iii) The use of student work to guide effective instruction and appropriate assistance.

(d) Consultant teachers to assist in implementing effective instructional practices by teachers serving participating students.

(e) Tutoring support for participating students.

(f) Outreach activities and support for parents of participating students, including employing parent and family engagement coordinators.

(g) Up to five percent of district's learning assistance program base allocation may be used to deliver a readiness to learn program. Students served are to be significantly at-risk of not being successful in school and services must be focused on reducing barriers to learning, increasing student

engagement, and enhancing students' readiness to learn. The program may include academic or nonacademic supports offered by the district or through development of partnerships with community-based organizations, educational service districts, and other local agencies. The school board must approve in an open meeting any community-based organization or local agency before learning assistance program funds may be expended.

(2) Beginning in the 2016-17 school year districts must either:

(a) Select a practice or strategy that is on one of the state-approved menus for the learning assistance program; or

(b) Use a practice or strategy that is not on the state menus for up to two years. Districts must annually notify the office of the superintendent of public instruction if selecting an alternative practice or strategy. At the end of the two years, the district must be able to demonstrate improved outcomes for participating learning assistance program students. If the district is able to demonstrate improved outcomes commensurate with the state approved menu for such students, the office of the superintendent of public instruction will approve the use of the alternative practice for one additional year. For each subsequent year, the district must provide data that demonstrates that participating students are meeting or exceeding academic achievement compared to those students who are being served by a state approved best practices and strategy.

(3) School districts may enter into cooperative agreements with state agencies, local governments, or school districts for administrative or operational costs needed to provide services in accordance with the state menus developed beginning in 2016-17.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-054 (~~Definition—District eligibility and distribution~~) **Allocation, supplement not supplant, and use of funds.** (1) The funds for the learning assistance program shall be ~~((appropriated in accordance with the Omnibus Appropriations Act and RCW 28A.150.260. The distribution formula is for school district allocation purposes only, but funds appropriated for the))~~ allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be distributed to the school building that generated the funding and may not supplant the learning assistance program base allocation.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through 28A.165.065. ((A school district's funded students for the learning assistance program shall be the sum of the district's full time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced price lunch in the prior school year.))

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-112 Carry over of funds. (1) Districts may carry over from one year to the next up to ten percent of the ~~((LAP funds—state or education legacy trust funds))~~ learning assistance program base allocation provided allocated under ((this program)) WAC 392-122-605; however, carry-over funds shall be expended for the learning assistance program.

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carryover must be expended for the learning assistance program and for the specific school generating the allocation.

WSR 18-02-083
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 2, 2018, 1:51 p.m., effective February 2, 2018]

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

Purpose: This rule updates the office of superintendent of public instruction's (OSPI) complaint procedures for programs administered under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) in 2016. ESSA requires OSPI to make several changes to chapter 392-168 WAC, which spells out the agency's process for investigating and resolving citizen complaints regarding federally funded programs under ESEA. Among other things, the changes (1) update the terms and references in the current rule to align with ESEA as amended by ESSA, and (2) establish a new timeline for OSPI to investigate and resolve complaints regarding federally funded services provided to private school students (so-called equitable services).

Citation of Rules Affected by this Order: Amending WAC 392-168-115, 392-168-132, 392-168-145, 392-168-155, 392-168-175, 392-168-180, and 392-168-190.

Statutory Authority for Adoption: RCW 28A.300.070.

Adopted under notice filed as WSR 17-21-120 on October 18, 2017.

Changes Other than Editing from Proposed to Adopted Version: Changes (1) update the terms and references in the current rule to align with ESEA as amended by ESSA, and (2) establish a new timeline for OSPI to investigate and resolve complaints regarding federally funded services provided to private school students (known as equitable services).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 7, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 2, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-115 Applicability. This chapter shall apply to federal programs authorized under the Elementary and Secondary Education Act and administered by the superintendent of public instruction, including the following:

(1) Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies;

(2) Title I, Part B(~~(- Subpart 1: Reading First)~~): State Assessment Grants;

(3) (~~(Title I, Part B, Subpart 3: William F. Goodling Even Start Family Literacy Program~~;

(4)) Title I, Part C: Education of Migratory Children;

(~~(5))~~ (4) Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;

(~~(6) Title I, Part F: Comprehensive School Reform~~;

(7)) (5) Title II, Part A: (~~(Teacher and Principal Training and Recruiting Fund)~~) Supporting Effective Instruction;

(~~(8) Title II, Part D: Enhancing Education Through Technology~~;

~~Title III—Language Instruction for Limited English Proficient and Immigrant Students~~

(9)) (6) Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement Act;

(~~(10) Title IV—21st Century Schools~~;

(11)) (7) Title IV, Part A(~~(- Subpart 1: Safe and Drug Free Schools and Communities)~~): Student Support and Academic Enrichment Grants;

(~~(12))~~ (8) Title IV, Part B: 21st Century Community Learning Centers;

(~~(Title V—Promoting Informed Parental Choice and Innovative Programs~~

(13)) (9) Title IV, Part C: Expanding Opportunity Through Quality Charter Schools;

(10) Title V, Part A: (~~(Innovative Programs)~~) Funding Transferability for State and Local Education Agencies;

(~~(Title VI—Flexibility and Accountability~~

(14) Title VI, Part A, Subpart 1: Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments;

(15)) (11) Title (~~(VI)~~) V, Part B, Subpart 1: Small, Rural School Achievement Program;

(~~(16))~~ (12) Title (~~(VI)~~) V, Part B, Subpart 2: Rural and Low-Income Schools;

(~~(17))~~ (13) Title (~~(IX)~~) VIII—General Provisions(~~(;~~

~~(18) Title IX, Part E (Section 9532): Unsafe School Choice Option~~)).

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-132 Informing citizens about complaint procedures. The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities;

(2) Conducting (~~(inservice)~~) training sessions on the complaint process (~~(through educational service districts; and~~

~~(3) Including information about the system in statewide conferences)~~) for local school districts, educational service districts, or other subgrantees, which may include webinars and screencasts.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-145 Procedure for filing a complaint. The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-168-180.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days, unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances with respect to a particular complaint.

(4) Receipt of complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall activate a time limit not to exceed forty-five calendar days.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-155 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee. Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Propose reasonable corrective action(s) deemed necessary to correct the violation.

(4) The superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is in violation of any federal program requirement as authorized under the Elementary and Secondary Education Act as amended by ~~((No Child Left Behind))~~ the Every Student Succeeds Act or this chapter.

(7) The superintendent of public instruction shall issue a written decision to the complainant and public agency that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. ~~((OSPI))~~ The superintendent may provide technical assistance activities or negotiations; and corrective measures necessary to resolve a complaint. All actions shall be instituted, as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) The written decision by the superintendent of public instruction is the final decision in the matter. A complaint is considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed.

(9) If compliance by a local district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction may initiate fund withholding, fund recovery, or any other sanction(s) deemed appropriate.

~~((10) For complaints arising under 20 U.S.C. § 7883 (participation by private school children), a complainant may appeal the superintendent's resolution to the Secretary of Education (U.S. Department of Education) within thirty days of receiving the written decision from the superintendent of public instruction.))~~

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-168-175 Complaints against the superintendent of public instruction—Designation of responsible employee(s). (1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-168-140.

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly. Complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall be coordinated by the staff assigned to fulfill the duties of the ombudsman for equitable services as provided in 20 U.S.C. Secs. 6320 and 7881.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-180 Complaints against the superintendent of public instruction—Investigation of and response to complaints. (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation, no later than sixty calendar days after the receipt of such complaint. For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, investigating staff shall provide the written report to the superintendent no later than thirty-five calendar days after receipt of the complaint.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than ten calendar days after the date of receipt of the written report described in subsection (3) of this section.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: Provided, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-168-190 Appeal to the secretary of education in complaints against the superintendent of public instruction. (1) In the event that a complainant remains aggrieved with the response of the superintendent of public

instruction, the complainant may file an appeal directly with the secretary, department of education.

(2)(a) For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, the superintendent's response may be appealed to the secretary not later than thirty days after the superintendent responds to the complaint.

(b) If the superintendent fails to resolve a complaint concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, within the forty-five-day limit, the complainant may appeal directly to the secretary no later than thirty days after the expiration of the forty-five-day limit.

WSR 18-02-086
PERMANENT RULES
ARTS COMMISSION

[Filed January 2, 2018, 2:06 p.m., effective February 2, 2018]

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

Purpose: Adopt minor amendments to twelve existing rules: WAC 30-01-040 Commission's purpose, 30-02-010 Definitions, 30-04-060 Copying, 30-08-030 Board meetings, 30-12-015 Grants, 30-12-016 Rosters, 30-12-017 Applications, 30-40-050 Funding, 30-40-060 Collections management, 30-40-100 Art acquisition committees, 30-40-110 Acquisition of works of art, and 30-44-030 Eligibility.

Citation of Rules Affected by this Order: Amending 12.

Statutory Authority for Adoption: RCW 43.46.040.

Adopted under notice filed as WSR 17-23-181 on November 21, 2017.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 12, Repealed 0.

Date Adopted: January 2, 2018.

Karen Hanan
Executive Director

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-01-040 Commission's purpose. The Washington state arts commission is charged with the conservation and development of the state's artistic resources as described in RCW 43.46.005. It is authorized by RCW 43.46.050 to

study, plan, and advise the governor, state departments, and the legislature regarding cultural development. Through the authority granted by RCW 43.46.055, the commission may administer any activity, and assist any person or agency in programs or projects related to the growth and development of the arts ~~((and))~~, humanities, and the creative economy. The conservation and development of the state's artistic resources is essential to the social, educational, and economic growth of the state of Washington.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-02-010 Definitions. The following definitions shall apply throughout Title 30 WAC:

"Accession" means to formally acquire a work of art for the state art collection, including the action of assigning an accession or control number to the work of art.

"Appeal procedure" means the procedure as established in WAC 30-12-036 (Request for review of denied applications) whereby an applicant may request a review of a denied application.

"Application form" means the printed ~~((or))~~, electronic, or web-based forms created and published by staff to be used in commission program applications.

"Application guidelines" means the published document that provides the public with information on how to apply for commission programs, including eligibility requirements, review criteria, deadlines, timelines, and appeal procedure. Application guidelines may be published in a printed format and/or in electronic format accessible through the commission's web site.

"Art advisory committee" means a committee formed by staff and a partner agency to develop plans and overall project specifications, and to make funding allocation decisions related to the state art collection.

"Art in public places program" means the visual art program of the commission established by the legislature in RCW 43.46.090 to acquire works of art and to develop, administer, and ~~((operate))~~ manage the state art collection.

"Art selection committee" means a committee formed by a partner agency, and approved by staff, to review and select artists to create works of art for the state art collection, or to review and select works of art for or from the state art collection, through a process facilitated by staff.

"Artistic disciplines" means dance, design, folk and traditional arts, media arts, music, literature, theater, visual arts, and interdisciplinary arts.

"Artistic excellence" means evidence of some or all of the following: Mastery of skills and techniques, communication of unique vision or perspective, professional approaches to process and presentation ~~((, and/or communication of unique vision or perspective))~~. Additionally, for groups and organizations, includes the contribution the artistic work(s) make to the development of the artists involved, the art form and the arts generally; or for services delivered, the contribution the services make to the development of a vibrant arts and cultural community in the state.

~~(("Artistic merit" means evidence of some or all of the following: Potential impact on the artistic and/or cultural~~

development of a community or individuals; and/or potential to broaden access to, expand and diversify the audiences for, and/or strengthen communities through the arts.))

"Arts professional" means an individual who has professional work experience in the arts or an arts-related field.

"Board" means the board of commissioners, consisting of nineteen members appointed by the governor and four members of the legislature appointed to the Washington state arts commission pursuant to RCW 43.46.015.

"Chair" means the chair of the board, elected pursuant to WAC 30-08-050 and fulfilling duties as established in Title 30 WAC.

"Collections management" means the ongoing care, preservation, and maintenance of the state art collection, including activities such as the management of conservation, restoration, deaccession, documentation, inventory, labeling, loans, and ~~((re-siting))~~ resiting of works of art.

"Commission" means the collective entity of the Washington state arts commission, including the board, executive director, and staff.

"Commissioner" means an individual appointed to the board of the Washington state arts commission.

"Conservation" means treatment of malfunctioning or damaged works of art for the purpose of bringing them to a stable condition so that future routine and special maintenance can be effective. Conservation-related activities may also include examination and documentation.

"Curator" means a qualified visual arts professional with past curatorial experience selected to recommend works of art for acquisition to the state art collection.

"Deaccession" means board action to remove an accessioned work of art from the state art collection.

"Disability" is defined in RCW 49.60.040(7).

"Eligibility requirements" means published standards by which applications are reviewed to determine if they meet the minimum required qualifications to apply for a commission program.

"Executive director" means that person employed pursuant to RCW 43.46.045 to carry out the functions of that chapter and Title 30 WAC.

"Grant" means a contract for arts or cultural services between the commission and an organization or individual, awarded through a competitive application process and approved or ratified by the board.

"Inventory" means a periodic survey of the physical state and current location of works of art in the state art collection.

"Nonprofit" means incorporation under the nonprofit laws of the state of Washington or another state, and determination by the Internal Revenue Service (IRS) that the incorporated entity is exempt from taxation under Section 501(c)(3) of the IRS code.

"Panel" means a group of individuals convened by staff to review applications, nominations, or staff recommendations based on published review criteria, in order to make recommendations to the board or executive director.

"Partner agency" means a state agency, K-12 public school, university, college, community college, or other public entity working with the art in public places program.

"Professional artist" means an individual who has a history of paid work as an artist.

"Public artist roster" means the board approved list of professional artists eligible to create visual works of art for the state art collection.

"Public benefit" means evidence of some or all of the following: Potential impact on the artistic, cultural, professional, or economic development of a community or individuals; and/or potential to broaden access to, expand and diversify the audiences for, and/or strengthen communities through the arts.

"Resiting" means the relocation of a work of art in the state art collection within the jurisdiction of a partner agency or between partner agencies.

"Restoration" means treatment that returns a malfunctioning or damaged work of art to a known or assumed state, often through the addition of nonoriginal material.

"Review criteria" means the standards used by panels to evaluate applications, nominations, or staff recommendations.

"Roster" means a list of approved arts professionals who have the skills and experience to address the needs of a specific commission program.

"Routine maintenance" means a regular procedure to preserve a work of art in the state art collection in proper condition: Clean, presentable, and in working order.

"Site responsive" means created, planned, or intended for a particular site. A site responsive work of art addresses both the physical characteristics of its location (~~(((size, environment, lighting, public use, etc., of the site)))~~) and the context of the community in which it is situated (~~(((neighborhood, users of site, historical population, etc.)))~~).

"Special maintenance" means anticipated but infrequent activities required to maintain aesthetic and/or structural aspects of the works of art in the state art collection, including integrity of the overall surface and/or individual elements.

"Staff" means employees of the Washington state arts commission, under the direction of the executive director, pursuant to RCW 43.46.045, employed to carry out the functions of that chapter, and Title 30 WAC.

"State art collection" means all works of art and select design models commissioned or purchased under RCW 43.17.200, 28A.58.055, 28A.335.210, 43.46.090, and 43.19.455.

"Teaching artist" means a professional artist who is dedicated to arts education as an integral part of his/her professional practice, and who has cultivated skills as an educator in concert with skills as an artist.

"Underserved" means populations whose opportunities to experience the arts are limited by geography, historical exclusion and marginalization due to race, ethnicity, sexual orientation, gender identity, economics, ((or)) disability, or other social or institutionally imposed barriers.

"Under-resourced" means a lack of access to specialized, professional, financial, or institutional expertise and communal knowledge, and/or working with neglected or dated infrastructures and limited or absent assets and resources resulting in lack of recognition, competitiveness, and cyclical absent or diminished funding.

"Washington state arts commission" means the collective entity of the Washington state arts commission, including the board and staff.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-04-060 Copying. (1) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the Washington state arts commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(2) The Washington state arts commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.

(3) No fee shall be charged for the inspection of public records. ((The commission shall charge ten cents per black and white copy. Specialized records, including color copy, will be duplicated at the amount necessary to reimburse the commission for its actual cost. If the public records officer deems it more efficient to have copying and/or duplicating done outside the commission, the charges will be based on the actual cost of such outside copying and/or duplicating service.))

For all copying and/or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington state arts commission. The commission may require that all charges be paid in advance of release of the copies of the records.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-08-030 Board meetings. (1) General schedule. The board meets at least four times each fiscal year and at such other times as determined to be necessary. All meetings of the board are "regular" or "special" meetings as those designations are applied in chapter 42.30 RCW. Meetings may be called, subject to the notice requirements of chapter 42.30 RCW, at any time and place by the chair or by a majority of the commissioners.

(2) Notice. Twenty calendar days' notice of all meetings shall be given by posting on the commission's web site notification of the date, time and location of the meeting, and by mailing or emailing the same to each commissioner and to any person who has made a written request to the commission to receive meeting notices.

(3) Special meetings. The twenty-day notice may be waived for special meetings upon consent of the chair. In such cases, the provisions of RCW 42.30.080 govern due notification of the time, place, and business to be transacted.

(4) Executive session. An executive session may be called by the chair or a majority of the board. Executive sessions shall deal only with matters authorized by chapter 42.30 RCW.

(5) Meeting formats. Meetings may be convened in-person and/or by conference call, online, or other alternative for-

mat as determined by the chair and the executive director, subject to the requirements of the Open Public Meetings Act, chapter 42.30 RCW.

(6) Rules of order. The board generally follows *Roberts Rules of Order*, newly revised, in conducting its business meetings.

(7) Quorum. A simple majority of the regularly appointed board members constitute a quorum. If all twenty-three positions are filled, the quorum is twelve.

(8) Voting rights. All officers of the board have the right to vote on all matters before the board, just as any other commissioner.

(9) Meeting materials. Staff makes meeting materials available to the public at the time of the meeting, and following the meeting upon request.

(10) Minutes of the proceedings of all board meetings are kept and published on the commission web site.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-12-015 Grants. (1) The commission provides grants through a competitive process to organizations or individuals for the purpose of developing, sponsoring, and promoting the growth and development of the arts and arts education in the state of Washington.

(2) Application cycles, forms, guidelines, eligibility requirements, and review criteria are established and published by staff.

(3) The application process is managed pursuant to WAC 30-12-017 (Applications) and applications are reviewed by a panel pursuant to WAC 30-12-030 (Panels).

(4) The board reviews panel recommendations and approves grants, except as noted below.

(a) The executive director may approve grants which do not exceed three thousand dollars. Such actions are reviewed and ratified at the next meeting of the board.

(b) The board may delegate to the executive director approval of grants which exceed three thousand dollars. Such actions are reviewed and ratified at the next meeting of the board.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-12-016 Rosters. (1) Staff may establish and manage a roster to address program needs.

(2) Application cycles, forms, guidelines, eligibility requirements, and review criteria are established and published by staff.

(3) The application process is managed pursuant to WAC 30-12-017 (Applications) and applications are reviewed by a panel pursuant to WAC 30-12-030 (Panels).

(4) Staff may eliminate a roster due to changes in priorities, program needs, or resources, subject to the review and approval of the board.

(5) Removal from a roster.

(a) Staff have the authority to remove individuals from a roster for the following reasons:

(i) Individual on the roster fails to inform staff of new contact information;

- (ii) Individual on the roster requests to be removed;
 - (iii) Individual on the roster is deceased;
 - (iv) Expiration of roster term limit, as published in application guidelines;
 - (v) Violation of the terms of a commission-related contract;
 - (vi) If artists are accepted onto a roster as a team and subsequently dissolve the team, all individuals on the team are removed from the roster;
 - (vii) Any other reason specified in published application guidelines.
- (b) Removed individuals may apply ~~((to))~~ for inclusion in the next roster ((competition)) application cycle, except if removed for violation of the terms of a commission-related contract or for other reasons as specified in application guidelines.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-12-017 Applications. (1) Application cycles, forms, guidelines, eligibility requirements, and review criteria are established and published by staff.

(2) Application forms and guidelines are published on the commission web site no fewer than twenty calendar days prior to the deadline for submitting applications, pursuant to RCW 34.05.413.

(3) Applications ~~((that arrive or are postmarked))~~ submitted by the published deadline as specified in application guidelines are reviewed by staff to determine if the application meets published eligibility requirements.

(4) Staff convene a panel to review eligible applications pursuant to WAC 30-12-030 (Panels).

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-40-050 Funding. (1) Calculation of funds.

(a) Pursuant to RCW 43.46.090 through 43.46.095, one-half of one percent of the state's capital appropriation for the original construction of specific public buildings is set aside for the administration, acquisition, and conservation of works of art for the state art collection.

(b) The formula is applied to escalated maximum allowable construction cost, and may be applied to architecture and engineering fees and equipment cost.

(c) Funding is generated by construction of any new building and/or additions to an existing building or structure except for highway construction sheds, warehouses, or other temporary buildings. In addition, funding is generated by any renovation and remodel work exceeding two hundred thousand dollars at universities, colleges, and community colleges. Renovation and remodel work does not include repair, maintenance, or replacement of building systems, such as HVAC, plumbing, wiring, fire sprinklers, roofs, insulation, lighting, or other system that keeps the building functional and safe.

(2) Partner agency eligibility and site requirements of funds.

(a) All state agencies including all state departments, boards, councils, commissions, and quasi-public corpora-

tions; all universities, colleges, community colleges, and technical colleges; and the office of the superintendent of public instruction who appropriates state funding to school districts for the original construction of school plant facilities, shall apply the formula.

(b) Works of art must be placed in public buildings or on public lands. In siting works of art, priority is given to state properties and K-12 public schools.

(c) Works of art may be sited in a location other than the construction site generating the funding.

(3) Use of funds.

(a) Staff is responsible for negotiating contracts and expending funds.

(b) Funds may be used for works of art in the state art collection that are:

(i) Integral to or attached to a public building or structure;

(ii) Detached inside or outside a public building or structure;

(iii) On or part of the landscape;

(iv) Permanent or temporary;

(v) Part of a portable exhibition or collection.

(c) Funds may be used for expenses incurred in the design, fabrication, and installation of works of art, artists' fees and expenses, staff administrative expenses, and conservation.

(d) Funds shall not be used for the partner agency's administrative expenses, architectural or professional design services, site preparation, public event expenses, insurance, fees for art selection committee participation, or maintenance of the work of art.

(e) Funds shall not be used for clock towers, electrically powered water features, memorials, logos, signage, or the depiction of school mascots.

(4) Determination of funds. Staff shall determine the funds that are available for projects and sites, in consultation with the partner agency; director of general administration; directors of state agencies; the superintendent of public instruction and school district boards of directors; or the boards of regents or trustees of universities, colleges, and community colleges. (RCW 43.17.210, 43.19.455, 28A.335.-210, and 28B.10.025.)

(5) Supplemental funds. The one-half of one percent formula is a required minimum for works of art. Partner agencies may designate additional funds from other sources. Works of art acquired using supplemental funding become part of the state art collection.

(6) Transfer of funds. After project funds for works of art are determined, staff may request transfer of the funds from the partner agency.

(7) Pooling of funds.

(a) Staff may determine that funds from multiple construction projects may be combined as part of a pooling program or to fund larger works of art within a partner agency.

(b) Only K-12 school districts with applicable state assisted construction project funds may apply for K-12 pooled funds.

(c) Eligible K-12 school districts may apply for pooled funds pursuant to WAC 30-12-017 (Applications), WAC 30-

12-030 (Panels), and in accordance with published application guidelines.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-40-060 Collections management. (1) Staff manage the state art collection as funded, including conservation, restoration, deaccession, inventory, loans, ~~((and))~~ resiting, recordkeeping and documentation.

(2)(a) The commission enters into interagency agreements with partner agencies hosting sites for works of art in the state art collection. The interagency agreement is in effect throughout the partner agency's possession of the work(s) of art.

(b) Partner agencies are responsible for all routine and special maintenance for works of art in the state art collection, which they hold as stated in the interagency agreement.

(i) Routine maintenance includes activities such as surface dusting, replacement of lights, cleaning of glass or Plexiglas, removal of debris, or oiling of moving parts.

(ii) Special maintenance typically involves nonart specific skills including, but not limited to, the application of paint and/or sealant to certain works of art, mortar replacement, or landscape maintenance.

(3) Collections management policy includes:

(a) Conservation/restoration. The commission is responsible for the conservation and restoration of the state art collection. Staff determine conservation and restoration priorities and actions.

(b) Deaccession. The board has authority to formally remove works of art from the state art collection when those works of art meet the review criteria in the collections management policy. Removal of works of art follows the procedures outlined in the collections management policy.

(c) Gifts and transfers. The commission does not accept gifts and transfers of works of art to the state art collection.

(d) Insurance. The state art collection is self-insured.

(e) Inventory. Staff inventory the state art collection in accordance with the state administrative and accounting manual.

(f) Loans of works of art. Works of art may be loaned for temporary exhibition in accordance with the collections management policy. The executive director approves, and staff coordinate outgoing loans.

(g) Resiting. Staff manage the resiting of works of art from the state art collection. Resiting is intended to provide a long-term, secure, and visible home for a work of art. Priority for resiting is given to the original partner agency when possible.

(i) If resiting within the original partner agency jurisdiction is not feasible, then the work of art becomes available for resiting to other partner agencies, in accordance with the collections management policy. Priority may be given to partner agencies that have generated funding pursuant to WAC 30-40-050 (Funding) but have not received a public art project.

(ii) Resiting may not be feasible for physically integrated or site-responsive works of art.

(h) Collections management policies are approved by the board and published on the commission's web site.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-40-100 Art acquisition committees. (1) Art advisory committees. Staff may recommend that a partner agency form an art advisory committee. Staff may appoint members of the committee. The committee may include, but is not limited to, members of an established art selection committee. The art advisory committee does not select artists or make decisions regarding artist proposals.

(2) Art selection committees. At staff request, an art selection committee shall be formed by the partner agency receiving the project. The committee is convened and facilitated by staff according to published program guidelines.

(a) Committee members may include partner agency administration, visual artists or visual art professionals, community members, board members and trustees, and building/location users. ~~((A balanced representation, reflecting the partner agency and the site's constituencies, should be appointed to the committee.))~~ The makeup of the committee should be gender-balanced and culturally diverse. Staff may recommend appointees to the committee.

(b) A preferred committee size is from three to seven members, depending on the method of acquisition of works of art.

(i) For commissioning works of art, the minimum committee size is five members. The committee shall select the artist and approve the artist's concept.

(ii) For direct purchase of curated existing works of art, the minimum committee size is five members. The committee will approve the curator, selection of artists, and work(s) of art.

(iii) For resiting works from the state art collection, the minimum committee size is three members. The committee shall select the work(s) of art to be permanently resited.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-40-110 Acquisition of works of art. (1) The commission enters into an interagency agreement with any partner agency generating one-half of one percent funds and/or hosting a site for a work of art in the state art collection.

(2) Methods of selecting artists and works of art.

(a) Commissioning new works of art. The primary method of acquisition is by commissioning new works of art through an art selection committee. The public artist roster (WAC 30-40-120) is the tool for selecting artists for commissioning except as specified in (d) of this subsection.

(b) Curated purchase. Staff facilitates a process whereby a curator recommends work(s) of art for art selection committee approval. The curator roster (WAC 30-40-130) is the tool for selecting curators for recommendations except as specified in (d) of this subsection.

(c) Resiting. Works of art may be resited with any partner agency pursuant to WAC 30-40-060 (3)(g) and in accordance with the collection care policy.

(d) ~~((Open competition.))~~ An open call. In consultation with the director of a partner agency, staff may elect to manage an open ~~((competition))~~ call for artists to be considered

for the commissioning of a new work(s) of art or for curators to recommend existing works of art through a curated purchase. The open ((~~competition~~)) call process is managed pursuant to WAC 30-12-017 (Applications) and WAC 30-12-030 (Panels) unless otherwise noted in this subsection.

(i) A partner agency art selection committee may act as the panel for the application review process.

(ii) In addition to artists who apply to the open ((~~competition~~)) call, the art selection committee ((~~will~~)) may review and consider all eligible artists from the public artist roster.

(iii) Artwork selection committee decisions regarding acquisitions are final and do not need board approval.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-44-030 Eligibility. (1) In order for the commission to consider an individual or organization for a governor's arts or heritage award, the nominee must:

(a) Be a current resident of the state of Washington, or have been a resident of the state of Washington during the time the contributions were made and/or achievements accomplished;

(b) Not have been a previous individual recipient with the exception of the young arts leader award;

(c) Not have been a previous organizational recipient within the last twenty years.

(2) The commission may establish additional eligibility requirements to be published in nomination guidelines.

WSR 18-02-090

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 3, 2018, 8:13 a.m., effective February 3, 2018]

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

Purpose: This rule-making order amends WAC 16-326-020 by changing the name, address and phone extension for the WSU Grant/Adams County Extension Office, which is now called WSU Grant - Adams Area Extension Office.

Citation of Rules Affected by this Order: Amending WAC 16-326-020.

Statutory Authority for Adoption: RCW 15.51.050.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-22-126 on November 1, 2017.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 3, 2018.

Derek I. Sandison
Director

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

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

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

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

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

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

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

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

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

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

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

WSR 18-02-091

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 3, 2018, 8:55 a.m., effective February 3, 2018]

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

Purpose: Modify WAC 308-124A-760 to clarify that the questions on the managing broker state examination are related to the simulations. This language mirrors the national portion of the WAC.

Citation of Rules Affected by this Order: Amending WAC 308-124A-760.

Statutory Authority for Adoption: RCW 18.85.041.

Adopted under notice filed as WSR 17-21-015 on October 9, 2017.

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

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

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

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

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

Date Adopted: January 3, 2018.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-14-077, filed 7/1/13, effective 8/1/13)

WAC 308-124A-760 Grading of examinations. (1) To pass the broker examination a minimum scaled score of 70 is required on each portion. The broker examination shall consist of two portions:

(a) The national portion consisting of questions that test general real estate practices; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing.

(2) To pass the managing broker examination a minimum scaled score of 75 is required on each portion. The managing broker examination shall consist of two portions:

(a) The national portion consisting of simulation examination questions that test general real estate brokerage practices which include information gathering and decision-making

aspects. A candidate must achieve a minimum scaled score of 75 on each aspect to pass the entire portion; and

(b) The state portion consisting of simulation examination questions that test on Washington laws and regulations related to real estate licensing, and the closing/settlement process.

(3) A passing score for a portion of an examination is valid for a period of six months.

WSR 18-02-109

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 3, 2018, 11:16 a.m., effective February 3, 2018]

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

Purpose: The department proposes to amend WAC 458-30-200, 458-30-280, 458-30-285, 458-30-295, 458-30-300, and 458-30-700 to:

- Incorporate legislative changes resulting from SHB 1747 (2017), that removed the two-year notice for owner-initiated withdrawals from classification;
- Incorporate legislative changes resulting from SSB 5977 (2017), that added natural disasters, such as wildfires, to the list of exceptions to additional tax and compensating tax when [land] is removed from the current use program or the designated forest land program; and
- Provide general editing and formatting updates.

Citation of Rules Affected by this Order: Amending WAC 458-30-200 Definitions, 458-30-280 Notice to withdraw from classification, 458-30-285 Withdrawal from classification, 458-30-295 Removal of classification, 458-30-300 Additional tax—Withdrawal or removal from classification, and 458-30-700 Designated forest land—Removal—Change in status—Compensating tax.

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

Adopted under notice filed as WSR 17-22-096 on October 30, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

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

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

Date Adopted: January 3, 2018.

Erin T. Lopez
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Owned by:

(I) Members of the same family;

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

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

(ii) "Family" includes only:

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

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

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

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

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

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

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

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

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

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

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

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

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

(w) "Farm and agricultural land" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Farm and agricultural land also includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Payments for soil conservation programs; or

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

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

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

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

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

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

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

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

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

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

(A) Conserve and enhance natural or scenic resources;

(B) Protect streams or water supply;

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

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

(E) Enhance recreation opportunities;

(F) Preserve historic sites;

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

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

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

(hh) "Owner" means:

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Timber land does not include:

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

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

(C) Land used as a residential home site.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 458-30-285 Withdrawal from classification. (1) **Introduction.** RCW 84.34.070(1) states that once land has been classified under chapter 84.34 RCW, it must remain classified for a minimum of ten years from the date of classification to qualify for owner withdrawal. The land will remain classified until and unless the owner submits to the assessor a notice of request for withdrawal of all or a portion of the land from classification. If land is classified for less than ten years, the owner may request removal under RCW 84.34.108. After a request to withdraw ~~((classification))~~ is received, the assessor is required to make a series of determinations. This rule explains the procedures the assessor must follow upon receipt of a request for withdrawal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) State agency;
- (b) Federal agency;
- (c) County;
- (d) City;
- (e) Town;
- (f) Metropolitan park district (see RCW 35.61.010);
- (g) Metropolitan municipal corporation (see RCW 35.58.020);

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

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

(j) Federally recognized Indian tribe.

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

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

~~((8))~~ **(10) Termination of timber land classification.** Designation of forest land under RCW 84.33.130(1) as a result of a merger pursuant to RCW 84.34.400 terminating a county's timber land classification is not considered a withdrawal or removal under this chapter and is not subject to additional tax, interest, and penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The assessor must determine:

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A governmental restriction includes:

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

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

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

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

written notice(s) to the owner. RCW 84.33.140 (5)(e) (written notice and opportunity to be heard), and RCW 84.33.-140(9) (notice of removal). Upon receiving the notice that the land has been removed (notice of removal), the owner may appeal the removal and/or apply for reclassification of the land under chapter 84.34 RCW. If the owner chooses to appeal the removal, the appeal must be filed within thirty days (or up to sixty days if such a time limit has been adopted by the county legislative authority) of the postmark date the notice was mailed by the assessor, electronically transmitted by the assessor, the assessor electronically notified the owner or person responsible for payment of taxes that the notice was available to be accessed by the owner or other person, or on or before July 1st of the year of removal, whichever is later. RCW 84.40.038. If the owner chooses to apply for reclassification, they must do so within thirty days of the postmark date of the notice.

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

had been valued at its true and fair value as of January 1st of the year of removal.

(b) Formulas for calculating taxes after removal:

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

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

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

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

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

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

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

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

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

(iv) The lien can be foreclosed upon expiration of the same period after delinquency and in the same manner as

liens for delinquent real property taxes are foreclosed under RCW 84.64.050. RCW 84.33.140(12).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Protect or enhance public resources; or

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

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

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

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

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

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

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

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

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

(b) A number equal to:

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

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